

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
Kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493 | Fax: (310) 675-0861

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

EDUARDO AQUINO RODRIGUEZ,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

vs.

EAT SWEET FARMS, LLC, a California
Limited Liability Company; JDB PRO, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: 22CV00203
*[Assigned to Hon. Patricia L. Kelly, Dept
SM1, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing
Date: July 24, 2024
Time: 8:30 a.m.
Dept.: SM1

Complaint filed: January 18, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for

1 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
2 competently testify thereto.

3 **COUNSEL'S EXPERIENCE**

4 2. I have been a member, in good standing, of the State Bar of California since 2001.
5 I am admitted to practice in the United States District Courts for the Central and Southern
6 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
7 courts in California.

8 3. I have handled well over 500 employee vs. employer litigation matters during my
9 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
10 representing employees, the majority of which has included class action and representative
11 action wage and hour matters. In total, I have handled well over 300 class action and
12 representative action wage/hour cases, and have been appointed by the court as class counsel and
13 have received final court approval and judgment in over half of those actions to date, and
14 anticipate receiving final approval in many more of those in the future.

15 4. As part of these settlements and judgments, I have recovered well in excess of
16 \$250 million in damages for my clients and the class members (who often work as nurses,
17 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
18 occupations and countless other trades). My team and I once held the record for the largest
19 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
20 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
21 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

22 5. I have tried two major class and PAGA cases against Fortune 100 companies over
23 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
24 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
25 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
26 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
27 the PAGA case was reversed and remanded.
28

1 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
2 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
3 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I
4 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
5 only 5% of lawyers receive.

6 **BRIEF SUMMARY OF THE SETTLEMENT**

7 7. Following a contested but productive mediation, Plaintiff and Defendants
8 (collectively, the “Parties”) entered into a Class and PAGA Settlement Agreement and Release
9 (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit A**.

10 8. The Settlement Agreement seeks to release and discharge Defendants from the
11 claims brought against them in exchange for Defendants’ agreement to pay \$2,150,000 on a
12 non-reversionary, non-claims made basis (each Class Member will receive his/her share of the
13 Net Settlement Amount without having to submit a claim form or take any action, except for
14 those who opt-out). As set forth in the motion and Settlement Agreement, Plaintiff seeks to
15 represent “All current and former nonexempt employees employed by Defendants Eat Sweet
16 Farms, LLC and JDB Pro, Inc. in California at any time during the Class Period of January 18,
17 2018, through May 24, 2024.”

18 9. Under the terms of the Settlement Agreement, Defendants will not oppose
19 Plaintiff Counsel’s application for a reasonable award of attorney’s fees not to exceed
20 \$716,666.67 (1/3 of the Gross Settlement Amount), litigation expenses not to exceed \$30,000,
21 Settlement Administrator Costs of approximately \$92,000 (not to exceed \$125,000), PAGA
22 penalties of \$100,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro
23 rata basis), and a Service Payment of \$10,000 to Plaintiff Eduardo Aquino Rodriguez (“Class
24 Representative”). (S.A. ¶ 3.2 et seq.). After subtracting the agreed-upon deductions from the
25 Settlement Amount, approximately \$1,201,333.33 will be available to pay the individual
26 settlement amounts to approximately the Class Members who do not opt-out of the settlement,
27 as follows:
28

Gross Settlement Amount	\$ 2,150,000.00
Attorneys' Fees (1/3)	\$ 716,666.67
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs (estimated)	\$ 92,000.00
PAGA Penalties	\$ 100,000.00
Class Representative Service Award	\$ 10,000.00
Net Settlement Amount	\$ 1,201,333.33

10. The actual payment to the Class Members will be calculated on a pro-rata basis according to the number of Weeks Worked during the Class Period with each Workweek having a value of approximately \$4.27 (\$2,150,000 / 504,000 total Work Weeks). (S.A. ¶ 3.2.4). In addition, the Aggrieved Employees will receive a share of the \$25,000 allocated to PAGA Penalties (25% of the total \$100,000 PAGA allocation), calculated pro-rata based on the number of PAGA Pay Periods worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks he/she is credited with working during the Class Period which is attached hereto as **Exhibit B**.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we sent a letter to Defendants requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate his wage and hour claims. On January 14, 2022, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA").

1 14. On January 18, 2022, Plaintiff filed a class and representative PAGA action
2 complaint in the Court alleging the following class action and PAGA claims against Defendants:
3 failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods;
4 failure to provide rest breaks; failure to pay vested vacation; failure to reimburse business
5 expenses; failure to timely pay final wages; failure to provide accurate itemized wage statements;
6 and unfair and unlawful competition.

7 15. Defendants retained counsel and immediately began to defend the case, including
8 arguing that Plaintiff entered into a binding arbitration agreement that required the dismissal of
9 all class and PAGA claims. Initially, on February 24, 2022, the Parties met and conferred to
10 discuss the (at the time) pending United State Supreme Court case captioned *Viking River*
11 *Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, and the potential impact it might have on the
12 issues presented in this case. To that end, the Parties agreed to stay all proceedings pending the
13 Supreme Court's decision in *Viking River Cruises*. However, the *Viking River Cruises* decision
14 left open additional questions that would ultimately be decided by the California Supreme Court
15 in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.

16 16. Meanwhile, while waiting for the California Supreme Court to consider the
17 *Adolph* case, the Parties agreed to submit the matter to mediation.

18 17. In preparation for the mediation, the Parties informally exchanged thousands of
19 pages of documents and information that allowed both sides to conduct significant investigation
20 regarding the facts of the case and calculate the potential damages and evaluate potential risk,
21 including policies and procedures pertaining to each claim alleged, and statistics relating to the
22 number of current and former employees, number of shifts, weeks worked and other things.
23 Defendants also provided its written policies and practices and a robust sampling of payroll and
24 timekeeping records for Class Members. This information enabled both parties to take a deep
25 dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
26 researched, and investigated the potential issues, including matters related to the calculation of
27 damages, trial, and appellate issues and risks.
28

1 18. The Parties engaged in extensive settlement negotiations, and on March 13, 2024,
2 Plaintiff and Defendants participated in a formal, full-day mediation conducted by Mr. Michael
3 Strauss, Esq., a highly experienced and respected class action mediator in California. At the
4 conclusion of mediation, Mr. Strauss issued a mediator's proposal which was ultimately accepted
5 by the Parties. During all settlement discussions, the Parties conducted their negotiations at
6 arm's length in an adversarial position. Arriving at a settlement that was acceptable to both
7 Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on
8 the merits and at certification, and Plaintiff and Class Counsel believed that they would be able
9 to obtain class certification and prevail at trial. After conducting investigations, extensive
10 settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed
11 that the matter is well-suited for settlement given the legal issues as well as the costs and risks to
12 both sides that would attend further litigation. The Parties now seek the Court's preliminary
13 approval of the Settlement.

14 **SUMMARY OF THE CLAIMS AND DEFENSES**

15 19. Here, Plaintiff alleged numerous wage and hour violations on behalf of the Class
16 Members. However, Defendant vigorously contested and denied Plaintiff's material allegations
17 on the merits and as to the propriety of a class action or PAGA representative action.

18 20. One of the primary claims in the action was based on failure to pay all wages.
19 Plaintiff alleged this occurred through various theories.

20 21. *First*, Plaintiff claimed that he and the Class Members that were paid on a piece-
21 rate basis did not properly receive all separate compensation for paid rest breaks. Furthermore,
22 Plaintiff alleges that times when Defendant paid for rest breaks, it rounded which resulted in an
23 underpayment to Plaintiff and the Class. However, Defendant denied any liability for this claim
24 by arguing that (1) it had compliant, written policies and (2) Defendant's electronic timekeeping
25 system requires the Class to track their time via badges with electronic barcodes to ensure
26 accurate timekeeping.

27 22. *Second*, Plaintiff alleged that Defendant failed to provide compliant meal periods
28 to him and the Class due to the nature of the work. However, Defendant argued that it provided

1 and made available meal breaks to all employees and the foremen would stop all work for his
2 respective crew to ensure a meal was taken. Furthermore, Defendant argued that any instances of
3 late meals was negated by the existence of valid meal waivers.

4 23. Plaintiff also alleged various other Class and PAGA claims, such as failure to
5 reimburse business expenses, failure to pay all wages owed upon termination, failure to provide
6 accurate wage statements, and other claims related to the alleged violations mentioned above.
7 However, Defendant argued that these other claims, as well as the “derivative claims” have no
8 merit.

9 24. Despite the disputed nature of the claims, the Parties concluded that further
10 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
11 be fully and finally settled to limit further risk, expense, and protracted litigation.

12 **EVALUATION OF THE SETTLEMENT**

13 25. In preparation for mediation, Kristina Carlson, an associate with 10 years of
14 litigation experience within my office, and I formulated a damages model and risk analysis based
15 upon detailed data obtained through informal discovery and information exchanges. The
16 summary of the claims below is based on calculations by our expert and us, and the risks that we
17 potentially faced, giving significant credit to the defenses that Defendant raised or would likely
18 raise in further proceedings.

19 26. Following the informal exchange and other information provided by Defendant,
20 we estimated the following data points through the date of mediation (1) 17,000 Class Members,
21 (2) 504,000 workweeks, (3) 2,520,000 shifts worked during the Class Period, and (4)
22 approximately 206,420 wage statements during the PAGA period. From these metrics, and when
23 factoring in claim certification probabilities and liability probabilities, we formulated detailed
24 damages models to value the claims in preparation for mediation and to reach a realistic and
25 reasonable resolution.

26 27. Plaintiff’s unpaid wage claims had several theories of liability. *First*, Plaintiff
27 alleged that Defendants failed to separately compensate for all rest breaks. *Second*, Plaintiff
28 alleged that Defendants’ rounding practice resulted in an underpayment during the instances

1 when Defendants separately paid rest breaks. However, Defendants vehemently opposed these
2 unpaid wage claims on the merits and the propriety of class certification. Furthermore,
3 Defendants raised several defenses (as discussed in the Sections above). Thus, for mediation and
4 settlement purposes, Plaintiff and Class Counsel applied appropriate risk reductions from the
5 maximum potential unpaid wages to account for the risks at class certifications and on the merits.

6 28. Additionally, Plaintiff alleged meal break claims against Defendant. Based on
7 mediation analysis and investigation, including expert review of timekeeping data, Class Counsel
8 estimated 12.1% of pay periods had at least one meal violation. However, Defendant raised
9 numerous arguments against this claim, including compliant written policies and valid meal
10 waivers. Defendant argued that a fact-finder would have to make an individualized determination
11 for each Class Member as to why a meal was missed or late and the reasons why. As a result,
12 Plaintiff and Class Counsel considered these risks and defenses, along with the relatively low
13 violation rates; and for settlement purposes, applied appropriate risk reductions related to class
14 and the merits.

15 29. As for the claim for failure to reimburse business expenses, Plaintiff calculated
16 potential violations in approximately 50,400 workweeks. However, Defendant argued that its
17 employees were not required, but actually discouraged, from incurring business expenses as
18 Defendant would provide all necessary tools and equipment. Thus, Defendant argued that any
19 unreimbursed expenses were not “necessary.” As a result, Class Counsel factored the risks and
20 defenses into mediation and settlement.

21 30. Plaintiff also alleged claims for waiting time penalties and wage statement
22 violations, including failure to accurately state all applicable hourly rates and total hours worked.
23 Some of these claims were derivative of the claims above, meaning that they only had merit if
24 the claims for unpaid wages or meal/rest breaks were successful. But Defendant raised a variety
25 of defenses to these derivative claims that impacted the valuation. Namely, as to the wage
26 statement violations, Defendant argued that its wage statements did not violate Labor Code § 226
27 and even if there was a “technical” violation, that Plaintiff would be unable to prove the required
28 “knowing and intentional” and “injury” elements. Then, as to the waiting time penalty claim,

1 Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid wage
2 and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at
3 certification or on the merits, there would be no waiting time penalties owed, so the same risks
4 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
5 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
6 violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here,
7 Defendant argued that there could not be a finding of a "willful" violation since they had
8 compliant written policies, and any deviations therefrom were inadvertent and unintentional.

9 31. While the theoretical maximum potential damages stretched into the 8-figures,
10 that figure fails to account for the various risks at class certification, on the merits, and the many
11 evidentiary issues present in a class action of this size. For that reason, the settlement presented
12 to the Court is fair, adequate, and reasonable when applying all risks and considering the
13 potential outcomes at class certification and trial.

14 32. Likewise, while the PAGA penalties had a maximum value in the eight figures,
15 this also fails to incorporate the risks above and, further, fails to acknowledge that courts have
16 wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular
17 case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
18 confiscatory." Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the
19 underlying claims and particularly that the "willfulness" standard and/or "good faith" defenses
20 mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also
21 argued it is improper to stack civil penalty claims on top of underlying statutory claims. For
22 these reasons, the Parties submit that this settlement is fair and reasonable.

23 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

24 33. The settlement was the product of extensive arm's length negotiations, facilitated
25 by an experienced mediator. Though cordial and professional, the settlement negotiations were
26 adversarial and non-collusive in nature. The settlement reached is the product of substantial
27 effort by the parties and their counsel. Although we believed that there was a possibility of
28 certifying the claims, we recognized the potential risk, expense, and complexity posed by

1 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
2 on the damages awarded, and/or on an appeal that can take several more years to litigate.

3 34. The settlement will result in a fair payment to each Class Member based on the
4 percentage of weeks worked during the Class Period and other factors as set forth in the
5 Settlement Agreement. As set forth hereinabove, Plaintiff and his counsel have diligently
6 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
7 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
8 fees and costs. After evaluating the significant risks attendant with further litigation described
9 above and weighing them against the benefits of a known compromise and settlement as set forth
10 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
11 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

12 35. My office brought to bear a great deal of experience in negotiating the settlement
13 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
14 making it possible to exercise informed judgment throughout the settlement process, including
15 significant document review (e.g. documents pertaining to Defendants' policies and procedures,
16 personnel documents, among others), and conducted an extensive analysis of the detailed class-
17 wide data provided by Defendants.

18 36. Based on my experience in other cases, including wage and hour matters, I
19 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
20 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
21 settlement at this time is in the best interests of the class. The settlement provides each class
22 member with compensation for the alleged violations when viewed in relation to the costs and
23 risks inherent in obtaining class certification and proceeding to trial.

24 37. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
25 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

26 38. Of course, the settlement amount represents a compromise figure, taking into
27 account the various risks surrounding class certification and the merits of Defendants' asserted
28 defense. Nevertheless, the settlement provides for fair and adequate payments to the class

1 members, with no reversion to Defendants.

2 **PLAINTIFF’S REQUESTED ENHANCEMENT PAYMENT**

3 39. Plaintiff seeks an enhancement payment of \$10,000 for his service to the class,
4 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
5 and practice change that benefitted all other Class Members, and to recover unpaid wages. He
6 assumed significant risk in bringing this litigation—namely, had he lost, he would have been
7 ordered to pay Defendants’ costs.

8 40. Plaintiff provided invaluable assistance to my office and the Class in this case,
9 including providing factual background for the Class Complaint; reviewing the litigation
10 documents; providing information and documents about Defendant’s policies and practices;
11 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
12 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
13 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
14 the reasons why he believes that the service award should be approved.

15 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
16 **REQUESTED FEES AND COSTS**

17 41. As set forth above, I have handled over 300 class and representative actions, have
18 been appointed as class counsel and have successfully resolved over half of those cases, and
19 many others remain pending and will successfully resolve in the future.

20 42. When this case was taken on a contingency fee basis, with my firm agreeing to
21 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
22 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
23 and mediation costs. There was never a guarantee that we would recoup those expenditures.

24 43. It is my experience that attorney fee awards of one-third of a common fund
25 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
26 of the Settlement Amount for attorneys’ fees. Defendant does not oppose this fee request. The
27 fee is further warranted because it is within the range of reasonableness typically awarded in
28 class actions. The costs are reasonably capped at \$30,000 and will be based on the actual amount

of costs incurred at the time of final approval.

SETTLEMENT ADMINISTRATOR

44. The parties request that the Court appoint Rust Consulting to serve as the Settlement Administrator. Rust is experienced in administering class action settlements, and has provided a proposal to administer this settlement for a total of \$92,000, which is attached hereto as **Exhibit C** and further attached to the declaration of Andrew Meyer of Rust Consulting.

SUBMISSION TO THE LWDA

45. Plaintiff has concurrently submitted the settlement and motion documents to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

EXHIBITS AND CONCLUSION

46. The fully signed Settlement Agreement is attached as Exhibit “A.”

47. The proposed Class Notice is attached hereto as Exhibit “B.”

48. Rust Consulting’s proposal to administer the Settlement is attached as Exhibit “C.”

49. The LWDA’s confirmation of receipt of this Motion, Declarations and exhibits is attached hereto as Exhibit “D.”

50. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys’ fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 20, 2024, at Riverside, California.

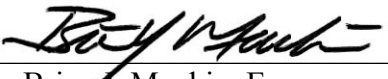
By: 
Brian J. Mankin, Esq.

EXHIBIT “A”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

This Class Action and PAGA Settlement Agreement and Release (“Agreement”) is made by and between plaintiff Eduardo Aquino Rodriguez (“Plaintiff”) and defendants Eat Sweet Farms, LLC and JDB Pro, Inc. (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC et al.* initiated on January 18, 2022 and pending in Superior Court of the State of California, County of Santa Barbara, Case No. 22CV00203.
- 1.2 “Administrator” means Rust Consulting, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses incurred in the execution of its duties under this Agreement.
- 1.4 “Aggrieved Employee” means all current and former non-exempt employees employed by Defendants in California during the PAGA Period.
- 1.5 “Class” means all current and former non-exempt employees employed by Defendants in California during the Class Period.
- 1.6 “Class Counsel” means Brian J. Mankin and Kristina Bui Carlson of Lauby, Mankin & Lauby, LLP, and Mehrdad Bokhour of Bokhour Law Group, P.C.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred in connection with Class Counsel’s litigation and resolution of the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendants’ possession including each Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources,

methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English and Spanish, in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from January 18, 2018 (four years prior to the date of filing of Plaintiff’s initial complaint) through either: 1) the date of Preliminary Approval; or 2) 60 days from March 25, 2024, whichever is earlier.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Santa Barbara.
- 1.16 “Defendants” means named Defendant Eat Sweet Farms, LLC, and named Defendant JDB Pro, Inc.
- 1.17 “Defense Counsel” means Rafael Gonzalez and Brian Daly of Mullen & Henzell, L.L.P.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means entry of the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means two million one hundred and fifty thousand dollars (\$2,150,000.00) which is the total amount Defendants agree to pay under the Settlement (except as provided in Paragraph 9 below). The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA

Payment, Class Counsel Fees, Class Counsel Expenses, the Class Representative Service Payment, the Administrator's Expenses, and employment and payroll taxes (but excluding employer's share of payroll taxes for the Wage Portion of the Net Settlement Amount, which will be paid by Defendants separately). Defendants have no obligation to pay any amount of the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.2 of this Agreement.

- 1.23 "Individual Class Payment" means each Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 "Individual PAGA Payment" means each Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25 "Judgment" means the judgment entered by the Court based upon the order granting Final Approval.
- 1.26 "LWDA" means the California Labor and Workforce Development Agency.
- 1.27 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be distributed to Participating Class Members as Individual Class Payments.
- 1.29 "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 "Notice of Objection" means a Class Member's written objection to the Settlement, which must include: (a) the case name and number of the Action; (b) the objector's full name, signature, address, telephone number, and last four digits of his or her Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) the full name, address, and telephone number of any attorney representing the Class Member with respect to his or her objection; and (e) copies of any papers, briefs, or other documents upon which the objection is based. Notices of Objection must be timely and properly submitted to the Administrator as detailed below.
- 1.31 "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.

- 1.32 “PAGA Period” means the period from January 14, 2021 (one year prior to Plaintiff’s submission of his initial PAGA Notice to the LWDA) through either: 1) the date of Preliminary Approval; or 2) 60 days from March 25, 2024, whichever is earlier.
- 1.33 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).
- 1.34 “PAGA Notice” means any letter submitted to the LWDA by Plaintiff providing notice pursuant to Labor Code section 2699.3, subdivision (a) of any alleged wage and hour violations by Defendants, including any Amended PAGA Notice(s).
- 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees, and 75% to the LWDA, in settlement of the PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Eduardo Aquino Rodriguez, the named plaintiff in the Action.
- 1.38 “Preliminary Approval” means entry of the Court’s Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means Defendants and each of their former and present directors, officers, shareholders, partners, principals, consultants, related entities, parents, subsidiaries, managers, owners, members, employees, contractors, fiduciaries, beneficiaries, agents, affiliates, representatives, heirs, executors, attorneys, accountants, insurers, payroll companies, predecessors, successors, and assigns.
- 1.43 “Request for Exclusion” means a Class Member’s timely and valid submission of a written request to be excluded from the Settlement. The Request for Exclusion must: (a) contain the case name and number of the Action; (b) be signed by the Class Member or his or her authorized representative; (c) contain the full name, address, telephone number, and last four digits of the Social Security Number of the Class Member requesting exclusion; and (d) clearly state that the Class Member does not wish to be included in the Settlement. Requests for Exclusion must be timely and properly submitted to the Administrator as detailed below.
- 1.44 “Response Deadline” means 45 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class

Members may submit a Request for Exclusion, Notice of Objection, and/or dispute the number of Workweeks or PAGA Pay Periods attributed to him or her. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

- 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46 “Workweek” means any week during the Class Period during which a Class Member worked at least one calendar day for Defendants as a non-exempt employee in California.

2. RECITALS.

- 2.1 On January 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging the following class action and PAGA claims against Defendants: failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay final wages; failure to provide accurate itemized wage statements; and unfair and unlawful competition. The Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, deny all allegations pertaining to alleged joint and/or client employer status or liability, and deny any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendants and the LWDA by submitting a PAGA Notice. Plaintiff has also submitted an Amended PAGA Notice to the LWDA.
- 2.3 On March 13, 2024, the Parties participated in an all-day mediation presided over by Michael Strauss, a respected mediator of complex wage and hour actions, which led to this Agreement to settle the Action.
- 2.4 Prior to mediation Plaintiff obtained, through informal discovery, various documents and information, including but not limited to: Plaintiff’s personnel, time, and payroll records; handbooks and other policies and documents pertaining to the claims alleged in the Operative Complaint; and electronic time and payroll records. Class Counsel has conducted a thorough investigation into the facts of the Action, including an extensive review of documents and data, and has diligently pursued an investigation of the claims against Defendants. Based on the documents and information produced, as well as Class Counsel’s own independent investigation and evaluation, Class Counsel believes that the Settlement with Defendants for the consideration and on the terms set forth in this Agreement is fair, reasonable and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and the class not being certified, uncertainty associated with continued litigation,

and the various defenses asserted by Defendants. Class Counsel's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

- 2.5 The Court has not granted class certification.
- 2.6 There are two other pending actions filed after this case asserting claims that will be extinguished or affected by the Settlement. Those actions are: (1) *Jose Luis Martinez Cervantes v. Eat Sweet Farms, LLC et al.*, Ventura County Superior Court Case No. 2023CUWT012225 (filed July 31, 2023); and (2) *Carlos Perez Alvino et al. v. Eat Sweet Farms LLC et al.*, Santa Barbara Superior Court Case No. 24CV00180 (filed January 9, 2024).
- 2.7 The Parties stipulate to certification of the Class for purposes of settlement only. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should the Court not grant Final Approval for whatever reason, or if judgment thereon should not become final, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate or inappropriate in a non-settlement context in this or any other proceeding.
- 2.8 The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions in the Action, as of the date on which the Settlement was reached. Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the Action, and Defendants will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Action.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraphs 8, 9 and 11 below, Defendants promise to pay \$2,150,000.00 and no more as the Gross Settlement Amount in consideration for the releases described herein (and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments). Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third (33.333%) of the Gross Settlement Amount which is currently estimated to be \$716,666.67, and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. These amounts will cover all fees and costs incurred to date in the Action, and all work to be performed and fees and costs to be incurred in connection with obtaining the Court's approval of this Settlement. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants and the Released Parties harmless, and indemnifies Defendants and the Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$125,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than this amount, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. Fifteen percent (15%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining eighty-five percent (85%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for disputed penalties, interest, and non-wage damages (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. The Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Class Payments, and issue checks to Participating Class Members for their Individual Class Payments (i.e., payment of their Individual Class Payment net of these taxes and withholdings). The employer's share of taxes and contributions on the Wage Portion of Individual Class Payments will be paid separately and in addition to the Gross Settlement Amount. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$100,000 to be paid from the Gross Settlement Amount, with 75% (\$75,000) allocated to the LWDA PAGA Payment and 25% (\$25,000) allocated to the Individual PAGA Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$25,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Data. Not later than thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.2 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes, by transmitting the funds to the Administrator. Payment of the Gross Settlement Amount shall be made in three equal installments as follows: (1) the first installment to be paid on or before January 1, 2025 or within 10 days after the Effective Date, whichever is later; (2) the second installment to be paid on or before July 31, 2025; and (3) the third installment to be paid on or before December 1, 2025.
- 4.3 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendants pay each installment of the Gross Settlement Amount, the Administrator will mail checks for one-third of the following amounts: all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of checks for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of checks Individual Class Payments and Individual PAGA Payments.
- 4.3.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom the Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the

Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.3.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.3.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b), or to an agreed upon and Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure section 384, subdivision (b) ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that they shall have no interest or relationship, financial or otherwise, with any intended Cy Pres Recipient. In the event that a Class Member's Individual Class Payment check or Individual PAGA Payment check is undeliverable, uncashed, or otherwise distributed to the State Controller's Office, Unclaimed Property Division, or to a Cy Pres Recipient specified above, the terms of the Final Judgment and the release(s) of claims applicable to that Class Member will nevertheless be binding upon that Class Member (and, for Aggrieved Employees, the State of California) with respect to that Class Member.
- 4.3.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 4.3.5 The Administrator shall undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and/or federal tax laws, that are necessitated due to the cancellation of any Individual Class Payment or Individual PAGA Payment check. Class Members whose Individual Class Payment or Individual PAGA Payment checks are cancelled shall nevertheless be bound by this Settlement Agreement.

5. RELEASES OF CLAIMS.

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, Class Members, and the State of California will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties (as defined above) as follows:

- 5.1 Plaintiff's Release. Plaintiff, on behalf of himself and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, fully releases and forever discharges Defendants and all Released Parties from all claims, complaints, costs, damages, demands, expenses, and liabilities of any nature and under any legal theory of liability whatsoever, arising from or relating to any transaction or occurrence that occurred during the Class Period, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action; and all claims arising out of or relating to Plaintiff's employment with any Defendant (the "Plaintiff Released Claims.") The Plaintiff Released Claims do not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that the release of the Plaintiff Released Claims shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of releasing the Plaintiff Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

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

- 5.2 Release by Participating Class Members: Plaintiff and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, fully release and forever discharge Defendants and all Released Parties from all claims, causes of action, rights, demands, penalties, costs, and attorneys' fees arising during the Class Period under state, federal, or local law that were alleged, or reasonably could have been alleged, based on the factual allegations in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action (the "Class Released Claims"). The Class Released Claims include any and all statutory, constitutional, contractual, and/or common law claims arising during the Class Period for wages, reimbursements, damages, penalties, restitution, liquidated damages,

interest, attorneys' fees, or litigation costs, including but not limited to claims arising under: California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, or 2802; the California Business and Professions Code section 17200, et seq.; and any IWC Wage Orders. The Class Released Claims include but are not limited to any and all claims arising during the Class Period involving any alleged failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to provide separate payment for rest and recovery periods and non-productive time; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay wages or final wages; failure to provide accurate itemized wage statements; failure to maintain employment records; and unfair and unlawful competition. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

- 5.3 Release by Aggrieved Employees and the State of California: Plaintiff and all Class Members (whether Participating or Non-Participating) who are Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, along with the State of California, fully release and forever discharge any and all claims against Defendants and the Released Parties for civil penalties under PAGA arising during the PAGA Period that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action (the "PAGA Released Claims"). The PAGA Released Claims include but are not limited to claims for PAGA penalties arising during the PAGA Period out of alleged violations of Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, or 2802, and any IWC Wage Orders, and any claims for PAGA penalties arising during the PAGA Period out of any alleged failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to provide separate payment for rest and recovery periods and non-productive time; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay wages or final wages; failure to provide accurate itemized wage statements; or failure to maintain employment records. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, all Aggrieved Employees, and the State of California will be forever barred from pursuing against Defendants and the Released Parties any and all claims for PAGA civil penalties arising during the PAGA Period under the Labor Code or IWC Wage Orders that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action.
- 5.4 Preclusive Effect of Settlement Agreement: The terms of this Settlement Agreement and the Judgment are and shall be binding on Plaintiff, Participating Class Members, and Aggrieved Employees, as well as their heirs, executors and administrators,

successors and assigns, and on the State of California, and the terms of this Settlement Agreement and the Judgment shall have res judicata, collateral estoppel and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings constitute Class Released Claims or PAGA Released Claims as set forth in this Agreement. Notwithstanding any other provision in this Agreement, this Agreement and the Judgment in the Action may be filed in any action against or by Defendants or the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

6. MOTION FOR PRELIMINARY APPROVAL.

Class Counsel agrees to prepare and, subject to the approval of Defense Counsel (which will not be unreasonably withheld), file a motion for preliminary approval (“Motion for Preliminary Approval”).

- 6.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel for approval all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; and (iii) a draft proposed Class Notice.
- 6.2 Responsibilities of Counsel. Class Counsel shall be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval promptly after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties will jointly select a third-party administrator to serve as the Administrator and to perform all duties specified in this Agreement in

exchange for payment of Administration Expenses. The Parties and their Counsel represent that they will disclose any interest or relationship, financial or otherwise, with the Administrator that the parties jointly select, other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
 - 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks and PAGA Pay Periods in the Class Data.
 - 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice (with Spanish translation) substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.4.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - 7.4.4 The deadlines for Class Members to submit Notices of Objection, Requests for Exclusion, or any challenges to the Workweeks and/or PAGA Pay Periods listed on their notice will be extended an additional fourteen (14) days beyond the initial forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants or Class Counsel are contacted by or otherwise discover any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by email or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that clearly communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's full name, address and telephone number, and the last four digits of his or her Social Security Number. To be valid, a Request for Exclusion must be timely emailed or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the releases of the Class Released Claims and PAGA Released Claims under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Class Member actually receives the Class Notice, objects to the Settlement, or cashes any check provided by the Administrator.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of

the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the PAGA Released Claims identified in Paragraph 5.3 of this Agreement, and are eligible for an Individual PAGA Payment.

7.6 Disputes Regarding Workweeks or PAGA Pay Periods. Each Class Member shall have forty-five (45) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to dispute the number of Workweeks or PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by submitting a written dispute that: (a) contains the case name and number of the Action; (b) contains the Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (c) contains a statement setting forth the number of Workweeks and/or PAGA Pay Periods during the Class Period that he or she contends is correct and attaches any relevant documentation in support thereof; and (d) is submitted to the Settlement Administrator by email or mail, postmarked no later than the Response Deadline. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly (no later than ten (10) calendar days after receipt) provide copies of all written disputes received regarding calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel, and the Administrator's determination regarding the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may submit a Notice of Objection to the Administrator by email or mail, which must include: (a) the case name and number of the Action; (b) the objector's full name, signature, address, telephone number, and last four digits of his or her Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) the full name, address, and telephone number of any attorney representing the Class Member with respect to his or her objection; and (e) copies of any papers, briefs, or other documents upon which the objection is based. In the alternative or in addition to a written Notice of Objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court at his or her own expense) to present verbal objections at the Final Approval Hearing. Any attorney who will represent an objector must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than the Response Deadline. A Participating Class Member

who elects to send a written Notice of Objection must do so not later than the Response Deadline.

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, Notices of Objection received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include or provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and Notices of Objection and disputes regarding Workweeks and/or PAGA Pay Periods received.

7.8.4 Workweek and/or PAGA Pay Period Disputes. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member disputes regarding the calculation of

Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator's Declaration. Not later than seven (7) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written Notices of Objection received, and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. ESCALATOR CLAUSE.

Based on its records, Defendants estimate that, as of March 25, 2024 the Class Members collectively worked a total of 504,000 Workweeks during the Class Period. If the number of Workweeks worked by all Class Members during the Class Period is ultimately determined to exceed 554,400 Workweeks (i.e. exceed 10% over the total Workweeks originally estimated), then Defendants shall have the option to either (1) end the Class Period and PAGA Period as of the first date that the Workweek count exceeds 554,400 Workweeks but under no circumstance shall the dates end prior to March 13, 2024 (the date of mediation), or (2) increase the Gross Settlement Amount in proportion to the increase in Workweeks in excess of 10% (e.g., if the number of Workweeks is 12% greater than the estimated Workweeks, Defendants shall have the option to increase the Gross Settlement Amount by 2%). Defendants shall have no obligation whatsoever to increase the Gross Settlement Amount, unless they elect option (2) specified above.

9. DEFENDANTS' RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds one hundred (100) Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio,

have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven (7) calendar days after the Administrator sends the final Exclusion List to Defense Counsel.

10. MOTION FOR FINAL APPROVAL.

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), and a [Proposed] Final Approval Order and Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval. The Parties shall agree on the [Proposed] Final Approval Order and Judgment before submission to the Court.

- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees, Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or

appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

- 10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of releases to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. NULLIFICATION.

If (a) the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter Judgment in the Action, or (c) the approval of the Settlement Agreement and/or the Court's Judgment is reversed, modified or declared or rendered void, or (d) Defendants elect to withdraw from this Agreement pursuant to Paragraph 9 above, then this Settlement Agreement and conditional class certification shall be considered null and void, and neither the Settlement Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all parties to the Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court.

Notwithstanding the foregoing, the Parties may and will attempt in good faith to cure any perceived defects in the Settlement Agreement to facilitate approval.

12. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

- 13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve

- the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 13.2 No Publicity. Class Counsel shall not issue any press release related to this Settlement and shall not advertise this settlement on their respective websites in any manner that identifies: any of the parties by name; the case number; or the geographic location of any Defendants' place of business. Class Counsel shall not otherwise advertise or have any other public communication about this settlement. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency (except the LWDA in connection with the approval process) or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement (except the LWDA in connection with the approval process) or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.5 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.

- 13.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.7 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 13.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 13.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 13.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.14 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.15 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data

provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

- 13.16 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.18 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Brian J. Mankin, Esq.
brian@lmlfirm.com
Kristina Bui Carlson, Esq.
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504

To Defendants:

Rafael Gonzalez
rgonzalez@mullenlaw.com
Brian T. Daly
bdaly@mullenlaw.com
MULLEN & HENZELL, L.L.P.
112 E. Victoria St.
Santa Barbara, CA 93101

- 13.19 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and

each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 13.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

[Party Signatures on Following Page]

**PLAINTIFF EDUARDO AQUINO
RODRIGUEZ**

DATED: 5/19/2024 _____

DocuSigned by:

B3161D8540FE4B6...

Eduardo Aquino Rodriguez

DEFENDANT EAT SWEET FARMS, LLC

DATED: _____

By: _____
Its Authorized Representative

DEFENDANT JDB PRO, INC.

DATED: _____

By: _____
Its Authorized Representative

[Counsel Signatures on Following Page]

**PLAINTIFF EDUARDO AQUINO
RODRIGUEZ**

DATED: _____

Eduardo Aquino Rodriguez

DEFENDANT EAT SWEET FARMS, LLC

DATED: 5/20/2024

DocuSigned by:
By: BRYAN GRESSER
-19CF7AACA23F425...
Its Authorized Representative

DEFENDANT JDB PRO, INC.

DATED: 5/20/2024

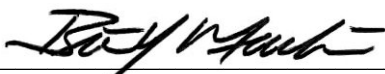
DocuSigned by:
By: Danny Gresser
-CBC0EF8CD687494...
Its Authorized Representative

[Counsel Signatures on Following Page]

APPROVED AS TO FORM:

LAUBY, MANKIN & LAUBY, LLP

DATED: 5/20/2024

By: 
Attorney(s) for Plaintiff

BOKHOUR LAW GROUP, P.C.

DATED: 5/15/2024

By: 
D8D3643F271940F...
Attorney(s) for Plaintiff

MULLEN & HENZELL, L.L.P.

DATED: 05/20/2024

By: 
Attorney(s) for Defendants

EXHIBIT “A”

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC et al
(Santa Barbara Superior Court, Case No. 22CV00203)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

Attention: All current and former non-exempt employees who were employed by Eat Sweet Farms, LLC, and JDB Pro, Inc., in California at any time from January 18, 2018, to **INSERT DATE** (the “Class Period”), you are a Class Member in a class action settlement.

You may be eligible to receive money as a Class Member in a class action lawsuit (“Action”) against Eat Sweet Farms, LLC and JDB Pro, Inc. (“Defendants”) for alleged wage and hour violations. The Action was filed by Eduardo Aquino Rodriguez (“Plaintiff” and “Class Representative”) and seeks payment of unpaid wages, statutory damages, interest and attorneys’ fees on behalf of all Class Members (defined above). Additionally, the Action seeks civil penalties under the California Private Attorney General Act (“PAGA”) for all current and former nonexempt employees who were employed by Defendants in California at any time from January 14, 2021, through **INSERT DATE** (the “PAGA Period”), who are referred to as “Aggrieved Employees.”

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants are settling the Action in order to avoid the further burden and expense of litigation.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and make a payment to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Time Worked	Your Estimated Share
Class Member	INSERT (Weeks Worked During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (Pay Periods Worked During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, your Individual Class Payment (less withholding) and your Individual PAGA Payment (to the extent applicable) are shown in the chart above, along

with the Workweeks you are credited with working during the Class Period and PAGA Pay Periods worked during the PAGA Period, according to Defendants' records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

If you believe that you worked more time during either period versus what Defendants' records show, you can submit a challenge by the **DATE**, 2024 (the "Response Deadline"). See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you were employed by Defendants during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims and Released PAGA Claims described below.
OPT-OUT (EXCLUDE YOURSELF) RESPONSE DEADLINE: <u>DATE</u>, 2024	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.

OBJECT RESPONSE DEADLINE: , 2024	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
DISPUTE YOUR TIME WORKED RESPONSE DEADLINE: , 2024	If you believe that your number of Workweeks listed above is incorrect, you may challenge it. The amount of your Individual Class Payment and Individual PAGA Payment (if any) depend on how many Workweeks you worked during the Class Period and how many PAGA Pay Periods you worked during the PAGA Period, respectively. The numbers you are credited are shown in the chart on the first page, and are based on Defendants’ records. If you disagree with either of these numbers, you must submit a challenge by the deadline. See Section 4 of this Notice.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT ITS NOT REQUIRED	
DATE: , 2024 TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and failing to provide meal periods, rest breaks, reimbursement for expenses, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted claims for unfair and unlawful competition and a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants have agreed to settle the case in order to avoid the burden and expense of further litigation.

Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$2,150,000 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and payment to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement Amount over the course of three equal payments in 2025 (January, July and December 2025) after the Judgment is entered by the Court and the Settlement becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$716,666.67 (one-third of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$30,000 for their litigation expenses. To date, Class

Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$10,000 to Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive from the Settlement other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$XX to XX (the "Settlement Administrator" or "Administrator") for services administering the Settlement.
 - D. Up to \$100,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of PAGA Pay Periods.
 - E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.
3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Workweeks during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages ("Wage Portion") and 85% to penalties and interest ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay, to the Administrator, employer payroll taxes they owe on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, email address or telephone number, and the last four digits of his or her Social Security Number, and which clearly communicates the Class Member is electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants subject to the applicable statute of limitations. Section 9 of this Notice has the Administrator's contact information.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged or could have been alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, **XX** (the "Settlement Administrator" or "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks and PAGA Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

Plaintiff and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, fully release and forever discharge Defendants and all Released Parties from all claims, causes of action, rights, demands, penalties, costs, and attorneys' fees arising during the Class Period under state, federal, or local law that were alleged, or reasonably could have been alleged, based on the factual allegations in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action (the "Class Released Claims"). The Class Released Claims include any and all statutory, constitutional, contractual, and/or common law claims arising during the Class Period for wages, reimbursements, damages, penalties, restitution, liquidated damages, interest, attorneys' fees, or litigation costs, including but not limited to claims arising under: California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, or 2802; the California Business and Professions Code section 17200, et seq.; and any IWC Wage Orders. The Class Released Claims include but are not limited to any and all claims arising during the Class Period involving any alleged failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to provide separate payment for rest and recovery periods and non-productive time; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay wages or final wages; failure to provide accurate itemized wage statements; failure to maintain employment records; and unfair and unlawful competition. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

As used herein, "Released Parties" means Defendants and each of their former and present directors, officers, shareholders, partners, principals, consultants, related entities, parents, subsidiaries, managers, owners, members, employees, contractors, fiduciaries, beneficiaries, agents, affiliates, representatives, heirs, executors, attorneys, accountants, insurers, payroll companies, predecessors, successors, and assigns.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

Plaintiff and all Class Members (whether Participating or Non-Participating) who are Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, along with the State of California, fully release and forever discharge any and all claims against Defendants and the Released Parties for civil penalties under PAGA arising during the PAGA Period that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action (the "PAGA Released Claims"). The PAGA Released Claims include but are not limited to claims for PAGA penalties arising during the PAGA Period out of alleged violations of Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, or 2802, and any IWC Wage Orders, and any claims for PAGA penalties arising during the PAGA Period out of any alleged failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to provide separate payment for rest and recovery periods and non-productive time; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay wages or final wages; failure to provide accurate itemized wage statements; or failure to maintain employment records. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, all Aggrieved Employees, and the State of California will be forever barred from pursuing against Defendants and the Released Parties any and all claims for PAGA civil penalties arising during the PAGA Period under the Labor Code or IWC Wage Orders that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$25,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.

3. Workweek and PAGA Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until the Response Deadline to challenge the number of Workweeks and/or PAGA Pay Periods credited to you. You can submit your challenge by submitting a written dispute that: (a) contains the case name and number of the Action; (b) contains the Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (c) contains a statement setting forth the number of Workweeks during the Class Period and/or PAGA Pay Periods during the PAGA Period that he or she contends is correct and attaches any relevant documentation in support thereof; and (d) is submitted to the Settlement Administrator by email or mail, postmarked no later than the Response Deadline. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or PAGA Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, checks to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The checks will combine the Individual Class Payment and the Individual PAGA Payment. The Settlement will be funded by Defendants in three payments in 2025 (approximately January 1, 2025, July 31, 2025 and December 1, 2025) assuming the judgment becomes final. Your checks should arrive within 30 days after each payment.
2. Aggrieved Employees Only. If you opt out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, checks for your Individual PAGA Payment and to every other Aggrieved Employee, including those who opt out of the Class Settlement. The Settlement will be funded by Defendants in three payments in 2025 (approximately January 1, 2025, July 31, 2025 and December 1, 2025) assuming the judgment becomes final. Your checks should arrive within 30 days after each payment is received.

Your checks will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, email address or telephone number, and the last four digits of your Social Security Number, and which clearly communicates that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded consistent with the above requirements. Be sure to personally sign your request, identify the Action as *Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC et al*, and include your identifying information (full name, address, email address or telephone number, approximate dates of employment, and last four digits of your social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by INSERT DATE (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the INSERT DATE Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys’ fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator’s Website INSERT URL or the Court’s website INSERT URL.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is INSERT DATE (the “Response Deadline”).** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. The Notice of Objection must include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, telephone number, and last four digits of his or her Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) the full name, address, and telephone number of any attorney representing the Class Member with respect to his or her objection; and (e) copies of any papers, briefs, or other documents upon which the objection is based. Make sure you identify the Action *Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC* and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final

Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **INSERT DATE** at **INSERT TIME** in Department 1 of the Santa Barbara Superior Court, Cook Division, located at 312-C East Cook St., Santa Maria, CA 93454. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision.

It's possible the Court will reschedule the Final approval Hearing. You should check the Administrator's website **INSERT URL** beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Administrator's website at **INSERT URL**. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below. The court records are also available to be inspected at any time during regular business hours at the Santa Barbara County Superior Court, located at 312-C East Cook St., Santa Maria, CA 93454.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

The contact information for Class Counsel and the Settlement Administrator are below:

<u>Class Counsel:</u>
Brian Mankin, Esq. brian@lmlfirm.com Kristina Carlson, Esq. kristina@lmlfirm.com Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

Mehrdad Bokhour, Esq.
mehrdad@bokhourlaw.com
Bokhour Law Group, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493

Settlement Administrator:

XX
Email Address
Mailing Address
Telephone Number
Fax Number

Case URL

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your checks, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “B”

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC et al
(Santa Barbara Superior Court, Case No. 22CV00203)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

Attention: All current and former non-exempt employees who were employed by Eat Sweet Farms, LLC, and JDB Pro, Inc., in California at any time from January 18, 2018, to **INSERT DATE** (the “Class Period”), you are a Class Member in a class action settlement.

You may be eligible to receive money as a Class Member in a class action lawsuit (“Action”) against Eat Sweet Farms, LLC and JDB Pro, Inc. (“Defendants”) for alleged wage and hour violations. The Action was filed by Eduardo Aquino Rodriguez (“Plaintiff” and “Class Representative”) and seeks payment of unpaid wages, statutory damages, interest and attorneys’ fees on behalf of all Class Members (defined above). Additionally, the Action seeks civil penalties under the California Private Attorney General Act (“PAGA”) for all current and former nonexempt employees who were employed by Defendants in California at any time from January 14, 2021, through **INSERT DATE** (the “PAGA Period”), who are referred to as “Aggrieved Employees.”

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants are settling the Action in order to avoid the further burden and expense of litigation.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and make a payment to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Time Worked	Your Estimated Share
Class Member	INSERT (Weeks Worked During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (Pay Periods Worked During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, your Individual Class Payment (less withholding) and your Individual PAGA Payment (to the extent applicable) are shown in the chart above, along

with the Workweeks you are credited with working during the Class Period and PAGA Pay Periods worked during the PAGA Period, according to Defendants’ records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

If you believe that you worked more time during either period versus what Defendants’ records show, you can submit a challenge by the **DATE**, 2024 (the “Response Deadline”). See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you were employed by Defendants during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims and Released PAGA Claims described below.
OPT-OUT (EXCLUDE YOURSELF) RESPONSE DEADLINE: DATE, 2024	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.

OBJECT RESPONSE DEADLINE: , 2024	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
DISPUTE YOUR TIME WORKED RESPONSE DEADLINE: , 2024	If you believe that your number of Workweeks listed above is incorrect, you may challenge it. The amount of your Individual Class Payment and Individual PAGA Payment (if any) depend on how many Workweeks you worked during the Class Period and how many PAGA Pay Periods you worked during the PAGA Period, respectively. The numbers you are credited are shown in the chart on the first page, and are based on Defendants’ records. If you disagree with either of these numbers, you must submit a challenge by the deadline. See Section 4 of this Notice.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT ITS NOT REQUIRED	
DATE: , 2024 TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and failing to provide meal periods, rest breaks, reimbursement for expenses, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted claims for unfair and unlawful competition and a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with and continue to comply with all applicable laws. Defendants have agreed to settle the case in order to avoid the burden and expense of further litigation.

Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$2,150,000 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and payment to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement Amount over the course of three equal payments in 2025 (January, July and December 2025) after the Judgment is entered by the Court and the Settlement becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$716,666.67 (one-third of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$30,000 for their litigation expenses. To date, Class

Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$10,000 to Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive from the Settlement other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$XX to XX (the "Settlement Administrator" or "Administrator") for services administering the Settlement.
 - D. Up to \$100,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of PAGA Pay Periods.
 - E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.
3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Workweeks during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages ("Wage Portion") and 85% to penalties and interest ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay, to the Administrator, employer payroll taxes they owe on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, email address or telephone number, and the last four digits of his or her Social Security Number, and which clearly communicates the Class Member is electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants subject to the applicable statute of limitations. Section 9 of this Notice has the Administrator's contact information.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged or could have been alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, **XX** (the "Settlement Administrator" or "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks and PAGA Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

Plaintiff and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, fully release and forever discharge Defendants and all Released Parties from all claims, causes of action, rights, demands, penalties, costs, and attorneys' fees arising during the Class Period under state, federal, or local law that were alleged, or reasonably could have been alleged, based on the factual allegations in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action (the "Class Released Claims"). The Class Released Claims include any and all statutory, constitutional, contractual, and/or common law claims arising during the Class Period for wages, reimbursements, damages, penalties, restitution, liquidated damages, interest, attorneys' fees, or litigation costs, including but not limited to claims arising under: California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, or 2802; the California Business and Professions Code section 17200, et seq.; and any IWC Wage Orders. The Class Released Claims include but are not limited to any and all claims arising during the Class Period involving any alleged failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to provide separate payment for rest and recovery periods and non-productive time; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay wages or final wages; failure to provide accurate itemized wage statements; failure to maintain employment records; and unfair and unlawful competition. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

As used herein, "Released Parties" means Defendants and each of their former and present directors, officers, shareholders, partners, principals, consultants, related entities, parents, subsidiaries, managers, owners, members, employees, contractors, fiduciaries, beneficiaries, agents, affiliates, representatives, heirs, executors, attorneys, accountants, insurers, payroll companies, predecessors, successors, and assigns.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

Plaintiff and all Class Members (whether Participating or Non-Participating) who are Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, along with the State of California, fully release and forever discharge any and all claims against Defendants and the Released Parties for civil penalties under PAGA arising during the PAGA Period that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action (the "PAGA Released Claims"). The PAGA Released Claims include but are not limited to claims for PAGA penalties arising during the PAGA Period out of alleged violations of Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, or 2802, and any IWC Wage Orders, and any claims for PAGA penalties arising during the PAGA Period out of any alleged failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest breaks; failure to provide separate payment for rest and recovery periods and non-productive time; failure to pay vested vacation; failure to reimburse business expenses; failure to timely pay wages or final wages; failure to provide accurate itemized wage statements; or failure to maintain employment records. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, all Aggrieved Employees, and the State of California will be forever barred from pursuing against Defendants and the Released Parties any and all claims for PAGA civil penalties arising during the PAGA Period under the Labor Code or IWC Wage Orders that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, or in any PAGA Notice submitted to the LWDA by Plaintiff, or ascertained in the course of the Action.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$25,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.

3. Workweek and PAGA Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until the Response Deadline to challenge the number of Workweeks and/or PAGA Pay Periods credited to you. You can submit your challenge by submitting a written dispute that: (a) contains the case name and number of the Action; (b) contains the Class Member's full name, address, telephone number, signature, and last four digits of his or her Social Security number; (c) contains a statement setting forth the number of Workweeks during the Class Period and/or PAGA Pay Periods during the PAGA Period that he or she contends is correct and attaches any relevant documentation in support thereof; and (d) is submitted to the Settlement Administrator by email or mail, postmarked no later than the Response Deadline. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or PAGA Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, checks to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The checks will combine the Individual Class Payment and the Individual PAGA Payment. The Settlement will be funded by Defendants in three payments in 2025 (approximately January 1, 2025, July 31, 2025 and December 1, 2025) assuming the judgment becomes final. Your checks should arrive within 30 days after each payment.
2. Aggrieved Employees Only. If you opt out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, checks for your Individual PAGA Payment and to every other Aggrieved Employee, including those who opt out of the Class Settlement. The Settlement will be funded by Defendants in three payments in 2025 (approximately January 1, 2025, July 31, 2025 and December 1, 2025) assuming the judgment becomes final. Your checks should arrive within 30 days after each payment is received.

Your checks will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, email address or telephone number, and the last four digits of your Social Security Number, and which clearly communicates that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded consistent with the above requirements. Be sure to personally sign your request, identify the Action as *Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC et al*, and include your identifying information (full name, address, email address or telephone number, approximate dates of employment, and last four digits of your social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by INSERT DATE (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the INSERT DATE Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys’ fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator’s Website INSERT URL or the Court’s website INSERT URL.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is INSERT DATE (the “Response Deadline”).** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. The Notice of Objection must include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, telephone number, and last four digits of his or her Social Security Number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) the full name, address, and telephone number of any attorney representing the Class Member with respect to his or her objection; and (e) copies of any papers, briefs, or other documents upon which the objection is based. Make sure you identify the Action *Eduardo Aquino Rodriguez v. Eat Sweet Farms, LLC* and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final

Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **INSERT DATE** at **INSERT TIME** in Department 1 of the Santa Barbara Superior Court, Cook Division, located at 312-C East Cook St., Santa Maria, CA 93454. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision.

It's possible the Court will reschedule the Final approval Hearing. You should check the Administrator's website **INSERT URL** beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Administrator's website at **INSERT URL**. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below. The court records are also available to be inspected at any time during regular business hours at the Santa Barbara County Superior Court, located at 312-C East Cook St., Santa Maria, CA 93454.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

The contact information for Class Counsel and the Settlement Administrator are below:

<u>Class Counsel:</u>
Brian Mankin, Esq. brian@lmlfirm.com Kristina Carlson, Esq. kristina@lmlfirm.com Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

Mehrdad Bokhour, Esq.
mehrdad@bokhourlaw.com
Bokhour Law Group, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493

Settlement Administrator:

XX
Email Address
Mailing Address
Telephone Number
Fax Number

Case URL

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your checks, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”



Settlement Administration Estimate
Aquino v. Eat Sweet Farms
April 30, 2024

Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com

EXPERIENCE

With experience on approximately 3,500 labor and employment cases, we are the nation's largest labor and employment settlement administrator. We have managed employment settlements with class sizes ranging from dozens to multi-million class members. In fact, we've been trusted to administer many of the nation's largest settlements, including the nation's top wage-and-hour cases in recent years.

DATA SECURITY

Rust's infrastructure and capabilities related to data processing and security ensure that your sensitive data will be protected. Our "unified compliance posture" includes a system certification and accreditation under FISMA from two federal agencies and an annual SSAE18 SOC 2 Type II Report audit of our data and system security controls and protocols.

DEDICATED SPECIALISTS

Our labor and employment case team is strictly dedicated to managing settlement administration for cases involving matters such as wage-and-hour, FLSA, discrimination and ERISA. They're specialists, not generalists, with an industry reputation for responsiveness and expertise in relevant areas such as the applicable banking and tax regulations. We are confident that Rust is the best choice for the administration of your settlement.

Project Summary

Estimated Class Size	17,000
Project Cost	
Mailed Notice	\$ 21,561
Processing and Administration	\$ 950
Telephone support	\$ 6,694
Website	\$ 300
Fund Distribution & Tax Reporting	\$ 51,828
Project Management	\$ 13,500
Other Out-of-pocket Expenses	\$ 750
Project Cost	\$ 95,583
Discount	\$ 4,779
Total Project Cost (assumes scope within)	\$ 90,804
TOTAL NOT TO EXCEED AMOUNT	\$ 92,000

Key Assumptions:
Notice mailing w/option to opt-out
Spanish translation
Case specific Telephone support included
Weekly Status Reports
Documents posted to Rust's website
***** Three Distributions in 2025**
W2/1099 Payments
Uncashed to CA Controller's Office
Preliminary, Final Approval and Final Payment
Declarations
Not Included: Website, Email, Claims processing,
Reminder postcards

Thank you for considering Rust Consulting, Inc. as your administrator -- we appreciate the opportunity to submit this estimate.



Settlement Administration Estimate
Aquino v. Eat Sweet Farms
April 30, 2024

Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com

Key Assumptions Used to Prepare this Estimate

Class Size	17,000	
Initial Mailed Notice:		
Mailed Notice	17,000	100.0%
Forwarded Notices	425	2.5%
Undeliverable Notices	2,550	15.0%
Re-Mailed Notices after Trace	2,040	80.0%
Telephone Support:		
Number of Telephone Contacts	2,125	12.5%
Connect Minutes per Call - CSRs	5.0	
Claimant Communications:		
Opt-outs / Correspondence received	85	0.5%
Payments	16,915	100.0%

Standard Hourly Rates*

SVP	\$175-\$275
Program Manager	\$160-\$180
Project Manager	\$100-\$140
Technical Consultant	\$110-\$180
Call Center Manager	\$125
CSR	\$ 43-\$ 50
Processor	\$ 43-\$ 50
Other	\$ 43-\$125

**Subject to change*

Additional Administration Assumptions Used to Prepare this Estimate:

Database Development: Receive and Process Database assumes that the data provided is complete with respect to the data components needed to mail and calculate settlement payments. Data that includes multiple records for individuals or work history that needs to be accumulated and totaled by individual generally requires additional efforts to bring to a point where it is final settlement data. These additional efforts can take a significant amount of time and should be considered when setting key settlement dates, especially the mailed notice deadline. Data must be provided in a complete, consistent, standardized electronic format. Rust's standard format is ASCII fixed width complete with field layout. Other formats may be accepted at Rust's discretion. Resources used to enhance or further develop non-standardized data will be billed on a time and materials basis according to Rust's Current Standard Hourly Rates.

CASS/NCOA/LACS: CASS - Coding Accuracy Support System; NCOA - National Change of Address; LACS - Locatable Address Conversion System.

Notice Package: Print and Mail per unit price is estimated. Actual prices will be provided after form is finalized prior to mailing. Notice package includes notice.

Telephone Support is included.

Processing & Administration: Receipt and Process Forms includes open, date stamp, label and data capture a 1-page form with up to five fields.

Project Management: Project Management fees are estimated and will be billed on actual time expended based on the rates found in the Current Standard Hourly Rates section above. The rates included in the estimate are a blended estimate of the rates listed above.

Out of Pocket Expenses: Includes post office box rental, overnight shipments, postage, labels, travel, long distance and other miscellaneous charges and expenses.

Pricing good for 90 days.



Settlement Administration Estimate

Aquino v. Eat Sweet Farms

April 30, 2024

Prepared by:
Andrew Meyer
 Business Development Consultant
 612-987-8835
ameyer@rustconsulting.com

Administrative Task	Estimated Quantity		Per Unit	Task Amount	Total
Database Development					
Receive and Process Database	6 Hours @		\$ 175	\$ 1,050	\$ 1,050
Additional Efforts to Finalize Settlement Data				<i>As Incurred</i>	
Initial Mailed Notice					
CASS / NCOA / LACS Processing				\$ 500	
Spanish				\$ 1,000	
Print and Mail Notice Package	17,000 Notices @		\$ 0.25	\$ 4,250	
Postage - 1 Ounce First Class	17,000 Notices @		\$ 0.56	\$ 9,537	\$ 15,287
Follow-up to Initial Notice					
Receive Undeliverable Notices and Update Database	2,550 Notices @		\$ 0.45	\$ 1,148	
Address Trace	2,550 Traces @		\$ 0.40	\$ 1,020	
Remail Notice Package	2,465 Notices @		\$ 0.60	\$ 1,479	
Remail Postage - 1 Ounce First Class	2,465 Notices @		\$ 0.64	\$ 1,578	\$ 5,224
Telephone Support					
Telephone Support	2,125 Calls		2.50	\$ 5,313	
800# Charges	10,625 Minutes @		\$ 0.13	\$ 1,381	\$ 6,694
Website					
Documents posted to Rust website	1 Fee @		\$ 300	\$ 300	\$ 300
Processing and Administration					
Declarations - reviewed, signed/completion	3 Hours @		\$ 175	525	
Receipt, Process, and Validate Forms	85 Forms @		\$ 5.00	425	\$ 950
Additional Administrative Services Requested by Client					<i>As Incurred</i>
Fund Distribution					
Print and Mail Payments (First Distribution)	16,915 Payments @		\$ 0.32	\$ 5,413	
Postage - 1 Ounce First Class	16,915 Payments @		\$ 0.56	\$ 9,489	
Check Processing	16,915 Payments @		\$ 0.17	\$ 2,876	
Print and Mail Payments (Second Distribution)	14,378 Payments @		\$ 0.32	\$ 4,601	
Postage - 1 Ounce First Class	14,378 Payments @		\$ 0.56	\$ 8,066	
Check Processing	14,378 Payments @		\$ 0.17	\$ 2,444	
Print and Mail Payments (Third Distribution)	12,221 Payments @		\$ 0.32	\$ 3,911	
Postage - 1 Ounce First Class	12,221 Payments @		\$ 0.56	\$ 6,856	
Check Processing	12,221 Payments @		\$ 0.17	\$ 2,078	
FDIC Fees				\$ 1,645	
Monthly Bank Account Fee (open - return to CA)	17 Months @		\$ 100	\$ 1,700	\$ 49,078
Tax Reporting					
Annual Fee -Qualified Settlement Fund	2 Year @		\$ 1,250	\$ 2,500	
Individual income Tax Reporting (W2/1099)	1 Year @		\$ 750	\$ 250	\$ 2,750
Project Management					
Director/Consultant	2 Hours @		\$ 225	Waived	
Project Management	56 Hours @		\$ 175	\$ 9,800	
Technical Consulting	20 Hours @		\$ 185	\$ 3,700	\$ 13,500
Other Charges and Out-of-pocket Costs					
					\$ 750
Total Settlement Administration Estimate					\$ 95,583



Settlement Administration Estimate
Aquino v. Eat Sweet Farms
April 30, 2024

Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com

Terms and Conditions

All administration services to be provided by Rust Consulting to you ("Customer") shall be subject to the following terms and conditions:

1. **Services.** Subject to the terms hereof, Rust Consulting agrees to provide the Customer with claims administration services (hereinafter, "Claims Services") as specified in the Proposal provided to Customer to which these Terms and Conditions are attached.
2. **Term.** The terms of this agreement will remain in effect until completion of the Claims Services, unless earlier terminated in accordance with Section 10 hereof.
3. **Charges for Services.** Charges to the Customer for Claims Services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Customer to Rust Consulting. Actual fees charged by Rust Consulting to Customer may be greater or less than such estimate, and Customer shall be responsible for the payment of all such charges and expenses in accordance with Section 4 hereof. Furthermore, Customer will be responsible for payment of all state and local sales and use taxes, if any, levied upon the charges payable by the Customer hereunder. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Customer to the extent that funds are received from the taxing authorities offset these charges. Rust Consulting may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
4. **Payment of Charges.** Payment by Customer of Rust Consulting's monthly invoices shall be due upon receipt thereof. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Customer's liability to Rust Consulting for payment of Claims Services. **Claims Services are not provided on a contingency fee basis.**
5. **Confidentiality.** Rust Consulting agrees to implement and maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Customer data provided to Rust Consulting by Customer in connection herewith. Should Rust Consulting ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Customer, Rust Consulting will promptly notify the Customer, unless prohibited by applicable law. The Customer shall have the option to (1) provide legal representation at the Customer's expense to avoid such access or (2) promptly reimburse Rust Consulting for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If Rust Consulting is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, Rust Consulting will not be liable for breach of said obligation.
6. **Standard Banking Procedures.** In accordance with Rust Consulting's standard banking procedures, Rust Consulting will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. In cases where funds are temporarily placed in interest bearing or investment accounts, funds will eventually be migrated to a demand deposit checking account prior to a fund distribution.
7. **Rights in Data.** Rust Consulting does not convey nor does the Customer obtain any right in the programs, system data, or materials utilized or provided by Rust Consulting in the ordinary course of business in the performance of this Agreement.
8. **Document Retention.** Unless directed otherwise in writing by Customer, Rust will maintain digitally scanned documents of undeliverable mail, claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust Consulting will retain all bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
9. **Limitation of Liability: Disclaimer of Warranty.** Rust Consulting warrants that our services will be performed with reasonable care in a diligent and competent manner. Our sole obligation will be to correct any non-conformance with this warranty. Rust Consulting shall not be liable, whether under theories of contract, negligence or other tort, statutory duty or other theories of liability in an amount exceeding the total charges to the Customer for the specific work affected by the error or omission. Rust Consulting will not be liable for any incidental, special, indirect, consequential or exemplary damages of any kind; or for any lost profits, lost opportunities, business interruption or for any liability incurred by the Customer or others to any third party. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSE.
10. **Termination.** The Claims Services to be provided under this Agreement may be terminated, at will by the Customer upon at least 30 calendar days' prior written notice to Rust Consulting. The Customer's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. Rust Consulting may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Customer is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Customer.
11. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of Rust Consulting or the Customer, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.
12. **Force Majeure.** To the extent performance by Rust Consulting of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Rust Consulting's reasonable control, then such performance shall be excused and this Agreement, at Rust Consulting's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
13. **Nonwaiver of Rights.** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.
14. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Court.
15. **Survival.** All accrued payment obligations hereunder, any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 7 (Rights in Data); Section 5 (Confidentiality), Section 9 (Limitation of Liability; Disclaimer of Warranty), and Section 14 (Jurisdiction).
16. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT “D”