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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SANDRA L. SALCEDO, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

PACIFIC GRAIN & FOODS, LLC, a California  
Limited Liability Company; and DOES 1-10,  
inclusive,

Defendants.

Case Number: 1:22-cv-00640-ADA-SAB

**Joint Stipulation re: Class Action Settlement**

1 TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF  
2 RECORD:

3 This Joint Stipulation Re: Class Action Settlement (hereinafter “Stipulation” or “Settlement  
4 Agreement”) is made and entered into by: (1) Plaintiff Sandra L. Salcedo (“Plaintiff”), individually and  
5 in her representative capacity on behalf of the Settlement Class, as defined below, and as a private  
6 attorney general on behalf of the State of California; and (2) Defendant Pacific Grain & Foods, LLC  
7 (“Defendant”). This Settlement Agreement is subject to the approval of the Court and is made for the  
8 sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the  
9 following terms and conditions. This Settlement shall be binding on Plaintiff and the class she purports  
10 to represent, Defendant, and on their respective counsel, subject to the terms and conditions hereof and  
11 the approval of the Court.

12 THE PARTIES STIPULATE AND AGREE as follows:

13 **1. DEFINITIONS**

14 As used in this Settlement Agreement, the following terms shall have the meanings specified  
15 below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined  
16 below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into  
17 this definition section.

18 **1.1. ACTION**

19 “Action” shall mean the following civil action: *Sandra L. Salcedo v. Pacific Grain & Foods,*  
20 *LLC*, case number 1:22-cv-00640-ADA-SAB, in the United States District Court, Eastern District of  
21 California.

22 **1.2. ADMINISTRATIVE EXPENSES**

23 “Administrative Expenses” shall include all costs and expenses associated with and paid to the  
24 third-party settlement administrator, which are anticipated not to exceed \$10,000.00.  
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1                   **1.3.     APPLICABLE WAGE ORDERS**

2                   “Applicable Wage Orders” shall mean the California Industrial Welfare Commission (“IWC”)  
3 Wage Orders applicable to the facts of this case, including IWC Wage Orders 8-2001 and others that  
4 may be applicable.

5                   **1.4.     CLAIMS**

6                   “Claims” shall mean the claims asserted in the Action.

7                   **1.5.     CLASS ATTORNEY FEES AND EXPENSES**

8                   “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount  
9 for which Class Counsel may apply for their attorney fees and litigation expenses. The amount of Class  
10 Attorney Fees and Expenses shall include all past and future attorneys’ fees and costs incurred in the  
11 Action – including, without limitation, all time expended by Class Counsel in the Actions or in  
12 defending the Settlement and securing final approval of the Settlement (including any appeals thereof).  
13 The Parties agree that the fee portion of the Class Attorney Fees and Expenses shall be up to 30% of  
14 the Gross Settlement Amount (i.e., \$30,000.00), as approved by the Court, and the award of costs and  
15 expenses shall be up to an additional \$10,000.00.

16                  **1.6.     CLASS COUNSEL**

17                  “Class Counsel” shall mean Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef,  
18 P.C.

19                  **1.7.     CLASS MEMBER**

20                  “Class Member” shall mean any person who is a prospective member of the Settlement Class,  
21 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-  
22 in-interest.

23                  **1.8.     CLASS NOTICE**

24                  “Class Notice” shall mean the *Notice of Proposed Class Action Settlement and Hearing Date*  
25 *for Court Approval*, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by  
26 the Court, which is to be mailed to Class Members along with the Share Form. The Class Notice and  
27 Share Form shall be disseminated in English and Spanish.  
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**1.9. CLASS PARTICIPANTS**

“Class Participants” shall mean all Class Members who do not timely request exclusion from the Class Settlement.

**1.10. CLASS PERIOD**

“Class Period” shall mean the period from May 27, 2018, through May 19, 2023.

**1.11. CLASS REPRESENTATIVE**

“Class Representative” shall mean Plaintiff Sandra L. Salcedo.

**1.12. CLASS SETTLEMENT**

“Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is subject to Court approval.

**1.13. COMPLAINT**

“Complaint” shall mean the currently-operative complaint in the Action.

**1.14. COURT**

“Court” shall mean the United States District Court, Eastern District of California, before whom the Action is currently pending.

**1.15. DEFENDANT**

“Defendant” shall mean Defendant Pacific Grain & Foods, LLC.

**1.16. DEFENSE COUNSEL**

“Defense Counsel” shall refer collectively to Irene V. Fitzgerald and Andrew H. Woo of Littler Mendelson, P.C.

**1.17. EFFECTIVE DATE**

The Court’s Judgment shall become final on the Effective Date. “Effective Date” shall be the date when all of the following events have occurred: (a) this Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Class Settlement; (c) notice has been given to the Settlement Class providing them with an opportunity to request exclusion from the Class Settlement; (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Settlement Class and

1 approving this Settlement Agreement; and (e) the later of the following events: (i) the expiration of the  
2 period for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has  
3 elapsed without any appeal, writ, or other appellate proceeding having been filed; (ii) the dismissal of  
4 any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue  
5 further remedies or relief; or (iii) any appeal, writ, or the issuance of such other final appellate order  
6 upholding the Court's final order with no right to pursue further remedies or relief. In this regard, it is  
7 the intention of the Parties that the Class Settlement shall not become effective until the Court's order  
8 approving the Class Settlement is completely final and there is no further recourse by an appellant or  
9 objector who seeks to contest the Class Settlement.

#### 10 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

11 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all  
12 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal  
13 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State  
14 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement  
15 Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld  
16 from and paid out of the Net Settlement Amount.

#### 17 **1.19. EMPLOYER'S TAXES**

18 "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g.,  
19 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is  
20 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.  
21 The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross  
22 Settlement Amount or Net Settlement Amount.

#### 23 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

24 "Final Approval and Fairness Hearing" shall mean the final hearing before the Court to finally  
25 approve the Settlement as fair, reasonable, and adequate.  
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**1.21. GROSS SETTLEMENT AMOUNT**

“Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling \$100,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Award, and PAGA Payment and all other amounts other than the Employer’s Taxes defined above. This is the maximum possible amount that may be paid by Defendant to resolve the Action, with the exception of the Employer’s Taxes defined above. Defendant shall separately pay its share of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

**1.22. HEARING ON PRELIMINARY APPROVAL**

“Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

**1.23. INCENTIVE AWARD**

“Incentive Award” shall mean any additional monetary payment provided to the Class Representative for her efforts and risks on behalf of the Settlement Class in this Action.

**1.24. INDIVIDUAL SETTLEMENT AMOUNT**

“Individual Settlement Amount” shall mean a Class Participant’s share of the Net Settlement Amount, as further detailed in Paragraphs 7.2 and 7.3 below.

**1.25. NET SETTLEMENT AMOUNT**

“Net Settlement Amount” shall mean the Gross Settlement Amount after all Court-approved deductions for Administrative Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award. The Net Settlement Amount is the maximum amount that will be available for distribution to Class Participants.

**1.26. OPT OUT**

“Opt Out” shall refer to the process of submitting a timely and valid request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline, as described in Paragraph 6.5 below.

**1.27. OPT-OUTS**

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline, as described in Paragraph 6.5 below.

**1.28. PAGA PAYMENT**

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$5,000.00. The PAGA Payment is to be deducted from the Gross Settlement Amount. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$3,750.00) to the LWDA and twenty-five percent (25%) (i.e., \$1,250.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

**1.29. PAGA PERIOD**

“PAGA Period” shall mean the period from March 22, 2021, through May 19, 2023.

**1.30. PAGA SETTLEMENT CLASS**

“PAGA Settlement Class” shall mean all individuals who are or were employed as hourly, nonexempt, employees employed by Defendant in California at Defendant’s Nut House facility located at 4603 N. Brawley #104, Fresno, CA 93722 (hereinafter referred as “Defendant’s Nut House facility”) during the PAGA Period.

**1.31. PARTIES**

“Parties” shall mean Plaintiff and Defendant.

**1.32. PLAINTIFF**

“Plaintiff” shall mean Plaintiff Sandra L. Salcedo.

**1.33. PRELIMINARY APPROVAL DATE**

“Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.

**1.34. RELEASED CLAIMS**

All Class Members who do not opt out of the Settlement will be bound by a release of all claims and causes of action falling within the definition of “Released Claims” (below), whether known or unknown, and irrespective of the factual basis for such claims. The scope of the release is limited to the Released Claims. Plaintiff and the Class Participants may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the Class Participants shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Claims. The parties understand and specifically agree that the scope of the release described in this Paragraph: is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this settlement and without it Defendant would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in Plaintiff’s Complaint.

The “Released Claims” are all claims, demands, suits, debts, obligations, damages, liabilities and causes of action alleged in the operative Complaint (“Complaint”), and all claims, demands, suits, debts, obligations, damages, liabilities, or causes of action which could have been alleged based on the facts and legal theories alleged in the Complaint, including: claims for failure to pay all wages due, failure to provide proper meal periods or proper meal premiums, failure to provide proper wage statements, failure to timely pay all wages when due or waiting time penalties; claims under California

Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 1199, sections 3 and 11 of IWC Wage Order No. 8-2001; Unfair Competition Law (UCL) violations pursuant to Cal. Bus. & Prof. Code §17200 based on the foregoing; civil penalties based on the foregoing under California’s Private Attorney Generals Act (“PAGA”) (Labor Code §§ 2698-2699.5); and all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the proposed complaint, and the California Unfair Competition Law. The Release Period shall be the Class Period.

This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Participants for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Participants under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

### **1.35. RELEASED PARTIES**

“Released Parties” shall mean and refer to Defendant and all of Defendant’s current or former parent companies, partnerships, joint ventures, and/or staffing agencies, and, with respect to each of them, all of their and/or such related entities’ predecessors and successors, and, with respect to each such entity, all of its past, present, and future employees, officers, partners, principals, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, though, under, or in concert with any of the persons or entities listed in this subsection, and their successors, .

1                   **1.36. RELEASING PARTIES**

2                   “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their  
3 behalf or purporting to assert a claim under or through them, including, but not limited to, their  
4 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,  
5 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,  
6 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

7                   **1.37. RESPONSE DEADLINE**

8                   “Response Deadline” shall mean the date forty-five (45) calendar days following the date on  
9 which the Settlement Administrator first mails Class Notice to the Class Members and the last day on  
10 which Class Members may submit a request for exclusion and/or objection to Class Settlement.

11                   **1.38. SETTLEMENT ADMINISTRATOR**

12                   “Settlement Administrator” shall mean CPT Group, Inc. (or other administrator agreed on by  
13 the parties) which the Parties have agreed will be responsible for administration of the Class Settlement  
14 and related matters.

15                   **1.39. SETTLEMENT CLASS**

16                   “Settlement Class” shall mean all hourly non-exempt individuals who are or were employed by  
17 Defendant in California at Defendant’s Nut House facility at any point during the Class Period.  
18 Defendant represents that between May 27, 2018 and December 31, 2022, there were approximately  
19 85 Settlement Class Members. If the Court does not grant either the preliminary or final approval of  
20 settlement, or if the settlement is revoked, the Parties stipulate that the conditional class certification is  
21 revoked without prejudice.

22                   **1.40. SHARE FORM**

23                   “Share Form” shall mean the Share Form, as set forth in the form of **Exhibit 2** attached hereto,  
24 or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class  
25 Notice. The Class Notice and Share Form shall be disseminated in English and Spanish.  
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1     **2.     FACTUAL AND PROCEDURAL BACKGROUND**

2             **2.1.     PLAINTIFF’S CLAIMS**

3             On May 27, 2022, Plaintiff, individually and in her representative capacity on behalf of the  
4     Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the  
5     following violations: (1) failure to pay minimum wages in violation of Labor Code sections 1194, 1197,  
6     1197.1, 1198, and 1199; (2) failure to pay proper overtime wages in violation of Labor Code section  
7     510 and the FLSA; (3) failure to provide complete and accurate wage statements in violation of Labor  
8     Code sections 226; (4) failure to pay all wages due and owing at separation in violation of Labor Code  
9     sections 201, 202, and 203; (5) failure to pay timely wages in violation of Labor Code sections 204 and  
10    210); (6) failure to provide compliant meal periods and pay missed meal period premiums in violation  
11    of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; (7) deceptive, fraudulent, or  
12    otherwise unlawful business practices based on the foregoing in violation of California’s Unfair  
13    Competition Law (Bus. & Prof. Code, §§ 17200–17210); and (8) penalties based on the foregoing  
14    pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

15            **2.2.     DISCOVERY, INVESTIGATION, RESEARCH, AND SETTLEMENT**

16            The Parties have conducted a detailed and comprehensive investigation of the claims asserted  
17    against Defendant and of the applicable law. This discovery, investigation, and prosecution has  
18    included, among other things, (a) several telephonic conferences with Plaintiff; (b) inspection and  
19    analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendant;  
20    (c) analysis of employment data from a sample of Class Members; (d) an analysis of the legal positions  
21    taken by Defendant; (e) investigation into the viability of class treatment of the claims asserted in the  
22    Action; (f) analysis of potential class-wide damages, including information sufficient to understand  
23    Defendant’s potential defenses to Plaintiff’s claims; (g) research of the applicable law with respect to  
24    the claims asserted in the Complaint and the potential defenses thereto; (h) assembling and analyzing  
25    of data for calculating damages; and (i) consideration of information disclosed at and in connection  
26    with mediation.

1 Class Counsel and the Class Representative have vigorously prosecuted this case, and  
2 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and  
3 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to  
4 them.

5 After such discovery, investigation, and prosecution, the Parties attended a mediation with an  
6 experienced employment law mediator, Laurie Saldana, which culminated in a settlement in principal,  
7 the terms of which are elaborated in this Settlement Agreement.

8 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**  
9 **CLASS SETTLEMENT**

10 The document and data exchange in this matter, as well as discussions between counsel, have  
11 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits  
12 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery  
13 conducted in this Action and the information exchanged by the Parties through pre-mediation  
14 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to  
15 compromise the issues on a fair and equitable basis.

16 The Class Representative and Class Counsel believe that the claims, causes of action,  
17 allegations, and contentions asserted in the Action have merit. However, the Class Representative and  
18 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings  
19 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel  
20 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex  
21 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential  
22 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.  
23 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims  
24 alleged in the Action.

25 The Class Representative and Class Counsel believe that the settlement set forth in this  
26 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an  
27 independent review of this Settlement Agreement by the Court in the approval process will confirm  
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1 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has  
2 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff  
3 and the Class Members.

#### 4 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

5 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by  
6 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing  
7 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the  
8 Action, and has expressly denied and continues to deny any wrongdoing whatsoever. Defendant  
9 contends that it complied with California and federal wage and hour laws and has dealt legally and  
10 fairly with Plaintiff and the Class Members.

11 Defendant further denies that, for any purpose other than settling this Action, these claims are  
12 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further  
13 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be  
14 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement  
15 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's  
16 respective businesses without further expensive litigation and the distraction and diversion of their  
17 personnel with respect to matters at issue in the Action. Defendant has also taken into account the  
18 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.  
19 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled  
20 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

#### 21 **2.5. INTENT OF THE CLASS SETTLEMENT**

22 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order  
23 approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of the Released  
24 Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from  
25 liability for any and all claims arising out of the Action.

1     **3.     CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

2             For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the  
3     Parties agree to conditional class certification of the Settlement Class. The certification of the  
4     Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by  
5     Defendant, including without limitation, that certification of a class is or would be warranted,  
6     appropriate or proper; or that Plaintiff could establish any of the requisite elements for class treatment  
7     of any of the claims in the Action. In the event that the Settlement Agreement is not finally approved  
8     by the Court, a Final Effective Date is not achieved, or the Class Settlement is rejected, terminated, or  
9     otherwise rendered null and void as set forth herein, then certification of the Settlement Class shall be  
10    automatically vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or  
11    a binding determination that the requirements for certification of a class for trial purposes in this Action  
12    or in any other action which have been, are or can be, satisfied. Further, if the Agreement does not  
13    reach a Final Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise  
14    raise any preliminary approval of the Settlement Class in connection with any later proceeding before  
15    the Court.

16    **4.     APPOINTMENT OF CLASS COUNSEL**

17             For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree  
18    to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the  
19    Class Settlement pursuant to this Settlement Agreement.

20    **5.     CONSIDERATION**

21             **5.1.    SETTLEMENT AMOUNT**

22             The Parties agree to settle this Action for the Gross Settlement Amount of \$100,000.00. There  
23    shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross  
24    Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate  
25    consideration for the Class Settlement and will be made in full and final settlement of: the Released  
26    Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the  
27    PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA  
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1 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the  
2 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).  
3 Under no circumstances will Defendant be obligated to pay more than the Gross Settlement Amount  
4 and its share of the employer's payroll taxes, which shall be funded in addition to the Gross Settlement  
5 Amount as a result of this Settlement, unless otherwise provided for in this Settlement.

## 6 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

7 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$7,500.00  
8 for Plaintiff to acknowledge her efforts on behalf of the Settlement Class in this Action, including  
9 assisting in the investigation and consulting with Class Counsel. Defendant shall not oppose any  
10 request by Plaintiff for an Incentive Award in such an amount. Any Incentive Award approved by the  
11 Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any  
12 distribution to which she may otherwise be entitled as a Class Participant. The Settlement  
13 Administrator shall issue the Incentive Award to Plaintiff on an IRS Form 1099. Plaintiff shall be  
14 responsible for the payment of all taxes with respect to any Incentive Award approved by the Court  
15 and shall hold Defendant harmless from all liability with regard thereto. In the event the Court reduces  
16 Class Representative's Incentive Award, the reduced amount shall be added to the Net Settlement  
17 Amount to be distributed to Class Participants.

18 The amount of the Incentive Award approved by the Court is not a material term of this  
19 Agreement. If the Court approves an amount for the Incentive Award less than the amount requested  
20 by Plaintiff, it shall not result in the Agreement being void.

## 21 **5.3. PAYMENT TO CLASS PARTICIPANTS**

22 Each Class Participant shall be eligible to receive payment of the Individual Settlement  
23 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked  
24 by the Class Members during the Class Period as a proportion of all weeks worked by all Class  
25 Members. For purposes of this calculation, a workweek means a week where a Class Member was  
26 employed in California at Defendant's Nut House facility in a non-exempt hourly job position. Each  
27 Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes  
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1 and Required Withholding with respect to his or her Individual Settlement Amount and shall hold  
2 Defendant harmless from any and all liability with regard thereto.

3 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

4 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA  
5 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have  
6 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which  
7 is \$5,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section 2699  
8 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$3,750.00) to the LWDA and  
9 twenty-five percent (25%) (i.e., \$1,250.00) to the PAGA Settlement Class. The portion of the PAGA  
10 Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class  
11 based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member  
12 during the PAGA Period at Defendant's Nut House facility as a proportion of all pay periods worked  
13 by all members of the PAGA Settlement Class at Defendant's Nut House facility. PAGA Settlement  
14 Class members cannot opt out of the PAGA portion of the settlement.

15 The Parties agree that should the Court condition approval of this Agreement upon a different  
16 allocation of the PAGA Payment amount, the Parties acknowledge and agree that the amount of the  
17 PAGA Payment is not a material term of this Agreement and will use their best efforts to comply with  
18 the Court's allocation so long as the allocation can be met without changing the Gross Settlement  
19 Amount.

20 **5.5. TAX TREATMENT AND PAYMENT**

21 The Settlement Administrator shall be responsible for paying the employees' share of federal,  
22 state, and local payroll and income taxes. For the purpose of calculating Employee's Taxes and  
23 Required Withholding for the Individual Settlement Amounts for Class Participants (including any  
24 payments to the Class Representative but exclusive of her Incentive Award), the Parties agree that 20%  
25 of each Individual Settlement Amount shall constitute payment in the form of wages (and each Class  
26 Participant will be issued an IRS Form W-2 for such payment to him or her), and 80% of each  
27  
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1 Individual Settlement Amount shall constitute penalties and interest (and each Class Participant will  
2 be issued an IRS Form 1099 for such payment to him or her).

3 Prior to final distribution, the Settlement Administrator shall calculate the total Employee's  
4 Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated  
5 Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement  
6 Amount. Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the  
7 Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the  
8 Class Participants' Individual Settlement Amounts and issue instructions to Defendant to separately  
9 fund these tax obligations/withholdings. The Parties understand that Plaintiff and the Class Participants  
10 who receive any payment pursuant to this Settlement Agreement shall be solely responsible for all  
11 other individual tax obligations.

12 With respect to the PAGA Payment and any payments made to individual members of the  
13 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest  
14 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the  
15 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement  
16 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made  
17 to them.

18 The Settlement Administrator shall issue an IRS Form W-2 to each Class Participant for the  
19 portion of the Individual Settlement Amount that is designated as wages. The Settlement Administrator  
20 shall issue an IRS Form 1099 to each Class Participant and/or PAGA Settlement Class Member for the  
21 portion of the Individual Settlement Awards that is not designated as wages. The Settlement  
22 Administrator shall issue an IRS Form 1099 to the Class Representative for any enhancement award  
23 paid in connection with her roles as the Class Representative.

24 The Settlement Administrator shall file, with the California Employment Development  
25 Department ("EDD"), the required reports of Personal Income Tax ("PIT") wages withheld from the  
26 Individual Settlement Amounts, as well as the amounts to be paid as Unemployment Insurance ("UI"),  
27 Employment Training Tax ("ETT"), and State Disability Insurance ("SDI"). For purposes of this  
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1 reporting, prior to disbursement of the Individual Settlement Amounts, the Settlement Administrator  
2 shall provide Defendant with a list of all Class Participants, and Defendant shall provide to the  
3 Settlement Administrator the following information: (1) its Form DE 2088, Notice of Contribution  
4 Rates and Statement of UI Account, for the current calendar year (if unavailable, Defendant may  
5 provide instead their California State Employer's Identification Number and its applicable UI and ETT  
6 Rates); and (2) the year-to-date earnings of each Class Participant who received any wages from  
7 Defendant during the current calendar year.

8 All Class Participants, PAGA Settlement Class members, and Plaintiff will be responsible for  
9 correctly characterizing the compensation they receive for tax purposes and for paying any taxes on  
10 the amounts received, except for the employer contributions which will be handled as provided by this  
11 Stipulation. The Class Participants, PAGA Settlement Class members, and Plaintiff agree to indemnify  
12 Defendant for any liability Defendant incurs to any tax authority on account of the Class Participants',  
13 PAGA Settlement Class members', or Plaintiff's failures to pay all taxes due on amounts they receive  
14 hereunder, except if the failure results from Defendant's failure to pay its own portion of taxes due.  
15 The liability of each Class Participant, PAGA Settlement Class member, and Plaintiff is limited to the  
16 liability caused by that individual's own failure.

#### 17 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

18 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any  
19 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus  
20 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,  
21 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,  
22 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be  
23 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other  
24 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.  
25 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs  
26 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are  
27 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined  
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1 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or  
2 any other purpose, and that additional contributions or benefits are not required by this Settlement  
3 Agreement. Defendant does not consider the Class Settlement payments “compensation” for purposes  
4 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,  
5 or any other plan sponsored by Defendant.

#### 6 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

7 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for  
8 an award of Class Attorney Fees and Expenses with the fee portion not to exceed 30% of the Gross  
9 Settlement Amount (i.e., \$30,000.00) and the award of costs and expenses up to an additional  
10 \$10,000.00. The Class Attorney Fees and Expenses shall be paid from the Gross Settlement Amount.  
11 Defendant agrees to not object to any such fee, cost, or expense application in those amounts.

12 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the  
13 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall  
14 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall  
15 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for  
16 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less  
17 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class  
18 Attorney Fees and Expenses awarded. In the event the Court reduces the Class Attorney Fees and  
19 Expenses, the reduced amount shall be added to the Net Settlement Amount to be distributed to Class  
20 Participants.

21 The Class Attorney Fees and Expenses approved by the Court shall reflect: (a) all work  
22 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to  
23 represent the Settlement Class through the date of this Settlement Agreement; (b) all work to be  
24 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;  
25 (c) all work to be performed and costs and expenses, if any, incurred in connection with administering  
26 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and (d) may  
27 be based on the “catalyst theory” and/or the “common fund doctrine.”  
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1 The amount of the Class Attorney Fees and Expenses approved by the Court is not a material  
2 term of this Agreement. If the Court approves an amount for the Class Attorney Fees and Expenses  
3 less than the amount requested by Class Counsel, it shall not result in the Agreement being void.

4 **6. SETTLEMENT ADMINISTRATION**

5 **6.1. COSTS AND EXPENSES**

6 All costs and expenses due to the Settlement Administrator in connection with its administration  
7 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class  
8 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment  
9 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the  
10 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement  
11 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement  
12 Amount, and is not expected to exceed \$10,000.00. To the extent actual costs for settlement  
13 administration are less than \$10,000.00, those amounts will be added to the Net Settlement Amount to  
14 be distributed to Class Participants. Defendant agrees not to oppose any such applications which are  
15 consistent with this paragraph.

16 **6.2. PAYMENT BY DEFENDANT**

17 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the  
18 employer-side payroll taxes to the Settlement Administrator within thirty (30) days of the later of 1)  
19 the Effective Date, 2) the date the Settlement Administrator provides Defendant with wire instructions  
20 for depositing the Gross Settlement Amount and verbally verifies the authenticity of those wire  
21 instructions with Defendant by a telephone call prior to the transfer initiated by Defendant using the  
22 Settlement Administrator's telephone number published on its known website, and 3) the date the  
23 Settlement Administrator provides Defendant with the calculated amount of employer-side payroll  
24 taxes. Defendant shall deposit the Gross Settlement Amount by wiring that amount to the Settlement  
25 Administrator. In no event shall Defendant be obligated to pay or deposit with the Settlement  
26 Administrator more than \$100,000.00 plus the Employer's Taxes, except where the Escalator Provision  
27 is triggered.  
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### 6.3. THE SETTLEMENT ADMINISTRATOR

The Settlement Administrator will be responsible for: (a) preparing, translating into Spanish, printing, and mailing the Class Notice and Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members as well as following up with reasonable skip tracing; (b) posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; (c) handling inquiries from Class Members concerning the Class Notice; (d) determining Individual Settlement Amounts; (e) determining individual payments to members of the PAGA Settlement Class; (f) maintaining the settlement funds in an appropriate interest-bearing account; (g) preparing, administering, and distributing Individual Settlement Amounts to Class Participants; (h) preparing, administering, and distributing individual payments to members of the PAGA Settlement Class; (i) distributing the portion of the PAGA Payment payable to the LWDA; (j) issuing a final report; (k) notifying the Parties of the identity of Class Members who submit timely Requests for Exclusion; (l) calculating and paying the employer's share of the applicable federal and state withholding taxes; (m) filing any required federal and state tax forms and related agency reporting; (n) filing any required reports with the Court; and (o) performing such other duties as the Parties may direct. Additionally, the Settlement Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel with summary information updating them as to the number of validated and timely objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class Member names which the Settlement Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing.

No later than seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary

1 information regarding: (a) the total amount of final Individual Settlement Amounts of each Class  
2 Participant, without any identifying personal information; (b) the number of Class Participants to  
3 receive such payments, and (c) the final number of Opt-Outs and objections.

#### 4 **6.4. NOTICE TO CLASS MEMBERS**

5 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days  
6 following the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with  
7 data that is within Defendant's possession containing, for each Class Member: (a) The Class Member's  
8 name; (b) the Class Member's last known address; (c) the Class Member's social security number; (d)  
9 the Class Member's first date of employment in California in a non-exempt hourly job position with  
10 Defendant; and (e) the Class Member's last date of employment (if any) in California in a non-exempt  
11 hourly job position with Defendant. This Class information is confidential and not to be disclosed to  
12 anyone other than the Settlement Administrator. This information shall be based on Defendant's  
13 payroll and other business records, and shall be in a format readily accessible to Defendant.

14 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement  
15 Administrator shall determine the number of workweeks worked by each Class Member at Defendant's  
16 Nut House facility; populate the data for each Class Member accordingly; conduct a National Change  
17 of Address search to update any addresses provided; and thereafter mail a copy of the Notice to all  
18 Class Members by first class regular U.S. Mail, using the most current mailing address information  
19 provided by Defendant and/or obtained by the Settlement Administrator. The Class Notice shall also  
20 contain an easily-understood statement alerting the Class Members that, unless they elect to Opt Out  
21 of the Class Settlement, the Class Member is releasing and waiving all Released Claims against the  
22 Released Parties.

23 The Class Notice will inform Class Members of their estimated share of the settlement and the  
24 number of workweeks they worked during the Class Period at Defendant's Nut House facility. Class  
25 Members may dispute their workweeks if they believe they worked more weeks in the Class Period  
26 than Defendant's records show by submitting information to the Settlement Administrator no later than  
27 forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement  
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1 Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work  
2 with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot  
3 agree over the workweeks to be credited, the Settlement Administrator shall make the final decision  
4 based on the information presented by the Class Member and Defendant.

5 The Settlement Administrator will engage in address searches consistent with its normal  
6 practices in administering settlements of wage claims, including skip tracing. Such search efforts shall  
7 include, where necessary, using social security numbers to obtain better address information and  
8 attempting to call such Class Members.

#### 9 **6.5. OPT-OUT PROCEDURE**

10 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate  
11 in the Class Settlement and shall become Class Participants without having to submit a claim form or  
12 take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or  
13 postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state  
14 the Class Member's name, address, telephone number, and signature. The Opt Out request should state  
15 something to the effect of:

16 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE  
17 *SALCEDO V. PACIFIC GRAIN & FOODS* LAWSUIT. I UNDERSTAND THAT IF I  
18 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT  
19 RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT  
20 AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

21  
22 Any Opt Out request that is not postmarked by the Response Deadline will be invalid.

23 Any returned envelopes from this mailing with forwarding addresses will be utilized by the  
24 Settlement Administrator to forward the Notices to the Class Members. Notices returned to the  
25 Settlement Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the  
26 returned envelope. Upon completion of these steps by the Settlement Administrator, the Parties shall  
27 be deemed to have satisfied their obligation to provide the Notice to the affected Class Member. The  
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1 affected Class Member shall remain a Class Participant and shall be bound by all the terms of this  
2 Stipulation and the Court's Final Order and Judgment. Any Re-Mailing of the Notice shall extend the  
3 receipt deadline by a period of fifteen (15) calendar days.

4 It will be presumed that, if an envelope containing the Class Notice has not been returned within  
5 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least ten (10)  
6 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class  
7 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard  
8 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall  
9 specify the number of Class Members to whom the Class Notice was sent and the number of Class  
10 Members to whom the Class Notice was not delivered, as well as information relating to the number  
11 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

12 If the Settlement Administrator determines that an Opt Out request returned by a Class Member  
13 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency  
14 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an  
15 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify if the Opt Out  
16 request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall be  
17 disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

18 A request to Opt Out of the Class Settlement shall not serve to exclude the Class Member from  
19 participation in the PAGA Settlement Class. Class Members who are also members of the PAGA  
20 Settlement Class shall have no right or ability to opt out of the portion of this Settlement Agreement  
21 releasing PAGA claims.

22 Class Participants will be bound by the Release of Released Claims set forth in the definition  
23 of "Released Claims" provided in this Settlement Agreement.

#### 24 **6.6. OBJECTION PROCEDURE**

25 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.  
26 Any Class Member who wishes to object to the Class Settlement may submit a written objection to the  
27 Settlement Administrator no later than the Response Deadline and may file with the Court, and serve  
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1 on all parties a written statement of objection. Only Class Participants may object to the Settlement.  
2 The objection must include the case name and number and must set forth, in clear and concise terms,  
3 a statement of the reasons why the objector believes that the Court should find that the proposed Class  
4 Settlement is not in the best interest of the Settlement Class and the reasons why the Class Settlement  
5 should not be approved. If an objector also wishes to appear at the Final Approval and Fairness Hearing,  
6 they need not file a notice of intention to appear. Any attorney who intends to represent an individual  
7 objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all  
8 parties on or before the Response Deadline.

9 The Settlement Administrator will promptly serve copies of any objection or notice of intention  
10 to appear on Class Counsel and Defense Counsel. Class Counsel shall lodge a copy of the objection  
11 with the Court. Class Members may appear and/or object at the Final Approval Hearing and may appeal  
12 the Final Judgment even if they have not submitted a timely written objection and notice of intention  
13 to appear pursuant to this subsection. Class Members may appear at the Final Approval Hearing, either  
14 in person or through a lawyer retained at their own expense.

15 In the event that the Court approves this Settlement notwithstanding the objections of any Class  
16 Members, Class Members who object to the Settlement will nonetheless be bound by the Settlement.  
17 Class Members who have opted out of the Settlement do not have standing to object to the Settlement  
18 or to file an appeal.

#### 19 **6.7. NOTICE OF FINAL JUDGMENT**

20 Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered  
21 a final order certifying the Class for settlement purposes only and approving the Class Settlement, the  
22 Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of  
23 the California Rules of Court, by posting a copy of said order and final judgment on its website at a  
24 web address to be included in the Class Notice.

1     **7. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

2             **7.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

3             The claims of all Class Members are settled for the Gross Settlement Amount of \$100,000.00,  
4     which will be allocated as follows:

- 5             1. The Administrative Expenses, not to exceed \$10,000.00;
- 6             2. Class Counsel's attorney fees not to exceed \$30,000.00;
- 7             3. Class Counsel's litigation costs and expenses not to exceed \$10,000.00;
- 8             4. The Incentive Award, not to exceed \$7,500.00; and
- 9             5. PAGA Payment to LWDA of \$3,750.00.

10            For purposes of calculating the estimated Individual Settlement Amounts, the Settlement  
11    Administrator shall calculate the estimated Net Settlement Amount based on the estimated values  
12    provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement  
13    Administrator shall recalculate the final Net Settlement Amount based on the actual values of the  
14    amounts in each category.

15            **7.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**  
16            **CLASS PARTICIPANTS**

17            Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net  
18    Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a  
19    "checks cashed" basis based on the proportional number of weeks worked by each Class Member  
20    during the Class Period at Defendant's Nut House facility.

21            The Settlement Administrator shall be solely and exclusively responsible for calculating the  
22    Individual Settlement Amounts for Class Participants. Defendant shall have no responsibility for  
23    deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to  
24    this Settlement Agreement, shall have no involvement in or responsibility for the determination or  
25    payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors  
26    made with respect to such Employee's Taxes and Required Withholding. Although the Settlement  
27    Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the  
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1 portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class  
2 Participants represent and understand that they shall be solely responsible for any and all tax obligation  
3 associated with their respective Individual Settlement Amounts and Incentive Awards.

4 **7.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**  
5 **THE PAGA SETTLEMENT CLASS**

6 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA  
7 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have  
8 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which  
9 is \$5,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699  
10 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$3,750.00) to the LWDA and  
11 twenty-five percent (25%) (i.e., \$1,250.00) to the PAGA Settlement Class.

12 The Settlement Administrator shall be responsible for calculating the Individual PAGA  
13 Payments for the PAGA Settlement Class. The portion of the PAGA Payment allocated to the PAGA  
14 Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of  
15 pay periods worked by each particular PAGA Settlement Class member during the PAGA Period at  
16 Defendant's Nut House facility as a proportion of all pay periods worked by all PAGA Settlement  
17 Class members during the PAGA Period at Defendant's Nut House facility. Each member of the PAGA  
18 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and  
19 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant  
20 harmless from any and all liability with regard thereto.

21 Defendant shall have no responsibility for deciding the validity of the individual payment  
22 amounts allocated to each member of the PAGA Settlement Class or any other payments made pursuant  
23 to this Settlement Agreement, shall have no involvement in or responsibility for the determination or  
24 payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors  
25 made with respect to such Employee's Taxes and Required Withholding.

26 The members of the PAGA Settlement Class shall be solely responsible for any and all tax  
27 obligation associated with their respective shares of the PAGA Payment.  
28

1           **7.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

2           The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses  
3 approved by the Court to Class Counsel no later than twenty (20) days after the Effective Date.

4           **7.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

5           The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the  
6 Court no later than twenty (20) days after the Effective Date.

7           **7.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

8           The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment  
9 due to it and approved by the Court no later than twenty (20) days after the Effective Date.

10          **7.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**  
11           **INDIVIDUAL SETTLEMENT AMOUNTS**

12          The Settlement Administrator shall make every effort to pay the Employee's Taxes and  
13 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail  
14 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the  
15 last-known address no later than twenty (20) days after the Effective Date. If the Settlement  
16 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel  
17 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required  
18 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no  
19 circumstances shall the Settlement Administrator distribute checks to Class Participants until all  
20 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the  
21 remaining monetary obligations have been calculated and accounted for.

22          Within one hundred twenty (120) days of mailing the Individual Settlement Amounts to Class  
23 Participants or as Ordered by the Court, the Settlement Administrator shall file with the Court and  
24 provide to Class Counsel a declaration of payment. In the event that any Class Participant is deceased,  
25 payment shall be made payable to the estate of that Class Member and delivered to the executor or  
26 administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration  
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1 pursuant to California Probate Code section 13101, in which case payment shall be made to the  
2 affiant(s) or declarant(s).

3 **7.8. NON-CASHED SETTLEMENT CHECKS**

4 Any funds associated with checks that have not been cashed within one hundred eighty (180)  
5 days, will become void and the Individual Settlement Amount associated with the uncashed check will  
6 be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class  
7 Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil  
8 Procedure Section 384, subd. (b). For the purposes of determining whether Defendant has met their  
9 financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to have  
10 fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether such  
11 Class Member subsequently negotiates the check.

12 **7.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**  
13 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

14 Each Class Member may dispute the number of Workweeks or their estimated Individual  
15 Settlement Amount contained on their Class Notice ("Workweeks Dispute"). Class Member  
16 Workweeks and the corresponding Individual Settlement Amount shall be calculated using the  
17 employment and payroll records of Defendant, which presumptively shall be deemed to be full,  
18 complete, and accurate for purposes of this Settlement Agreement. To overcome that presumption, any  
19 Class Member objecting to the accuracy of the number of Workweeks or amount of the Individual  
20 Settlement Amount must submit documentary evidence, such as pay stubs or other written employment  
21 records, to the Settlement Administrator.

22 Any Workweeks Dispute must be mailed or faxed to the Settlement Administrator by the Class  
23 Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement  
24 Administrator shall immediately provide copies of all disputes to counsel for Defendant, shall inform  
25 Class Counsel of the dispute without disclosing the identity of the Class Member making the dispute,  
26 and shall immediately attempt to resolve all such disputes directly with relevant Class Members with  
27 the assistance of Defendant, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it  
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1 shall be submitted to the Settlement Administrator for its final, non-appealable decision. The  
2 Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective  
3 Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been  
4 distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any  
5 amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

6 **8. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

7 **8.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

8 **8.2. THIS STIPULATION SHALL BE CONSIDERED NULL AND VOID, ALL**  
9 **PARTIES TO THE CLASS SETTLEMENT SHALL STAND IN THE SAME**  
10 **POSITION, WITHOUT PREJUDICE, AS IF THE CLASS SETTLEMENT HAD**  
11 **BEEN NEITHER ENTERED INTO NOR FILED WITH THE COURT, AND**  
12 **ANY ORDER OF JUDGMENT ENTERED BY THE COURT IN**  
13 **FURTHERANCE OF THE SETTLEMENT SHALL BE VITIATED *NUNC PRO***  
14 ***TUNC*, IF ANY OF THE FOLLOWING OCCURS: (A) THE COURT SHOULD**  
15 **FOR ANY REASON FAIL TO APPROVE THIS SETTLEMENT AGREEMENT**  
16 **IN THE FORM AGREED TO BY THE PARTIES; (B) THE COURT DOES NOT**  
17 **ENTER THE FINAL SETTLEMENT APPROVAL ORDER AND JUDGMENT**  
18 **AS PROVIDED FOR HEREIN OR CONTEMPLATED BY THIS**  
19 **STIPULATION; , (C) THE COURT DOES NOT ENTER A FINAL**  
20 **SETTLEMENT APPROVAL ORDER AND JUDGMENT AS PROVIDED FOR**  
21 **HEREIN THAT BECOMES FINAL AS A RESULT OF THE OCCURRENCE**  
22 **OF THE EFFECTIVE DATE; OR (D) THE SETTLEMENT DOES NOT**  
23 **BECOME FINAL FOR ANY OTHER REASON. NOTWITHSTANDING THE**  
24 **FOREGOING, THE PARTIES MAY ATTEMPT IN GOOD FAITH TO CURE**  
25 **ANY PERCEIVED DEFECTS IN THIS SETTLEMENT AGREEMENT TO**  
26  
27  
28

**FACILITATE APPROVAL. PARTIES' RIGHTS TO VOID CLASS  
SETTLEMENT; ESCALATOR PROVISION**

If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant shall have the right (but not the obligation) to void this Settlement Agreement, in which case this Stipulation will not have any force and/or effect. Class Counsel and Plaintiff agree not to oppose any application by Defendant and/or its Counsel that is consistent with this paragraph. The Parties and their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement Agreement.

If the Settlement is voided, no payment will be made by Defendant to Plaintiff, any Class Member, or Class Counsel; and all Parties and third parties referenced in this Stipulation will bear their own costs, fees, and expenses associated with the Litigation.

**8.3. STAY ON APPEAL**

If an appeal is filed from the Court's Final Settlement Approval Order and Judgment prior to the Effective Date, administration of the Settlement shall be immediately stayed pending final resolution of the appeal process.

In the event of a timely appeal from the approval of the Class Settlement and judgment prior to the Effective Date, the judgment and administration of the Settlement shall be immediately stayed pending final resolution of the appeal process.

**9. MOTIONS FOR COURT APPROVAL**

**9.1. PRELIMINARY APPROVAL**

As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement, and shall apply to the Court for the entry of an order substantially in the following form:

a) Scheduling a fairness hearing on the question of whether the proposed Settlement – including payment of attorneys' fees, attorneys' costs, appointment of the Class Representative and the amount of her enhancement award, and the method of determining Individual Settlement Amounts to

1 be paid to Class Participants, should be finally approved as fair, reasonable, and adequate as to the  
2 Class;

3 b) Approving as to form and content the proposed Class Notice and Share Form (attached  
4 as Exhibit 1 and Exhibit 2, respectively);

5 c) Directing the mailing to Class Members of the Notice, by first class U.S. Mail, pursuant  
6 to the terms specified herein;

7 d) Preliminarily approving the Settlement, subject only to the objections of Class Members  
8 and final review by the Court; and

9 Each party shall cooperate to present the Class Settlement to the Court for preliminary approval  
10 in a timely fashion. While Defendant can reserve its right to object to facts or assertions made in the  
11 moving papers, Defense Counsel shall file a notice of non-opposition to the granting of the motion for  
12 preliminary approval or join in the motion.

13 To the extent the Court does not approve this Stipulation, or any term contained herein, and  
14 instead allows the Parties to amend this Stipulation, the Parties agree to cooperate in good faith to  
15 amend the Stipulation in accordance with the Court's direction, and to retain all other terms of the  
16 Stipulation that the Court approves.

## 17 **9.2. FINAL APPROVAL**

18 Class Counsel shall timely prepare Final Settlement Papers in conformance with the terms of  
19 this Stipulation, including: (1) motion for final approval of the Settlement and award of attorneys' fees  
20 and costs and enhancement award (2) the [Proposed] Final Settlement Order; and (3) any other  
21 documents, petitions, or motions required to effectuate this Settlement – including, but not limited to,  
22 any additional proposed orders requested by the Court. Class Counsel shall provide copies of such  
23 documents to Defendant's counsel at least three (3) days before filing for comment, though Class  
24 Counsel is not required to obtain Defendant's approval before filing.

25 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval  
26 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the  
27 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,  
28

1 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,  
2 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent  
3 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.  
4 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may  
5 be required for the Court's determination.

6 **10. RELEASES AND WAIVERS**

7 **10.1. RELEASE OF CLAIMS BY PLAINTIFF AND SETTLEMENT CLASS**

8 Upon the date Defendant fully funds the Gross Settlement Amount, Plaintiff and the Releasing  
9 Parties shall be deemed to each release the Released Parties, and each of them, of and from any and all  
10 Released Claims arising during the Class Period. It is the desire of the Parties and the Releasing Parties  
11 to fully, finally, and forever settle, compromise, and discharge the Released Claims. Each of the  
12 Releasing Parties, including each Class Participant, will be bound by the release of Released Claims as  
13 a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such  
14 judgment.

15 Class Participants will be deemed to have acknowledged and agreed that their claims for wages  
16 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes  
17 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged  
18 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement  
19 Amount. That section provides in pertinent part as follows:

20 "An employer shall not require the execution of a release of a claim or right on account  
21 of wages due, or to become due, or made as an advance on wages to be earned, unless  
22 payment of those wages has been made."  
23

24 **10.2. GENERAL RELEASE OF CLAIMS BY PLAINTIFF**

25 In addition to the release set forth in Paragraph 10.1 above, Plaintiff, on behalf of herself and  
26 her dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents,  
27 trustees, conservators, guardians, personal representatives, and successors-in-interest, whether  
28

1 individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other  
2 capacity, shall and does hereby forever release, discharge and agree to hold harmless the Released  
3 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,  
4 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and  
5 expenses (including attorney fees and costs), known or unknown, at law or in equity, which she may  
6 now have or may have after the signing of this Settlement Agreement, arising out of or in any way  
7 connected with her employment with Defendant including, the Released Claims, claims that were  
8 asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or  
9 matters between the Parties occurring prior to the date this Settlement Agreement is fully executed.  
10 Without limiting the generality of the foregoing, this release shall include, but not be limited to, any  
11 and all claims under: (a) the Americans with Disabilities Act; (b) Title VII of the Civil Rights Act of  
12 1964; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981; (e) the Age Discrimination in  
13 Employment Act; (f) the Fair Labor Standards Act; (g) the Equal Pay Act; (h) the Employee Retirement  
14 Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the  
15 Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966;  
16 (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the  
17 California Labor Code; (p) the California Government Code; (q) the California Civil Code; and (r) any  
18 and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any  
19 and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any  
20 other claims based on theories of wrongful or constructive discharge, breach of contract or implied  
21 contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress,  
22 negligent infliction of emotional distress, or damages under any other federal, state, or local statutes,  
23 ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated,  
24 including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages,  
25 tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney  
26 fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant  
27  
28

1 and the Released Parties from any and all claims for attorney fees and costs arising out of the matters  
2 released in this Settlement Agreement.

3 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of  
4 California Civil Code section 1542, which provides as follows:

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

10 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and  
11 relinquishes all rights and benefits she may have under section 1542 as well as any other statutes or  
12 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or  
13 different from those which she now knows or believes to be true with respect to the subject matter of  
14 all the claims referenced herein, but agrees that, upon the date Defendant fully funds the Gross  
15 Settlement Amount, Plaintiff shall and hereby does fully, finally, and forever settle and release any and  
16 all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or  
17 non-contingent, that were asserted or could have been asserted upon any theory of law or equity without  
18 regard to the subsequent discovery of existence of such different or additional facts. Plaintiff’s general  
19 release shall extend up to the Final Order and Judgment.

### 20 **10.3. CIRCULAR 230 DISCLAIMER**

21 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging  
22 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)  
23 acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written  
24 communication or disclosure between or among the parties or their attorneys and other advisers, is or  
25 was intended to be, nor shall any such communication or disclosure constitute or be construed or be  
26 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31  
27 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or its own  
28

independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

## **11. DUTIES OF THE PARTIES**

### **11.1. MUTUAL FULL COOPERATION**

The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by court order or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Settlement Agreement.

### **11.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral attack.

### **11.3 First Amended Complaint**

1 Plaintiff agrees that within fourteen (14) days of the execution of this Agreement, Plaintiff will  
2 file Plaintiff's First Amended Class, Collective, and Representative Action Complaint, substantially in  
3 the same form as Exhibit 3 attached hereto.

4  
5 **12. MISCELLANEOUS PROVISIONS**

6 **12.1. ENFORCEMENT**

7 Notwithstanding anything else contained herein, this Settlement Agreement shall be  
8 enforceable under California Code of Civil Procedure section 664.6 and admissible under California  
9 Evidence Code section 1123, subdivision (a), and the Federal Rules of Evidence.

10 **12.2. DIFFERENT FACTS**

11 The Parties acknowledge that, except for matters expressly represented herein, the facts in  
12 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out  
13 to be different from the facts now known by each party and/or its counsel, or believed by such Party or  
14 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or  
15 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective  
16 and binding despite such difference.

17 **12.3. NO PRIOR ASSIGNMENTS**

18 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,  
19 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any  
20 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged  
21 except as set forth herein.

22 **12.4. NON-ADMISSION**

23 Nothing contained herein is to be construed or deemed to be an admission of liability or  
24 wrongdoing by Defendant. This Stipulation and the attached exhibits are settlement documents, and,  
25 pursuant to California Evidence Code section 1152, these documents shall be inadmissible in any  
26 proceeding except in an action or proceeding to approve, interpret, or enforce this Stipulation..  
27  
28

**12.5. NON-EVIDENTIARY USE**

Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and the Released Parties to prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

**12.6. MEDIA OR PRESS**

Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action, shall not be discussed with, publicized, or presented to the media or press. The Parties and their counsel shall not issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement Agreement, including the fact of the Settlement Agreement, its terms or contents and the negotiations underlying the Settlement Agreement, except as shall be contractually required to effectuate the terms of the Settlement Agreement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose a brief description of the case and the fact of settlement. In response to any inquiries, including those from media outlets, concerning the settlement, the Parties and their respective counsel agree that they shall simply respond by stating, "the matter has resolved."

1                   **12.7. NON-RETALIATION**

2           Defendant understands and acknowledges that it has a legal obligation to not retaliate against  
3 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class  
4 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement  
5 Administrator or Class Counsel and will not discourage Class Members who are employees, directly  
6 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,  
7 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or  
8 indirectly, to Opt Out of the Class Settlement.

9                   **12.8. CONSTRUCTION**

10          The Parties agree that the terms and conditions of this Settlement Agreement are the result of  
11 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement  
12 Agreement is not to be construed in favor of or against any party by reason of the extent to which any  
13 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this  
14 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the  
15 next business day.

16                  **12.9. GOVERNING LAW**

17          This Settlement Agreement is intended to and shall be governed by the laws of the State of  
18 California, without regard to conflict of law principles, in all respects, including execution,  
19 interpretation, performance, and enforcement.

20                  **12.10. NOTICES**

21          Except for Class Member notices required to be made by the Settlement Administrator, all  
22 notices or other communications required or permitted under this Settlement Agreement shall be in  
23 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.  
24 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the  
25 party appearing in this Settlement Agreement.

**12.11. CAPTIONS AND INTERPRETATIONS**

Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision thereof.

**12.12. MODIFICATION**

This Settlement Agreement may not be changed, altered, or modified, except in writing signed by the Parties or their counsel. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

**12.13. INTEGRATION CLAUSE**

This Settlement Agreement contains the entire agreement between the Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under this Settlement Agreement may be waived except in writing as provided above.

**12.14. SUCCESSORS AND ASSIGNS**

This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class Members (excluding only persons who timely Opt Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

**12.15. CORPORATE SIGNATORIES**

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

**12.16. EXECUTION IN COUNTERPARTS**

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

**12.17. ATTORNEY FEES, COSTS, AND EXPENSES**

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

**12.18. ACTION TO ENFORCE AGREEMENT**

In the event that any of the Parties to this Stipulation institutes any legal action, arbitration, or other proceeding against any of the other Parties to enforce the provisions of this Stipulation or to declare rights or obligations under this Stipulation, the prevailing party shall be entitled to recover her or its attorney fees and costs incurred in connection with any such enforcement proceedings.

**12.19 JURISDICTION OF THE COURT**

The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and judgments entered in connection therewith.

**12.19 EXHIBITS INCORPORATED BY REFERENCE**

The terms of this Stipulation include the terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth herein. Any Exhibit to this Stipulation is an integral part of the Settlement.

**12.20 INTERIM STAY OF PROCEEDINGS**

The Parties agree to refrain from further litigation in the Action, except such proceedings necessary to implement and obtain an Order granting Final Approval of the terms of the Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate either as of the Effective Date or the date upon which this Settlement has been denied by the Court and all subsequent attempts to cure deficiencies have ended.

## 12.21 BINDING AGREEMENT

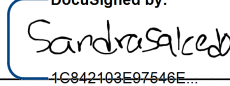
The Parties intend that this Settlement shall be fully enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

**13. EXECUTION**

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

**APPROVAL AND EXECUTION BY PARTIES****CLASS REPRESENTATIVE:**

Dated: 3/22/2023

DocuSigned by:  
  
 1C842103E97546E...  
 Sandra L. Salcedo  
 Plaintiff and Class Representative

**DEFENDANT:**

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

**Pacific Grain & Foods, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM BY COUNSEL****CLASS COUNSEL:**

12.21 BINDING AGREEMENT

The Parties intend that this Settlement shall be fully enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

13. **EXECUTION**

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

**APPROVAL AND EXECUTION BY PARTIES**

**CLASS REPRESENTATIVE:**

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

\_\_\_\_\_  
Sandra L. Salcedo  
Plaintiff and Class Representative

**DEFENDANT:**

Dated: 3/20/2023

**Pacific Grain & Foods, LLC**

PACIFIC GRAIN & FOODS

By: [Signature]

Title: MANAGING PARTNER

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL:**

1 Dated: 3/20/2023

**Ackermann & Tilajef, P.C.**

DocuSigned by:

Craig J. Ackermann

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Craig J. Ackermann

Attorneys for Plaintiff

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7 **DEFENDANT'S COUNSEL:**

8  
9 Dated: 3/20/2023

**Littler Mendelson, P.C.**

DocuSigned by:

Andrew Woo

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Irene V. Fitzgerald

Andrew H. Woo

Attorneys for Defendant