

GERARDO DUENAS V. STREMICKS HERITAGE FOODS, LLC AND JACK NOENICKX
MEMORANDUM OF AGREEMENT OF SETTLEMENT AND RELEASE (“MOA”)

1. Defendants Stremicks Heritage Foods, LLC and Jack Noenickx (“Defendants”) and Plaintiff Gerardo Duenas (“Plaintiff”) hereby set forth the terms of a Memorandum of Agreement (“MOA” or “Agreement”) designed to bind the parties to terms of a settlement to be thereafter memorialized further in a long form Stipulation of Settlement, the provisions of which are consistent with this MOA. For purposes of this MOA, “Defendants” shall include the Defendants named by Plaintiff in his Complaint in this Action, and their past, present, and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.
2. For purposes of this Agreement, the “Action” is defined as *Gerardo Duenas v. Stremicks Heritage Foods, LLC and Jack Noenickx*, U.S. District Court for the Central District of California, Case No. 5:22-cv-01039-FLA (SHKx). This MOA memorializes the settlement reached in the mediation on April 24, 2023 between Plaintiff and Defendants (the “Parties”). This MOA confirms the essential terms of the settlement and assists in preparation of a comprehensive settlement agreement. This MOA is admissible and enforceable by, binding on, and subject to disclosure by all Parties.
3. The Parties intend to enter into a more formal “long form” agreement (“Stipulation of Settlement”) not inconsistent with the terms of this MOA, but if they fail to execute a more formal agreement, this MOA will be final, binding, and enforceable pursuant to California Code of Civil Procedure section 664.6 and admissible pursuant to California Evidence Code Section 1123. The Parties shall have 30 days from the date of this MOA to prepare a “long form” Stipulation of Settlement. In the event that the Parties do not complete that “long form” Settlement Stipulation within 30 days, either party may move for preliminary approval of this class action settlement on the basis of the terms set forth in this MOA. In that event, Plaintiff will propose customary terms and procedures for the notice process and settlement administration.
4. The Parties will stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, the Parties stipulate that class certification will be revoked without prejudice.
5. The Settlement Class Members are: All current and former non-exempt California employees of Stremicks Heritage Foods, LLC (“Stremicks”) between September 26, 2020 and July 23, 2023 (the “Class Period”).
6. The Parties and their counsel agree that the consideration described in the subparagraphs below constitutes their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendants consists of the following:
 - a. Defendants shall pay a maximum amount (“Maximum Settlement Amount”) of \$1,000,000 in full and complete settlement of this matter, which sum includes all attorneys’ fees, costs, administration costs, PAGA payments, and enhancement award to the class representatives. In no event shall Defendant be liable for more than \$1,000,000 as a result of this Settlement, except in connection with Defendants’ share of any employer-side payroll taxes, as set forth herein. The balance after deduction of attorneys’ fees, costs, administration costs, PAGA settlement amount, and enhancement awards will be the “Net Settlement Amount.”
 - b. This is a non-reversionary settlement. All funds represented by uncashed checks remaining in the

Qualified Settlement Fund shall be tendered to the unclaimed property fund that is maintained by the State of California.

- c. Defendants have estimated that, during the period from September 27, 2020 to November 19, 2022 (the “Data Period”), there were approximately 33,285 weeks in which class members performed work for Stremicks. If the actual number of such weeks during the Data Period is more than 7% greater than 33,285 weeks (i.e., if the actual number is greater than 35,615), the Maximum Settlement Amount will increase in proportion to the increase in the number of workweeks above 35,615. By way of example, if the actual number of weeks in which class members performed work for Stremicks during the data period is 33,618, the Maximum Settlement Amount would be increased by 1% (i.e., increased \$10,000 to \$1,010,000).
 - d. Defendants shall fund the MSA within 10 business days of being provided the final accounting of funds by the administrator, which shall be provided by the administrator within 10 calendar days of the “Effective Date.”
 - e. The Effective Date means the date on which the settlement embodied in this Settlement Agreement shall become effective and is the date after all of the following events have occurred: (i) this Settlement Agreement has been executed by Plaintiff and Defendants; (ii) the Court has given Preliminary Approval to the Settlement, including approving a provisional Settlement Class; (iii) notice has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of the Settlement or to opt-out of the Settlement; and (iv) either (1) the Court has held a formal fairness hearing and, having heard no objections to the Settlement, has given Final Approval to the Settlement, including entering a final order and judgment certifying the Class and approving this Settlement Agreement; or (2) in the event there are oral or written objections filed prior to or at the formal fairness hearing which are not later withdrawn or denied, the later of the following events: (a) five (5) business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval of the Settlement have elapsed without any appeal, writ, or other appellate proceeding having been filed; or (b) five (5) business days have elapsed following the final and conclusive dismissal or resolution of any appeal, writ, or other appellate proceeding opposing the Settlement, with no right to pursue further appellate remedies or relief.
 - f. This is a non-reversionary settlement. All funds represented by uncashed checks remaining in the Qualified Settlement Fund shall be tendered to a cy pres recipient to be mutually selected by the Parties.
7. The Parties agree that the consideration described in Paragraph 7, above, constitutes adequate consideration for the settlement and release described immediately below.
- a. *Release by Plaintiff:* PLAINTIFF shall be bound by a complete California Civil Code Section 1542 release and waiver of all claims known and unknown, without exception, except as may be prohibited by law. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or releasing party.
 - b. *Release by Settlement Class Members & LWDA:* All Settlement Class Members who do not opt out of the Settlement will be bound by a release of all claims against the Released Parties,

whether known or unknown, falling within the definition of “Released Claims” (below). In addition, the LWDA and State of California will be bound by a release of all claims for civil penalties relating to or arising out of the Released Claims.

- c. *Definition of “Released Claims”*: All claims and/or causes of action that were or reasonably could have been alleged based on the factual allegations and legal theories in the First Amended Complaint and/or all LWDA letter(s) associated with this action.
 - d. *First Amended Complaint & Amended PAGA Notice Letter*: To effectuate the release intended by the Parties, Plaintiff agrees to file an amended complaint (the “First Amended Complaint”), and to submit an amended PAGA notice to the LWDA to include the following claims for relief and/or factual allegations: (a) failure to properly pay or calculate all wages owed, including but not limited to overtime, minimum, and sick pay wages; (b) failure to pay all wages owed at the applicable/correct regular rate of pay; (c) failure to pay all wages owed due “off-the-clock” work; (d) improper “rounding” of employees’ time entries and meal/rest breaks; (e) failing to properly pay for time spent donning and doffing of employees’ uniforms, (f) failing to properly pay for time spent waiting in line to clock in and out of work and/or walking to/from timeclocks; (g) failing to properly pay for time spent submitting to or engaging in security checks, security screenings, bag checks, security/health procedures, and/or waiting in cars to go through security booth checks; (h) failure to provide proper meal periods or proper premium pay in lieu thereof, (i) failure to provide proper rest periods or proper premium pay in lieu thereof, (j) failure to reimburse business expenses, including but not limited to expenses related to personal cell phone use, masks, tools, uniforms, and footwear; (k) failure to provide compliant and/or timely wage statements; (l) failure to properly pay vested vacation time or timely pay vacation time pursuant to Labor Code section 227.3; (m) failure to properly maintain accurate employment or payroll records; (n) failure to timely pay all wages owed during employment; (o) failure to timely pay all wages owed upon termination of employment; (p) violations of the Unfair Competition Law based on the Labor Code claims released by this Agreement; and (p) civil penalties under the Private Attorneys General Act (“PAGA”) based on the claims and legal theories released by this Agreement, (q) any other claims, penalties or requests for interest alleged in or arising out of the claims alleged in the First Amended Complaint.
 - e. The Release shall cover the period from September 26, 2020 to July 24, 2023. The *res judicata* effect of the Judgment will be the same as that of the Release.
 - f. By virtue of this Agreement, Plaintiff and the Settlement Class Members 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 Plaintiffs’ Complaint.
8. Defendants will not oppose a request by the named Plaintiff to be appointed Class Representatives and for an enhancement payment of up to \$15,000.00, to be deducted from the Maximum Settlement Amount, in exchange for his service as Class Representative and a General Release of all claims against Defendants. This enhancement payment is in addition to the payment to which Plaintiff is entitled as a Settlement Class Member. Even in the event that the Court reduces or does not approve the requested Class Representative enhancement payment, Plaintiff shall not have the right to revoke this MOA or this

settlement, and it will remain binding.

9. The Parties designate that \$100,000.00 of the Maximum Settlement Amount will be allocated to violations of PAGA. 75% of this amount (or \$75,000) will be payable to the LWDA, and the remaining 25% (\$25,000) will be payable to the Settlement Class.
10. Defendant will not oppose an application for an award to Class Counsel, from the Maximum Settlement Amount, of up to one-third (1/3) of the Maximum Settlement Amount in attorneys' fees, plus actual costs and expenses as supported by declaration up to the amount of \$35,000.00. Even in the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff's Counsel shall not have the right to revoke this MOA or this settlement, and it will remain binding.
11. The Parties agree that the Action will be remanded to state court for the settlement approval process. In the unlikely event that the settlement is not approved, however, the Parties intend to return the Action to its procedural status quo as the case existed before settlement. To that end, if the settlement is not approved, the Parties agree to employ best efforts to ensure that all claims and theories alleged in this Action are returned to federal court for litigation. However, even if this matter is returned to federal court, Plaintiff shall retain his right to argue that remand is appropriate for reasons unrelated to the settlement and/or the case being voluntarily moved to state court for settlement approval purposes, including but not limited to Plaintiff's Motion for Remand which was filed on July 27, 2022.
12. Class Counsel shall select a Settlement Administrator on the basis of cost and competence, with the best interest of the Class in mind. Defendants and Defendants' counsel shall not be a party to any agreement or contract entered into with the Settlement Administrator. Reasonable fees of the Settlement Administrator shall be paid out of the Maximum Settlement Amount. None of the Parties or their legal counsel will be responsible for any errors or omissions in the Settlement Administrator's work product or calculations. Fees of the Settlement Administrator shall be paid out of the Settlement Fund Amount, in the amount up to \$25,000.
13. The Class Notice will contain an estimated individual settlement payment, dates of employment, how to opt-out of the settlement, how to contest the workweek calculation (i.e., a "Share" form), and how to object to the settlement. Settlement Class Members will be mailed and e-mailed a Class Notice and return postage-paid envelope. A reminder postcard will be mailed and e-mailed out 30 days after the Class Notice is sent to Settlement Class Members.
 - a. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment except as to that portion of the settlement and final judgment dedicated to alleged violations of the PAGA and associated penalties.
 - b. After reductions for attorneys' fees, costs, administrative costs, PAGA settlement amount, and class representative enhancement (including without limitation any penalties and interest payable thereon), the remaining (net) balance of the settlement fund shall be distributed on a pro rata basis to Settlement Class Members, subject to the distribution formula agreed upon by the Parties. Payments shall be reduced as necessary to account for mandatory payroll withholdings. Defendants will pay the employer's share of payroll taxes separately from the Maximum Settlement Amount; however, recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations.
14. The settlement payment for each individual claimant shall be allocated as follows: (a) 33% as wages; and (b) 33% as penalties and 34% as interest. The Settlement Administrator will be responsible for issuing to

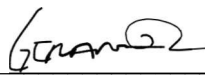
claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties and interest.

15. Defendants maintain the right, in their sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that 7 percent (7%) or more of Settlement Class Members opt out of the settlement.
16. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.
17. The Parties and their counsel agree not to take any action to encourage, support, or induce any Settlement Class Members to opt out of and/or object to the Settlement. This includes requiring or asking Class Members to sign any arbitration agreements that purport or could be read to limit a Class Member’s right to participate in this Settlement prior to Entry of Judgment and disbursement of the MSA.
18. Defendants expressly deny any liability. Neither this MOA nor the “long form” Stipulation of Settlement shall constitute an admission of liability or the accuracy of any allegation made by Plaintiff or his counsel.
19. The long form Stipulation of Settlement will include a representation that Plaintiff and Plaintiff’s Counsel: (a) are not currently (i.e., as of the date of execution of this Agreement) aware of any unalleged facts or claims that would support a legal action against any of the Released Parties; (b) do not currently represent, except with respect to the matters released by this Settlement, any current or former employees of Defendants or any of them with respect to any legal claims against any of the Released Parties. The Parties acknowledge, understand, and agree that the representations described in this paragraph are essential to the Agreement and that this Agreement would not have been entered into were it not for this representation. However, the Parties also agree that nothing in this Paragraph limits or restrains Plaintiffs’ Counsel from representing any individuals of their choosing or ability to bring claims of their choosing, except to the extent such individuals or claims are covered by the release negotiated in this Agreement.
20. The Parties agree not to issue press releases, communicate with, or respond to, any media or publication entities, or otherwise publish any information, concerning the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement prior to final approval and Entry of Judgment, except as required by law or as shall be contractually required to effectuate the terms of the Settlement as set forth herein. Nothing stated herein shall prohibit Class Counsel from discussing the Settlement, the fact of Settlement, and its terms and conditions: (i) with Class Members and/or (ii) in court filings, including in their respective firm resumes, and/or (iii) in all necessary motions and supporting memoranda related to preliminary and final approval of the Settlement, or for other class action settlements. This provision also does not limit Class Counsel (i) from complying with ethical obligations; or (ii) from posting a neutral description of publicly available facts regarding the Settlement, provided that such posting does not expressly identify Defendants by name.
21. The Parties agree to support the Settlement so it is effectuated until the Court issues an order granting final approval of the settlement. The Parties agree that they will work collaboratively and exercise reasonable best efforts to defeat any objections or challenges to the approval of the Settlement. Before filing any documents with the Court related to or in furtherance of this Settlement, Plaintiff shall provide Defendant with copies of such documents at least five court days in advance of filing.
22. The Parties will cooperate in staying any and all discovery, pre-trial, and trial-related deadlines. Within five (5) court days after the complete execution of this MOA, the parties will submit to the Court a stipulation to vacate all pre-trial dates and deadlines.

IT IS SO AGREED.

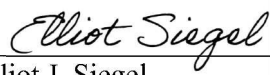
Dated: 04 / 24 / 2023

PLAINTIFF


Gerardo Duenas

KING & SIEGEL LLP

Dated: 04 / 24 / 2023


Elliot J. Siegel
Attorneys for Plaintiff

**DEFENDANT STREMICKS HERITAGE
FOODS, LLC**

Dated: _____

(Signature)

(Printed Name)

(Title)

DEFENDANT JACK NOENICKX

Dated: _____

Jack Noenickx

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Dated: _____

Evan R. Moses
Catherine L. Brackett
Attorneys for Defendants

11168097.4

stipulation to vacate all pre-trial dates and deadlines.

IT IS SO AGREED.

PLAINTIFF

Dated: _____

Gerardo Duenas

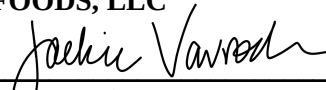
KING & SIEGEL LLP

Dated: _____

Elliot J. Siegel
Attorneys for Plaintiff

**DEFENDANT STREMICKS HERITAGE
FOODS, LLC**

Dated: 04/24/2023



(Signature)

Jacquelyn Vavroch

(Printed Name)

Assistant General Counsel,
(Title) Dairy Farmers of America, Inc.

DEFENDANT JACK NOENICKX

Dated: _____

Jack Noenickx

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Dated: _____

Evan R. Moses
Catherine L. Brackett
Attorneys for Defendants

stipulation to vacate all pre-trial dates and deadlines.

IT IS SO AGREED.

PLAINTIFF

Dated: _____

Gerardo Duenas

KING & SIEGEL LLP

Dated: _____

Elliot J. Siegel
Attorneys for Plaintiff

**DEFENDANT STREMICKS HERITAGE
FOODS, LLC**

Dated: 04/24/2023

Jacquelyn Vavroch
(Signature)

Jacquelyn Vavroch
(Printed Name)

Assistant General Counsel,
(Title) Dairy Farmers of America, Inc.

DEFENDANT JACK NOENICKX

Dated: _____

Jack Noenickx

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Dated: 4/24/23

Evan R. Moses
Evan R. Moses
Catherine L. Brackett
Attorneys for Defendants

stipulation to vacate all pre-trial dates and deadlines.

IT IS SO AGREED.

PLAINTIFF

Dated: _____

Gerardo Duenas

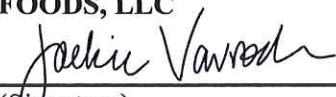
KING & SIEGEL LLP

Dated: _____

Elliot J. Siegel
Attorneys for Plaintiff

**DEFENDANT STREMICKS HERITAGE
FOODS, LLC**

Dated: 04/24/2023

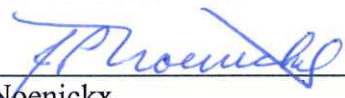

(Signature)

Jacquelyn Vavroch
(Printed Name)

Assistant General Counsel,
(Title) Dairy Farmers of America, Inc.

DEFENDANT JACK NOENICKX

Dated: 4/25/2023


Jack Noenickx

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Dated: _____

Evan R. Moses
Catherine L. Brackett
Attorneys for Defendants