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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SANTA BARBARA**

11 **(UNLIMITED JURISDICTION)**

12 GENARO REYES VILLAGRA, on behalf of
13 himself and all others similarly situated, and as
14 an "aggrieved employee" on behalf of other
15 "aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 INNOVATIVE PRODUCE, INC., a California
19 corporation; and DOES 1–50, inclusive,

20 *Defendant(s).*

Case No. 22CV02744

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: July 18, 2022
Dept: 2, The Honorable James F.
Rigali

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Attorneys for Defendant(s),
INNOVATIVE PRODUCE, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Genaro Reyes Villagra (“Plaintiff”) and defendant Innovative Produce, Inc.
3 (“Innovative Produce, Inc.”). The Agreement refers to Plaintiff and Defendant collectively as
4 “Parties,” or individually as “Party.”

5
6 **1. DEFINITIONS.**

7 1.1. “Action” means the Plaintiff’s class action and PAGA lawsuits alleging wage
8 and hour violations against Innovative Produce, Inc. captioned “Genaro Reyes Villagra, on
9 behalf of himself, and all others similarly situated, and as an ‘aggrieved employee’ on behalf of
10 other ‘aggrieved employees’ under the Labor Code Private Attorneys General Act of 2004,
11 *Plaintiff(s)*, vs. Innovative Produce, Inc., a California corporation; and DOES 1 through 50,
12 inclusive, *Defendant(s)*,” Case No. 22CV02744 initiated on July 18, 2022 and pending in
13 Superior Court of the State of California, County of Santa Barbara, which the Court
consolidated with Case No. 22CV02747 on September 21, 2023.

14 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have
15 agreed to appoint to administer the Settlement.

16 1.3. “Administration Expenses Payment” means the amount the Administrator will be
17 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
18 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
19 with Preliminary Approval of the Settlement.

20 1.4. “Aggrieved Employee” means a person directly employed by Defendant in
California and classified as a non-exempt employee who worked during the PAGA Period.

21 1.5. “Class” means all persons directly employed by Defendant in California and
22 classified as a non-exempt employee who worked during the Class Period..

23 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Louis M.
24 Benowitz of Benowitz Law Corporation.

25 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses
26 Payment” mean the amounts allocated to Class Counsel for reasonable attorneys’ fees and
27 statutorily recoverable costs, respectively, incurred to prosecute the Action.

28 1.8. “Class Data” means Class Member the Class Member’s name, last-known

1 mailing address, Social Security number, and number of Class Pay Periods and PAGA Pay
2 Periods.

3 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as
4 either a Participating Class Member or Non-Participating Class Member (including a Non-
5 Participating Class Member who qualifies as an Aggrieved Employee).

6 1.10. "Class Member Address Search" means the Administrator's investigation and
7 search for current Class Member mailing addresses using all reasonably available sources,
8 methods and means including, but not limited to, the National Change of Address database, skip
9 traces, and direct contact by the Administrator with Class Members.

10 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
11 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
12 Class Members in English with a Spanish translation in the form, without material variation,
13 attached as Exhibit A and incorporated by reference into this Agreement.

14 1.12. "Class Pay Period" means any Pay Period during which a Class Member worked
15 for Defendant for at least one day during the Class Period.

16 1.13. "Class Period" means the period from July 18, 2018 to the order preliminarily
17 approving this Settlement.

18 1.14. "Class Representative" means the named Plaintiff in the Operative Complaint in
19 the Action seeking Court approval to serve as a Class Representative.

20 1.15. "Class Representative Service Payment" means the payment to the Class
21 Representative for initiating the Action and providing services in support of the Action.

22 1.16. "Court" means the Superior Court of California, County of Santa Barbara.

23 1.17. "Defendant" means named Defendant Innovative Produce, Inc.

24 1.18. "Defense Counsel" means Ian B. Wieland and Michael J. Conway II of Sagaser
25 Watkins & Wieland PC.

26 1.19. "Effective Date" means the date by when both of the following have occurred:
27 (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b)
28 the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if
no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b)
if one or more Participating Class Members objects to the Settlement, the day after the deadline
for filing a notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is

- 1 filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 2 1.20. "Final Approval" means the Court's order granting final approval of the
- 3 Settlement.
- 4 1.21. "Final Approval Hearing" means the Court's hearing on the Motion for Final
- 5 Approval of the Settlement.
- 6 1.22. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
- 7 Approval of the Settlement.
- 8 1.23. "Gross Settlement Amount" means \$150,000.00 which is the total amount
- 9 Defendant agrees to pay under the Settlement, subject to (voluntary) increase as provided in
- 10 Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class
- 11 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class
- 12 Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.
- 13 1.24. "Individual Class Payment" means the Participating Class Member's pro rata
- 14 share of the Net Settlement Amount calculated according to the number of Class Pay Periods
- 15 worked by the Participating Class Member.
- 16 1.25. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
- 17 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked
- 18 by the Aggrieved Employee.
- 19 1.26. "Judgment" means the judgment entered by the Court based upon the Final
- 20 Approval.
- 21 1.27. "LWDA" means the California Labor and Workforce Development Agency, the
- 22 agency entitled, under Labor Code section 2699, subd. (i).
- 23 1.28. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
- 24 LWDA under Labor Code section 2699, subd. (i).
- 25 1.29. "Net Settlement Amount" means the Gross Settlement Amount, less the
- 26 following payments in the amounts approved by the Court: Individual PAGA Payments, the
- 27 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
- 28 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
- 1.30. "Non-Participating Class Member" means any Class Member who opts out of the
- Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. "Notice Packet" means the Class Notice (Exhibit A), the Request for Exclusion

1 form (Exhibit B), the Pay Period Dispute form (Exhibit C), and the Objection form (Exhibit D)
2 in English with Spanish translations.

3 1.32. "PAGA Pay Period" means any Pay Period during which an Aggrieved
4 Employee worked for Defendant for at least one day during the PAGA Period.

5 1.33. "PAGA Period" means the period from July 18, 2021 to the order preliminarily
6 approving this Settlement.

7 1.34. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

8 1.35. "PAGA Notice" means Plaintiff's April 20, 2022 and October 6, 2023 letters to
9 Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

10 1.36. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid
11 from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and
12 the 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

13 1.37. "Participating Class Member" means a Class Member who does not submit a
14 valid and timely Request for Exclusion from the Settlement.

15 1.38. "Plaintiff" means Genaro Reyes Villagra, the named plaintiff in the Action.

16 1.39. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
17 of the Settlement.

18 1.40. "Preliminary Approval Order" means the proposed Order Granting Preliminary
19 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
20 attached as Exhibit E.

21 1.41. "Released Class Claims" means the claims being released as described in
22 Paragraph 6.3 below.

23 1.42. "Released PAGA Claims" means the claims being released as described in
24 Paragraph 6.3 below that arise and/or are assertable under PAGA.

25 1.43. "Released Parties" means: Defendant together with its present and former
26 parents, subsidiaries, affiliated entities, commonly owned or controlled entities, its present and
27 former owners, board members, officers, directors, trustees, shareholders, members, partners,
28 employees, agents, insurers, attorneys, representatives, heirs, executors, administrators,
successors and assigns, and any individual or entity to whom liability for the Released Claims,
as defined herein, could be assigned pursuant to Labor Code §558.1, or on a joint-employer,
alter-ego, or other vicarious liability theory.

1 1.44. "Request for Exclusion" means a Class Member's submission of a written request
2 to be excluded from the Class Settlement signed by the Class Member. A Request for Exclusion
3 form is attached as Exhibit B.

4 1.45. "Response Deadline" means 60 days after the Administrator mails Notice to
5 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
6 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or
7 mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent
8 after having been returned undeliverable to the Administrator shall have an additional 14
9 calendar days beyond the Response Deadline has expired.

10 1.46. "Settlement" means the disposition of the Action effected by this Agreement and
11 the Judgment.

12 2. RECITALS.

13 2.1. On July 18, 2022, Plaintiff commenced this Action by filing a Complaint
14 alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful
15 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,
16 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
17 timely pay wages, failure to maintain required payroll records, and related claims. On July 18,
18 2022, Plaintiff filed another lawsuit against Defendant under PAGA. On ___, 2024, Plaintiff filed a
19 First Amended Complaint alleging causes of action against Defendant for failure to pay wages,
20 unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize
21 and permit rest and recovery periods, failure to issue proper wage statements, failure to timely
22 pay wages, failure to maintain required payroll records, and related allegations. The First
23 Amended Complaint is the Operative Complaint in the Action (the "Operative Complaint.")
24 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with
25 the laws identified in in the Operative Complaint and denies any and all liability for the causes
26 of action alleged.

27 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
28 notice to Defendant and the LWDA by sending the PAGA Notice.

29 2.3. On July 18, 2023, the Parties participated in an all-day mediation presided over
30 by Mr. Scott Radovich which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of workweeks, the number of pay periods, average rates of pay, sample time records, sample payroll records, written policies, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$150,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.1.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less

1 than the amount requested, the Administrator will retain the remainder in the Net Settlement
2 Amount. The Administrator will pay the Class Representative Service Payment using IRS Form
3 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
4 Representative Service Payment and agrees to hold Defendant harmless, and indemnify
5 Defendant, from any dispute or controversy regarding any division or sharing of any of these
6 Payments.

6 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third,
7 which is currently estimated to be \$50,000.00 and a Class Counsel Litigation Expenses Payment
8 of not more than \$12,000.00. Defendant will not oppose requests for these payments provided
9 that do not exceed these amounts and such expenses claimed are recoverable under statute.
10 Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class
11 Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If
12 the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses
13 Payment less than the amounts requested, the Administrator will allocate the remainder to the
14 Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other
15 Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or
16 Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel
17 Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
18 Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees
19 Payment and the Class Counsel Litigation Expenses Payment and agrees to hold Defendant
20 harmless, and indemnify Defendant, from any dispute or controversy regarding any division or
21 sharing of any of these Payments.

21 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
22 \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
24 Administrator will retain the remainder in the Net Settlement Amount.

24 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
25 by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by
26 all Participating Class Members during the Class Period and (b) multiplying the result by each
27 Participating Class Member's Class Pay Periods.

28 3.2.5. Tax Allocation of Individual Class Payments. 10.00% of each Participating Class

1 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
2 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-
3 2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be
4 allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-
5 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
6 Participating Class Members assume full responsibility and liability for any employee taxes
owed on their Individual Class Payment.

7 3.2.6. Effect of Non-Participating Class Members on Calculation of Individual Class
8 Payments. Non-Participating Class Members will not receive any Individual Class Payments.
9 The Administrator will retain amounts equal to their Individual Class Payments in the Net
10 Settlement Amount for distribution to Participating Class Members on a pro rata basis.

11 3.2.7. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
12 \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00) allocated to the
13 LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA Payments.

14 3.2.8. The Administrator will calculate each Individual PAGA Payment by (a) dividing
15 the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,000.00) by the total
16 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period
17 and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
18 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
Payment.

19 3.2.9. If the Court approves PAGA Penalties of less than the amount requested, the
20 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
21 report the Individual PAGA Payments on IRS 1099 Forms.

22 **4. SETTLEMENT FUNDING AND PAYMENTS.**

23 4.1.1. Class Size. Based on a review of its records through the date of mediation,
24 Defendant estimates there are 126 Class Members who collectively worked a total of 14,193
25 Pay Periods.

26 4.1.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
27 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
28 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the

1 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
2 of this Settlement and for no other purpose, and restrict access to the Class Data to
3 Administrator employees who need access to the Class Data to effect and perform under this
4 Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it
5 discovers that the Class Data omitted class member identifying information and to provide
6 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
7 deadline by which Defendant must send the Class Data to the Administrator, the Parties and
8 their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise
9 resolve any issues related to missing or omitted Class Data.

10 4.1.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
11 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of
12 payroll taxes by transmitting the funds to the Administrator no later than 60 days after the
13 Effective Date.

14 4.1.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
15 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
16 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
17 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
18 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
19 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
20 Service Payment shall not precede disbursement of Individual Class Payments and Individual
21 PAGA Payments.

22 4.1.5. The Administrator will issue checks for the Individual Class Payments and/or
23 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
24 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
25 after the date of mailing) when the check will be voided. The Administrator will cancel all
26 checks not cashed by the void date. The Administrator will send checks for Individual
27 Settlement Payments to all Participating Class Members (including those for whom Notice
28 Packet was returned undelivered). The Administrator will send checks for Individual PAGA
Payments to all Aggrieved Employees including Non-Participating Class Members who qualify
as Aggrieved Employees (including those for whom Notice Packet was returned undelivered).
The Administrator may send Participating Class Members a single check combining the

1 Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the
2 Administrator must update the recipients' mailing addresses using the National Change of
3 Address Database.

4 4.1.6. The Administrator must conduct a Class Member Address Search for all other
5 Class Members whose checks are returned undelivered without USPS forwarding address.
6 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
7 forwarding address provided or to an address ascertained through the Class Member Address
8 Search. The Administrator need not take further steps to deliver checks to Class Members
9 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
10 replacement check to any Class Member whose original check was lost or misplaced, as
11 requested by the Class Member prior to the void date.

12 4.1.7. For any Class Member whose Individual Class Payment check or Individual
13 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
14 transmit the funds represented by such checks to the California Controller's Unclaimed Property
15 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
16 requirements of California Code of Civil Procedure Section 384, subd. (b).

17 4.1.8. The payment of Individual Class Payments and Individual PAGA Payments shall
18 not obligate Defendant to confer any additional benefits or make any additional payments to
19 Class Members (such as 401(k) contributions, bonuses, vacation plans, sick leave plans, PTO
20 plans, regular rate of pay calculations, or other benefit plan) beyond those specified in this
21 Agreement.

22 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
23 Gross Settlement Amount and funds employer payroll taxes owed on the Wage Portion of the
24 Individual Class Payments as calculated and directed by the Administrator, Plaintiff, Class
25 Members, and Class Counsel will release claims against all Released Parties as follows:

26 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
27 representatives, agents, attorneys, heirs, administrators, successors, and assigns, as of the
28 Effective Date, generally release and discharge Released Parties from all claims, transactions, or
occurrences that occurred between or involving the parties through the date of Plaintiff's
execution of this Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any

1 claims or actions to enforce this Agreement, or to any claims for unemployment benefits,
2 disability benefits, social security benefits, or workers' compensation benefits that arose at any
3 time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff
4 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
5 knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain
6 effective in all respects, notwithstanding such different or additional facts or Plaintiff's
7 discovery of them. Plaintiff understands and agrees that by signing this Agreement he is giving
8 up any and all legal claims he has or may have against the Released Parties through his
9 execution of his Agreement, expressly including claims under the federal Age Discrimination in
10 Employment Act ("ADEA"). Plaintiff is advised to consult with legal counsel regarding the
11 waiver contained herein generally and specifically as to the waiver of claims under the ADEA.
12 Plaintiff understands and agrees that he has been advised in writing of his right to consult with
13 an attorney before signing this Agreement. Plaintiff has twenty-one (21) days to consider this
14 Agreement, although he may sign it at any time prior to the expiration of the twenty-one (21)
15 days. Plaintiff may revoke this Agreement at any time during the seven (7) days after he signs
16 the Agreement. This Agreement shall not become effective until the seven (7) day revocation
17 period has passed.

18 6.2 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
19 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
20 rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

25 6.3 Release by Participating Class Members and Aggrieved Employees: All
26 Participating Class Members and all Aggrieved Employees (who shall not have the right to opt
27 out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative
28 Complaint or any of Plaintiff's PAGA Notice(s) , or which could have been alleged based on
the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which

1 arose during the Class Period and PAGA Period. The Released Class Claims shall include all
2 claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by
3 Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint,
4 including any and all claims or causes of action regarding unpaid wages, including but not
5 limited to failure to pay minimum wages, straight time wages, overtime compensation, and
6 interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest,
7 and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of
8 meal and rest obligations; claims arising from invalid meal period waivers; payment for all
9 hours worked; wage statements and paystubs, including wage statements and paystubs furnished
10 or available in physical, electronic, or other forms; failure to keep accurate records; unfair
11 business practices related thereto; and any and all related penalties, including recordkeeping
12 penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other
13 statutory or civil penalties associated with any of the foregoing. Such Released Class Claims
14 shall include, but are not limited to those claims arising under California Labor Code sections
15 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512,
16 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., and
17 2699 et seq., and/or those arising under the applicable Industrial Welfare Commission Wage
18 Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the
19 applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the provisions of the
20 California Code of Regulations codifying the applicable Wage Order(s)]), 8 C.C.R. §3395,
21 California Business Professions Code 17200 et seq. (including, without limitation, §§17200
22 through 17208); the California Civil Code sections 3287, and 3289; California Code of Civil
23 Procedure section 1021.5, and any related claims under the claims under the provisions of the
24 Fair Labor Standards Act (29 USC §§201, et seq.) (“Released Claims”). Any Non-Participating
25 Class Member shall only be bound by claims for civil penalties released under PAGA as
26 provided in this section and shall not be deemed to release any individual claims for which
27 recovery under PAGA is not permitted.

28 6.4 Construction. The Parties intend that this release be construed as broadly as
possible. The release excludes the release of claims not permitted by law.

6.5 Resolution of Good Faith Dispute. The parties warrant and represent that the
releases for Participating Class Members and Aggrieved Employees resolve, pursuant to Labor

1 Code §§206 and 206.5, and applicable case law (including but not limited to *Chindarah v. Pick*
2 *Up Stix, Inc.* (2009) 171 Cal.App.4th 796) a good faith dispute regarding any and all wages, if
3 any, owed to Participating Class Members / Aggrieved Employees through their last day of
4 employment with Defendant within the Class Period and PAGA Period.

5 **7. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff shall prepare and file a motion
6 for preliminary approval (“Motion for Preliminary Approval”). Defendant shall not oppose the
7 motion, to the extent consistent with this Agreement. A Preliminary Approval Order form is
8 attached as Exhibit E.

9 7.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense
10 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of
11 the notice, and memorandum in support, of the Motion for Preliminary Approval that includes
12 an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA
13 Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting
14 Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet;
15 (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for
16 administering the Settlement and attesting to its willingness to serve; competency; operative
17 procedures for protecting the security of Class Data; amounts of insurance coverage for any data
18 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
19 conflicts of interest with Class Members; and the nature and extent of any financial relationship
20 with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff
21 confirming willingness and competency to serve and disclosing all facts relevant to any actual
22 or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed
23 declaration from each Class Counsel firm attesting to its competency to represent the Class
24 Members; and (vi) its timely transmission to the LWDA of all necessary PAGA documents
25 (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor
26 Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)). In
27 their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of
28 any other pending matter or action asserting claims that will be extinguished or adversely
affected by the Settlement.

7.2 Responsibilities of Counsel. Class Counsel is responsible for expeditiously

1 finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full
2 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
3 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
4 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
5 Administrator.

6 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
7 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
8 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
9 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
10 Preliminary Approval or conditions Preliminary Approval on any material change to this
11 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
12 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement
13 and otherwise satisfy the Court's concerns. However, no party shall be obligated to consent to
14 any material change (including but not limited to changes to the Gross Settlement Amount or the
15 releases set forth herein) in the Agreement, whether or not such material change is caused or
16 requested by the Court.

16 **8. SETTLEMENT ADMINISTRATION.**

17 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
18 Settlement Administrators to serve as the Administrator and verified that, as a condition of
19 appointment, ILYM Group, Inc. Settlement Administrators agrees to be bound by this Agreement
20 and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of
21 Administration Expenses. The Parties and their Counsel represent that they have no interest or
22 relationship, financial or otherwise, with the Administrator other than a professional
23 relationship arising out of prior experiences administering settlements.

24 8.2 Employer Identification Number. The Administrator shall have and use its own
25 Employer Identification Number for purposes of calculating payroll tax withholdings and
26 providing reports state and federal tax authorities.

27 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
28 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
Regulation section 468B-1.

1 8.4 Notice to Class Members.

2 8.4.1 No later than three (3) business days after receipt of the Class Data, the
3 Administrator shall notify Class Counsel that the list has been received and state the number of
4 Class Members, Aggrieved Employees, Class Pay Periods, and PAGA Pay Periods in the Class
5 Data.

6 8.4.2 Using best efforts to perform as soon as possible, and in no event later
7 than 14 days after receiving the Class Data, the Administrator will send to all Class Members
8 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the
9 Notice Packet with Spanish translation substantially in the forms attached to this Agreement as
10 Exhibits A, B, C, and D. The first page of the Class Notice shall prominently estimate the dollar
11 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
12 Member, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to
13 calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class
14 Member addresses using the National Change of Address database.

15 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
16 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
17 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
18 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-
19 mail the Notice Packet to the most current address obtained. The Administrator has no
20 obligation to make further attempts to locate or send Notice Packet to Class Members whose
21 Notice Packet is returned by the USPS a second time.

22 8.4.4 The deadlines for Class Members’ written objections, Challenges to Class
23 Pay Periods and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended
24 an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
25 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
26 extended deadline with the re-mailed Notice Packet.

27 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
28 otherwise discovers any persons who believe they should have been included in the Class Data
and should have received Notice Packet, the Parties will expeditiously meet and confer in
person or by telephone, and in good faith, in an effort to agree on whether to include them as
Class Members. If the Parties agree, such persons will be Class Members entitled to the same

1 rights as other Class Members, and the Administrator will send, via email or overnight delivery,
2 a Class Notice requiring them to exercise options under this Agreement not later than 14 days
3 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

4 8.5 Requests for Exclusion (Opt-Outs).

5 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
6 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
7 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
8 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
9 Exclusion is a letter from a Class Member or his/her representative that reasonably
10 communicates the Class Member's election to be excluded from the Settlement and includes the
11 Class Member's name, address and email address or telephone number. To be valid, a Request
12 for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. A
13 Request for Exclusion form, attached as Exhibit B, may be used for this purpose but is not
14 required.

15 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
16 because it fails to contain all the information specified in the Class Notice. The Administrator
17 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
18 identity of the person as a Class Member and the Class Member's desire to be excluded. The
19 Administrator's determination shall be final and not appealable or otherwise susceptible to
20 challenge. If the Administrator has reason to question the authenticity of a Request for
21 Exclusion, the Administrator may demand additional proof of the Class Member's identity. The
22 Administrator's determination of authenticity shall be final and not appealable or otherwise
23 susceptible to challenge.

24 8.5.3 Every Class Member who does not submit a timely and valid Request for
25 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
26 benefits and bound by all terms and conditions of the Settlement, including the Participating
27 Class Members' Releases under Paragraph 6.3 of this Agreement, regardless of whether the
28 Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for
Exclusion is a Non-Participating Class Member and shall not receive an Individual Class
Payment or have the right to object to the class action components of the Settlement.

1 Aggrieved Employees are eligible for an Individual PAGA Payment.

2 8.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days
3 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
4 whose Notice Packet is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay
5 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a
6 dispute. A Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but
7 is not required. The Class Member may challenge the allocation by communicating with the
8 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
9 Member to submit supporting documentation. In the absence of any contrary documentation,
10 the Administrator is entitled to presume that the Pay Periods contained in the Class Notice are
11 correct so long as they are consistent with the Class Data. The Administrator's determination of
12 each Class Member's allocation of Class Pay Periods and/or PAGA Pay Periods shall be final
13 and not appealable or otherwise susceptible to challenge. The Administrator shall promptly
14 provide copies of all challenges to calculation of Class Pay Periods and/or PAGA Pay Periods
15 to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

16 8.7 Objections to Settlement.

17 8.7.1 Only Participating Class Members may object to the class action
18 components of the Settlement and/or this Agreement, including contesting the fairness of the
19 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
20 Litigation Expenses Payment and/or Class Representative Service Payment.

21 8.7.2 Participating Class Members may send written objections to the
22 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may
23 appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final
24 Approval Hearing. A Participating Class Member who elects to send a written objection to the
25 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
26 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
27 The Objection form attached as Exhibit D may be used for this purpose but is not required.

28 8.7.3 Non-Participating Class Members have no right to object to any of the
class action components of the Settlement.

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

1 otherwise.

2 8.8.1 Email Address and Toll-Free Number. The Administrator will establish
3 and maintain and use an email address and a toll-free telephone number to receive Class
4 Member calls, faxes and emails.

5 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
6 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
7 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
8 Administrator shall email a list to Defense Counsel containing (a) the names and other
9 identifying information of Class Members who have timely submitted valid Requests for
10 Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
11 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
12 Exclusion documentation submitted (whether valid or invalid). Upon request, the Administrator
13 may provide summary information regarding the information described in this paragraph to
14 Class Counsel, but shall not provide any personal identifying information (e.g., names and
15 contact information) to Class Counsel.

16 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
17 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
18 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
19 Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay
20 Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
21 Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must
22 include the Administrator's assessment of the validity of Requests for Exclusion and attach
23 copies of all Requests for Exclusion and objections received.

24 8.8.4 Class Pay Period and/or PAGA Pay Period Challenges. The
25 Administrator has the authority to address and make final decisions consistent with the terms of
26 this Agreement on all Class Member challenges over the calculation of Class Pay Periods and/or
27 PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise
28 susceptible to challenge.

8.8.5 Administrator's Declaration. Not later than 14 days before the date by
which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable

1 for filing in Court attesting to its due diligence and compliance with all of its obligations under
2 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice
3 Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class
4 Members, the total number of Requests for Exclusion from Settlement it received (both valid or
5 invalid), the number of written objections and attach the Exclusion List, except that any
6 personal identifying information (e.g., names and contact information) shall be redacted from
7 any copies of the Requests for Exclusion forms or other documentation. The Administrator will
8 supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel
9 is responsible for filing the Administrator's declaration(s) in Court.

10 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
11 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class
12 Counsel and Defense Counsel with a final report detailing its disbursements by employee
13 identification number only of all payments made under this Agreement. At least 15 days before
14 any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
15 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
16 all payments required under this Agreement. Class Counsel is responsible for filing the
17 Administrator's declaration in Court.

18 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
19 Defendant estimates that, as of the date of the parties' mediation, (1) there were 126 Class
20 Members and 14,193 total Pay Periods during the Class Period. If the number of Class Members
21 exceeds 126 by 10% or the number of Pay Periods worked by Class Members exceeds 14,193
22 by 10% or more, whichever figure is more favorable Defendant, by the date of preliminary
23 approval ("the Pro Rata Increase Threshold"), the GSA will increase pro rata per additional
24 class member above 137 (e.g., $126 + [.1 * 126]$) or additional workweek above 15,612 (e.g.,
25 $14,193 + [.1 * 14,193]$), whichever figure Defendant elects to use, but only to the extent
26 Defendant does not choose a date earlier than the date of preliminary approval to avoid any pro
27 rata increase. If the Pro Rata Increase Threshold is triggered, Defendant shall have the exclusive
28 right to choose an earlier date than the date of preliminary approval as the end of the Class
Period and PAGA Period so to avoid triggering any pro rata increase.

1 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
2 Exclusion identified in the Exclusion List exceeds 10.00% of the total number of all Class
3 Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The
4 Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force
5 or effect whatsoever, and that neither Party will have any further obligation to perform under
6 this Agreement; provided, however, Defendant will remain responsible for paying all
7 Settlement Administration Expenses incurred to that point. Defendant must notify Class
8 Counsel and the Court of its election to withdraw not later than 21 days after the Administrator
9 sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10 Termination of the Agreement may be achieved by Defense Counsel providing written notice to
11 Class Counsel of Defendant's intent to terminate the settlement.

12 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the
13 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of
14 the Settlement that includes a request for approval of the PAGA settlement under Labor Code
15 section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively
16 "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense
17 Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and
18 Defense Counsel will expeditiously meet and confer in person or by telephone, and in good
19 faith, to resolve any disagreements concerning the Motion for Final Approval.

20 11.1 Response to Objections. Each Party retains the right to respond to any
21 objection raised by a Participating Class Member, including the right to file responsive
22 documents in Court no later than 5 court days prior to the Final Approval Hearing, or as
23 otherwise ordered or accepted by the Court.

24 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions
25 Final Approval on any material change to the Settlement (including, but not limited to, the
26 scope of release to be granted by Class Members), the Parties will expeditiously work together
27 in good faith to address the Court's concerns by revising the Agreement as necessary to obtain
28 Final Approval. The Court's decision to award less than the amounts requested for the Class
Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph. However, no party shall be

obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged. However, no party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the reviewing Court.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil

1 Procedure section 384, the Parties will work together in good faith to jointly submit and a
2 proposed amended judgment.

3 **13. ADDITIONAL PROVISIONS.**

4 13.1 No Admission of Liability, Class Certification or Representative Manageability
5 for Other Purposes. This Agreement represents a compromise and settlement of highly
6 disputed claims. Nothing in this Agreement is intended or should be construed as an admission
7 by Defendant that any of the allegations in the Operative Complaint have merit or that
8 Defendant has any liability for any claims asserted; nor should it be intended or construed as an
9 admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree
10 that class certification and representative treatment is for purposes of this Settlement only. If,
11 for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment,
12 Defendant reserves the right to contest certification of any class for any reasons, Defendant
13 reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to
14 move for class certification on any grounds available and to contest Defendant's defenses. The
15 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
16 and will not be admissible in connection with, any litigation (except for proceedings to enforce
or effectuate the Settlement and this Agreement).

17 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
18 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary
19 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
20 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
21 terms of the Agreement directly or indirectly, specifically or generally, to any person,
22 corporation, association, government agency, or other entity except: (1) to the Parties'
23 attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
24 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
25 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to
26 an inquiry or subpoena issued by a state or federal government agency. Thereafter, Class
27 Counsel further agrees to keep this Settlement confidential. Class Counsel shall not disclose this
28 Settlement to current or former employees of the Released Parties, to the media, or on any
websites, blogs, social media, and/or online platforms. Exceptions to Class Counsel's obligation

1 of confidentiality are (i) disclosures necessary to comply with the law, judicial processes, or for
2 financial planning or tax preparation purposes; (ii) to the extent needed to enforce this
3 Agreement. Nothing herein shall prevent Class Counsel from disclosing this settlement for
4 purposes of describing its qualifications as counsel in other cases or as required by a court, nor
5 shall any terms herein preclude Class Counsel from communicating with and fulfilling its
6 obligations to Class Members.

7 13.3 Each Party agrees to immediately notify each other Party of any judicial or
8 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
9 Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
10 conversation or other communication, before the filing of the Motion for Preliminary Approval,
11 any with third party regarding this Agreement or the matters giving rise to this Agreement
12 except to respond only that “the matter was resolved,” or words to that effect.

13 13.4 Nothing in this paragraph shall be construed to restrict Defendant’s or Defense
14 Counsel’s ability to communicate with Class Members in accordance with applicable ethical
15 obligations, including for the purposes of notifying Class Members regarding this settlements
16 and its procedures.

17 13.5 No Solicitation. The Parties separately agree that they and their respective
18 counsel and employees will not solicit any Class Member to opt out of or object to the
19 Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to
20 restrict Class Counsel’s ability to communicate with Class Members in accordance with Class
21 Counsel’s ethical obligations owed to Class Members. Nothing in this paragraph shall be
22 construed to restrict Defendant’s or Defense Counsel’s ability to communicate with Class
23 Members in accordance with applicable ethical obligations, including for the purposes of
24 notifying Class Members regarding this settlements and its procedures.

25 13.6 Integrated Agreement. Upon execution by all Parties and their counsel, this
26 Agreement together with its attached exhibits shall constitute the entire agreement between the
27 Parties relating to the Settlement, superseding any and all oral representations, warranties,
28 covenants, or inducements made to or by any Party.

13.7 Cooperation. The Parties and their counsel will cooperate with each other and
use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing

1 points and authorities as requested by the Court. In the event the Parties are unable to agree
2 upon the form or content of any document necessary to implement the Settlement, or on any
3 modification of the Agreement that may become necessary to implement the Settlement, the
4 Parties will seek the assistance of Mr. Scott Radovich and/or the Court for resolution. However,
5 no party shall be obligated to consent to any material change in the Agreement, whether or not
6 such material change is caused or requested by the Court or the reviewing Court.

7 13.8 No Prior Assignments. The Parties separately represent and warrant that they
8 have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity and portion of any liability, claim, demand, action,
10 cause of action, or right released and discharged by the Party in this Settlement.

11 13.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
12 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
13 Settlement be relied upon as such within the meaning of United States Treasury Department
14 Circular 230 (31 CFR Part 10, as amended) or otherwise.

15 13.10 Modification of Agreement. This Agreement, and all parts of it, may be
16 amended, modified, changed, or waived only by an express written instrument signed by all
17 Parties or their representatives, and approved by the Court.

18 13.11 Agreement Binding on Successors. This Agreement will be binding upon, and
19 inure to the benefit of, the successors of each of the Parties.

20 13.12 Applicable Law. All terms and conditions of this Agreement and its exhibits
21 will be governed by and interpreted according to the internal laws of the state of California,
22 without regard to conflict of law principles.

23 13.13 Cooperation in Drafting. The Parties have cooperated in the drafting and
24 preparation of this Agreement. This Agreement will not be construed against any Party on the
25 basis that the Party was the drafter or participated in the drafting.

26 13.14 Confidentiality. To the extent permitted by law, all agreements made, and
27 orders entered during Action and in this Agreement relating to the confidentiality of information
28 shall survive the execution of this Agreement.

29 13.15 Use and Return of Class Data. Information provided to Class Counsel pursuant
30 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
31 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in

1 connection with the Settlement, may be used only with respect to this Settlement, and no other
2 purpose, and may not be used in any way that violates any existing contractual agreement,
3 statute, or rule of court. Not later than 90 days after the date when the Court discharges the
4 Administrator's obligation to provide a Declaration confirming the final pay out of all
5 Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received
6 from Defendant unless, prior to the Court's discharge of the Administrator's obligation,
7 Defendant makes a written request to Class Counsel for the return, rather than the destructions,
8 of Class Data.

9 13.16 Headings. The descriptive heading of any section or paragraph of this
10 Agreement is inserted for convenience of reference only and does not constitute a part of this
11 Agreement.

12 13.17 Calendar Days. Unless otherwise noted, all reference to "days" in this
13 Agreement shall be to calendar days. In the event any date or deadline set forth in this
14 Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first
15 business day thereafter.

16 13.18 Notice. All notices, demands or other communications between the Parties in
17 connection with this Agreement will be in writing and deemed to have been duly given as of the
18 third business day after mailing by United States mail, or the day sent by email or messenger,
19 addressed as follows:

20 To Plaintiff:
21 David G. Spivak, Esq.
22 The Spivak Law Firm
23 8605 Santa Monica Bl
24 PMB 42554
25 West Hollywood, CA 90069
26 david@spivaklaw.com

27 To Defendant:
28 Ian B. Wieland, Esq.
Michael Joseph Conway, II Esq.
Sagaser Watkins & Wieland PC
5260 N Palm Ave
Ste 400
Fresno, CA 93704-2217
mikec@sw2law.com; ian@sw2law.com

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13.19 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

Dated: February ²⁹____, 2024

By: 
GENARO REYES VILLAGRA

Dated: February ²⁶____, 2024

By: 
GEORGE ADAM, President
Innovative Produce, Inc.

Dated: February ²⁹____, 2024

THE SPIVAK LAW FIRM
By: 
DAVID G. SPIVAK, Attorneys for
Plaintiff, GENARO REYES
VILLAGRA, and all others similarly
situated

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BENOWITZ LAW CORPORATION

Dated: February 29, 2024

By: 
LOUIS M. BENOWITZ, Attorneys for
Plaintiff, GENARO REYES
VILLAGRA, and all others similarly
situated

SAGASER WATKINS & WIELAND PC

Dated: February 28, 2024

By: 
IAN B. WIELAND / MICHAEL
JOSEPH CONWAY, Attorneys for
Defendant, INNOVATIVE
PRODUCE, INC.