

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action and PAGA Settlement Agreement and Release of Claims is entered into by and between Plaintiffs Tim Botonis and Liam Patrick Meikle (“Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Bimbo Bakeries USA, Inc. (“Defendant”), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Tim Botonis, Liam Patrick Meikle v. Bimbo Bakeries USA, Inc.*, pending in the Eastern District of California, Case No. 2:22-cv-01453-DJC-DB, initially filed in Sacramento County Superior Court Case No. 34-2022-319624.

2. “Aggrieved Employees” include all current and former individuals who are or previously were employed by Defendant in California as Transport Associates (also referred to as Drivers, including Relief Drivers) and Route Sales Professionals or any associate doing similar work¹ during the PAGA Period as defined below.

3. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached Exhibits.

4. “Class Claims” includes any and all wage and hour and wage payment claims, obligations, demands, actions, rights, causes of action, and liabilities (including state statutory and common law claims) that accrued or arose during the Class Period, including: (a) failure to reimburse business expenses; (b) failure to provide accurate, itemized wage statements; (c) failure to pay wages upon termination/severance; (d) unfair competition; and (e) PAGA penalties based on the underlying alleged Labor Code violations set forth in Plaintiffs’ Complaint, as well as interest, attorneys’ fees, litigation costs, restitution, equitable relief, or

¹ Employees encompassed within the definition of Aggrieved Employees include but are not limited to the following: Bakery RSR; Commission Sales Representative; Relief Driver; Relief Drivers; Relief Route Drivers; Route Relief; Route Sales Representative; Route Sales Representative-Express Routes; Route Sales Representatives; Vacation Relief RSR.

1 additional damages which allegedly arise from the claims described above under any applicable
2 law.

3 The release applicable to Aggrieved Employees and Settlement Class Members is
4 defined as follows:

5 Statutory Claims: any and all claims that were pled or that could have been pled based
6 on Defendant's alleged failure to reimburse Aggrieved Employees and Class members
7 for business expenses, specifically for the alleged use of their personal cell phones for
8 work-related purposes arising under the Cal. Labor Code, including, §§ 201-204, 226,
9 226.2, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2802, 2698-
10 2699.5, Cal. Business & Professions Code §§ 17200, *et seq.*, Cal. Civil Code §§ 3287-
11 3288, and Cal. Code of Civil Procedure §1021.5.

12 Common Law and/or Equitable Claims: Any and all common law or equitable claims,
13 under any theory whatsoever, to the extent that such claims arise out of Defendant's
14 alleged failure to reimburse Aggrieved Employees and Class members for business
15 expenses, specifically for the alleged use of their personal cell phones for work-related
16 purposes, as described in Plaintiffs' PAGA letter and the operative complaint (class
17 action and PAGA action). The release excludes all other claims and class claims outside
18 of the Class Period and PAGA claims outside of the PAGA Period.

19 5. "Class Counsel" means and refers to Costa Kerestenzis and Sarah S. Kanbar of
20 Beeson, Tayer & Bodine, APC.

21 6. "Class Data" means a complete list that Defendant will diligently and in good
22 faith compile from its records and provide to the Settlement Administrator and shall include the
23 Settlement Class Members' full names; last known addresses; telephone numbers; Social
24 Security Numbers; and dates of employment and/or number of Work Months Worked during
25 the Class Period and pay periods worked during the PAGA Period as Transport Associates or
26 Route Sales Professionals of Defendant in California for each Settlement Class Member.

27 7. "Class Period" and "Class Release Period" shall mean May 10, 2018 through
28 August 26, 2023.

8. “Class Representatives” or “Plaintiffs” means and refers to Tim Botonis and Liam Patrick Meikle.

9. “Complaint” refers to the Complaint filed in the Action entitled *Tim Botonis, Liam Patrick Meikle v. Bimbo Bakeries USA, Inc.*, pending in the Eastern District of California, Case No. 2:22-cv-01453-DJC-DB, initially filed in Sacramento County Superior Court, Case No. 34-2022-319624.

10. “Court” means the United States District Court for the Eastern District of California or any Court of competent jurisdiction.

11. “Defendant” means and refers to Bimbo Bakeries USA, Inc.

12. “Defendant’s Counsel” or “Defense Counsel” means and refers to Michael Puma and Brian D. Fahy of Morgan, Lewis & Bockius LLP.

13. “Effective Date” means the latest of the following dates: (i) if no Settlement Class Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under California Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement and entering Judgment; (ii) if a Settlement Class Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval of the Settlement and entering Judgment, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

14. “Final” means that the Settlement has been granted “Final Approval” by the Court and the “Effective Date” has occurred.

15. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a Judgment approving this Settlement on the same terms provided herein (unless explicitly excepted herein) or as may be modified by subsequent written and executed agreement of the Parties.

1 16. “Final Settlement Class” or “Final Settlement Class Members” means,
2 collectively, all Participating Class Members and all Aggrieved Employees.

3 17. “Individual Settlement Amount” shall have the meaning ascribed to it in
4 Paragraph 49(c) below.

5 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph
6 49(b) below.

7 19. “Notice” means the Notice of Settlement of Class and PAGA Action that will be
8 sent to the Settlement Class Members.

9 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is
10 mailed to the Settlement Class Members.

11 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
12 than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement with
13 respect to the Class Claims pursuant to Paragraph 71(c) below.

14 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
15 of 2004, California Labor Code Sections 2698, *et seq.*

16 23. “PAGA Claims” shall include any and all claims for civil penalties pursuant to
17 PAGA based on the allegations stated in the PAGA Notices that accrued or arose during the
18 Class Period, including claims that were pled in the operative Complaint and/or that could have
19 been pled based on the facts alleged therein, specifically for Defendant’s alleged failure to
20 reimburse Aggrieved Employees for business expenses for the alleged use of their personal cell
21 phones for work-related purposes, as well as related claims for failure to provide accurate
22 itemized wage statements, failure to pay all earned wages due to separated employees, and
23 unfair competition.

24 24. “PAGA Notice” shall refer to the notice sent by Plaintiffs, by and through
25 counsel, on or about May 24, 2022, to the California Labor & Workforce Development Agency
26 (“LWDA”) and to Defendant, alleging that Defendant engaged in violations of the California
27 Labor Code and California Wage Orders.
28

25. “PAGA Payment” shall mean a payment of \$10,000 to be paid from the Gross Settlement Amount, with 25% of the payment going to the Aggrieved Employees who were employed during the PAGA Period, and 75% of the payment going to the LWDA. These payments will be made whether or not the Aggrieved Employees opt out of the Settlement since the Aggrieved Employees will not have the ability to opt out of the PAGA portion of the Settlement.

26. “PAGA Period” and “PAGA Release Period” shall mean May 10, 2021 through August 26, 2023.

27. “Participating Class Member” means any and all Settlement Class Members who do not opt out of the Settlement of the Class Claims by submitting timely and valid Requests for Exclusion and will be mailed an Individual Settlement Amount for their participation in the Settlement.

28. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class Members, the Aggrieved Employees, and Defendant, collectively.

29. “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

30. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of Plaintiffs, preliminarily approving this Settlement and providing for the issuance of the Notice of Settlement of Class and PAGA Action, an opportunity to opt out of the Settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Defendant will not object to Plaintiffs’ motion for preliminary approval as long as it comports with the terms of this Agreement and after giving Defendant’s counsel ten (10) business days for reasonable review and comment prior to the filing of motion for preliminary approval.

31. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement

1 payments shall be made, and which is intended to be a fund that qualifies under Internal
2 Revenue Code Section 468.

3 32. “Release” shall mean the complete release and discharge of the Class Claims by
4 Plaintiffs and all of the Participating Class Members and the complete release and discharge of
5 the PAGA Claims by Plaintiffs and all of the Aggrieved Employees as set forth herein.

6 33. “Released Parties” shall refer to Defendant and all affiliated and related parties
7 and entities (including their past and/or present affiliates, parents, subsidiaries, predecessors,
8 owners, successors, shareholders, division, and each of these entities’ past and present directors,
9 officers, managing agents, employees, partners, benefit plans, shareholders, and
10 representatives).

11 34. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 71(a)
12 below.

13 35. “Service Payment” or “Service Award” means the amount approved by the Court
14 to be paid to the Class Representatives in addition to their Individual Settlement Amounts as
15 Participating Class Members.

16 36. “Settlement Administration Costs” means the costs payable from the Gross
17 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
18 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
19 reporting, due diligence, reporting and remittance obligations, distributing the Gross Settlement
20 Amount, and providing necessary reports and declarations, as requested by the Parties. The
21 Settlement Administration Costs shall be paid from the Gross Settlement Amount.

22 37. “Settlement Administrator” means and refers to Phoenix Settlement
23 Administrators, the settlement administrator agreed to by the Parties that will provide the Notice
24 to the Settlement Class Members and distribute the settlement amounts as described in this
25 Agreement.

26 38. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
27 ascribed to it in Paragraph 49(a) below.
28

39. “Settlement Class Member” or “Class Member” refers to individual members of the Settlement Class.

40. “Settlement Class” and “Settlement Class Members” refers to all current and former individuals who are or previously were employed by Defendant in California as Transport Associates or Route Sales Professionals or any associate doing similar work² during the Class Period (*i.e.*, May 10, 2018 to August 26, 2023).

41. “Work Months Worked” for each Settlement Class Member and Aggrieved Employee means any work month during the Class Period, as applicable, in which the Settlement Class Member and/or Aggrieved Employee performed work for Defendant as a Transport Associate or Route Sales Professional in California or similar work.

B. General Terms

42. On May 10, 2022, Plaintiffs filed a class action complaint for failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to pay wages upon termination/severance, and unfair competition. Plaintiffs thereafter filed an Amended Class Action Complaint to include a PAGA representative complaint and PAGA penalties based on the foregoing Labor Code violations. Plaintiffs’ putative class and PAGA action is based on the allegation that Defendant failed to properly reimburse class members and aggrieved employees for business expenses, specifically for the alleged use of their personal cell phones for work-related purposes, and related derivative claims for inaccurate wage statements and waiting time penalties.

43. Defendant denies Plaintiffs’ claims and allegations and contends that the Action is not suitable for class certification and/or representative treatment. Defendant and the Released Parties deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, or that they have any liability to anyone under the claims asserted in this Action.

² Associates encompassed within the definition of Settlement Class Members includes but are not limited to the following: Bakery RSR; Commission Sales Representative; Relief Driver; Relief Drivers; Relief Route Drivers; Route Relief; Route Sales Representative; Route Sales Representative-Express Routes; Route Sales Representatives; Vacation Relief RSR.

1 44. Class Representatives believe they can proceed with their representative and
2 class claims, that the Action is meritorious, and that class certification is appropriate.

3 45. The Parties have conducted a thorough investigation into the facts of the Action.
4 This includes conducting extensive exchange of informal discovery, including Defendant's
5 written policies and practices and the production of payroll and timekeeping records for the
6 Class Representatives, the applicable collective bargaining agreement, and information
7 regarding the number of current and former Settlement Class Members and Aggrieved
8 Employees, and number of workweeks and work months during the applicable limitations
9 periods. Class Counsel is both knowledgeable about and has done extensive research with
10 respect to the applicable law and potential defenses to the claims of the Settlement Class
11 Members and Aggrieved Employees. Class Counsel has diligently pursued an investigation of
12 the Class Members' claims against Defendant. Based on the foregoing data and on their own
13 independent investigation and evaluation, Class Counsel is of the opinion that the settlement
14 with Defendant for the consideration and on the terms set forth in this Settlement Agreement is
15 fair, reasonable, and adequate and is in the best interest of the Settlement Class Members and
16 Aggrieved Employees in light of all known facts and circumstances, including the risk of
17 significant delay and uncertainty associated with litigation, various defenses asserted by
18 Defendant, and numerous potential appellate issues.

19 46. On January 17, 2023, the Parties participated in a full-day mediation with John
20 Hyland, a highly experienced class action mediator. Ultimately, Mr. Hyland issued a mediator's
21 proposal outlining the primary terms for an Agreement, which both parties accepted. The parties
22 continued to negotiate at arm's-length regarding the remaining terms of the settlement
23 agreement following acceptance of the mediator's proposal, resulting in this Agreement.

24 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
25 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
26 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
27 any statute or law or liability on the claims or allegations in the Action.

28 48. Stipulation for Class Certification and Representative Treatment. For settlement

purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the Aggrieved Employees are appropriate for representative treatment for purposes of settlement only. This stipulation to certification and representative treatment is in no way an admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, or the Effective Date does not happen, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court fail to issue Final Approval or the Effective Date does not happen. Plaintiffs expressly reserve their rights and declare that they will continue to pursue class certification and representative treatment and a trial should the Court fail to issue Final Approval or the Effective Date does not happen.

C. Terms of Settlement

49. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Eight Hundred and Seventy-Five Thousand Dollars and no cents (\$875,000) ("the Settlement Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and includes Individual Settlement Amounts inclusive of attorneys' fees of Class Counsel, costs and expenses, the Service Payments to the Class Representatives, all Settlement Administration Costs, and the PAGA Payment.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement Amount less attorneys' fees and litigation costs of Class Counsel as approved and awarded by the Court, the Service Payments to the Class Representatives as approved and

awarded by the Court, the Settlement Administration Costs as approved and awarded by the Court, and the PAGA Payment as described in paragraph 43 above. In the event that the Court reduces the attorneys' fees and litigation costs to Class Counsel or the Service Award, Settlement Administration Costs, or either increases or decreases the amount allocated of the PAGA Payment, the Net Settlement Amount shall be increased or decreased accordingly.

(c) Individual Settlement Amounts for the Settlement Class: The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and Aggrieved Employee's Individual Settlement Amounts based on the following formula:

i. PAGA Payment: \$10,000 of the Gross Settlement Amount has been designated to the PAGA Claims. Twenty-five percent (25%), or \$2,500, shall be paid out to Aggrieved Employees employed during the PAGA Period. Each Aggrieved Employee shall receive a portion of the \$2,500 proportionate to the number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period.

ii. Class Amount: The Net Settlement Amount designated to the Class Claims shall be allocated to each Participating Class Member based on his or her proportionate Work Months Worked during the Class Period compared to the total number of Work Months Worked by all Participating Class Members during the Class Period. Each Settlement Class Member's respective estimated Work Months Worked shall be identified in the Notice of Settlement of Class and PAGA Action. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Class Claims.

(d) Tax Allocation of Individual Settlement Amounts: The Individual Settlement Amounts paid to Participating Class Members for Class Claims will be allocated for tax purposes based on the allegations in the Action as follows: one hundred percent (100%) will be

1 allocated as expense reimbursement, interest, and as statutory penalties (pursuant to, e.g.,
2 California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement
3 Administrator will issue to each Participating Class Member a Form 1099 with respect to the
4 expense reimbursement, statutory penalties, and interest allocations, as applicable. Aggrieved
5 Employees shall have their Individual Settlement Amount from the PAGA Payment allocated as
6 one hundred percent (100%) statutory penalties for which no taxes will be withheld and for
7 which a Form 1099 will be issued by the Settlement Administrator, if required.

8 (e) Service Payment to Class Representatives: The amount awarded to the Class
9 Representatives as a Service Payment will be set by the Court in its discretion, not to exceed
10 \$5,000 to each Plaintiff, or \$10,000 total. Defendant agrees not to oppose this request. The
11 Service Payments to the Class Representatives will be paid out of the Gross Settlement Amount.
12 The Class Representatives will be issued a Form 1099 in connection with this payment.
13 Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on this
14 payment. The Parties agree that any amount awarded by the Court as the Service Payment to
15 Plaintiffs less than the requested amount shall not be a basis for Plaintiffs or Class Counsel to
16 rescind the Settlement Agreement or otherwise void the Settlement. Should the Court approve a
17 lesser amount for the Service Payment, the unawarded amount shall be added to the Net
18 Settlement Amount to be distributed to the Participating Class Members. In the event of any
19 appeal of the amount of the Service Award (if any) approved by the Court, if, after the
20 exhaustion of any such appellate review, additional amounts not awarded to Class
21 Representatives shall be added to the Net Settlement Amount to be distributed to the
22 Participating Class Members.

23 (f) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by Class
24 Counsel to the Court for an award of attorneys' fees up to \$130,000, or approximately a little
25 less than fifteen percent of the Gross Settlement Amount, plus reasonable litigation costs not to
26 exceed \$10,000 ("Attorneys' Fees and Cost Award"). For purposes of this Settlement,
27 Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be
28 based on the common fund theory. The Attorneys' Fees and Cost Award shall be paid from the

1 Gross Settlement Amount, and except for this award, Defendant shall have no further obligation
2 to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a
3 lesser amount than what is sought by Class Counsel, the unawarded amount shall be added to
4 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
5 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
6 Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the
7 amount of the awards of Attorneys' Fees and Costs (if any) approved by the Court, final funding
8 and administration of the portion of the Attorneys' Fees and/or Costs award in dispute will be
9 segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any
10 such appellate review, additional amounts not awarded to as Attorneys' Fees and Costs shall be
11 added to the Net Settlement Amount to be distributed to the Participating Class Members. The
12 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
13 of Attorneys' Fees and Costs awarded by the Court. Class Counsel agrees that any allocation of
14 fees between or among Class Counsel and any other attorney representing or claiming to
15 represent the Class Members shall be the sole responsibility of Class Counsel.

16 (g) Settlement Administration Costs: The fees and other charges of the Settlement
17 Administrator will be paid from the Gross Settlement Amount, not to exceed \$15,000 subject to
18 Court approval, unless approved by all Parties and the Court. At this time, it is estimated that
19 the total Settlement Administration Costs will be \$11,765.

20 (h) Tax Liability: Class Counsel, Defendant and Defendant's Counsel make no
21 representations as to the tax treatment or legal effect of the Individual Settlement Amounts
22 called for hereunder, and Plaintiffs and the Settlement Class Members are not relying on any
23 statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard.
24 Plaintiffs and the Final Settlement Class understand and agree that they will be solely
25 responsible for the payment of any taxes and penalties assessed on their respective Individual
26 Settlement Amounts described herein. If necessary, income tax withholding will also be made
27 pursuant to applicable federal, state and/or local withholding codes or regulations. In this case,
28 Forms 1099 will be distributed at times and in the manner required by the Internal Revenue

Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

(i) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS 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 ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’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 AGREEMENT.

1 50. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
2 no circumstances will any portion of the Settlement Amount revert to Defendant. Settlement
3 Class Members will not have to make a claim in order to receive an Individual Settlement
4 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
5 each Participating Class Member. The Settlement Administrator shall be responsible for
6 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
7 result of a Participating Class Member not cashing an Individual Settlement Amount by the
8 check cashing deadline, as set forth herein.

9 51. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable,
10 and adequate, and will so represent same to the Court.

11 52. Prospective Relief:

12 (a) Expense Reimbursement Policy. Defendant will, no later than Preliminary
13 Approval, issue a revised expense reimbursement policy applicable to Settlement Class
14 Members and Aggrieved Employees that will note the right of California employees to submit
15 requests for expense reimbursement in instances when employees believe they are required to
16 use their personal cell phones for reasonable and necessary work-related purposes. To obtain
17 such reimbursement, covered employees will be required to follow Defendant’s expense
18 reimbursement protocol and platform. Subject to any legal requirements, Defendant has sole
19 discretion to determine what documentation or information is required to be provided by a
20 covered employee for an expense reimbursement request, including but not limited to
21 documentation to determine the (i) specific amount of time, (ii) the work-related reason the
22 employee used his or her personal cell phone for work-related purposes compared to the amount
23 of time it was used for non-work related purposes, and (iii) the alleged work-related charges
24 incurred.

25 (b) Communications Upgrades to Company-Issued Devices. In addition to issuing a
26 revised expense reimbursement policy addressing reimbursement for personal cell phone use,
27 Defendant will implement, no later than Preliminary Approval, communications-related updates
28 to company-issued devices (e.g., tablets for Transport Associates and handheld computers for

Route Sales Professionals) that will enable texting and/or talking capabilities. The parties note that Defendant has, as of the filing of this Motion, already completed most if not all of the upgrades to company-issued devices to obviate or minimize the alleged need for the use of personal cell phones for work-related purposes. If a covered employee still believes he or she was required to use their personal cell phone for work-related purposes despite these upgrades, then they will be referred to the reimbursement policy referenced in (a) above.

D. Release by Plaintiffs and the Final Settlement Class

53. In exchange for payments by the Defendant, as described herein, upon the Effective Date of this Settlement, Plaintiffs and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives (collectively, “Releasing Parties”), will forever completely release and discharge the Released Parties from the Class Claims as defined in paragraph 4 for the duration of the Class Period. Each Participating Class Member and/or Aggrieved Employee will be deemed to have made the foregoing Release as if by manually signing it.

54. Upon the Effective Date of this Settlement, Plaintiffs, the LWDA, and each Aggrieved Employee, for themselves and the Releasing Parties will forever completely release and discharge the Released Parties from the PAGA Claims as defined in paragraph 23 for the duration of the PAGA Period regardless of whether any Aggrieved Employee submitted a Request for Exclusion. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

55. Plaintiffs and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Releases with respect to the Class Claims as defined in paragraph 4. The Settlement Class

Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement.

56. Plaintiffs and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Releases with respect to the PAGA Claims as defined in paragraph 23. The Aggrieved Employees and the LWDA shall be so notified in the Notice.

57. Class Representatives, on behalf of themselves and the Participating Settlement Class Members, acknowledge and agree that the claims for untimely payment of wages and expenses in the Action, are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representatives, on behalf of themselves and the Participating Settlement Class Members, acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

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

E. Release by Class Representatives

58. As a material inducement to Defendant to enter into this Settlement Agreement, in addition to the Class Representatives' release of the Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 53 and 54 above, Class Representatives do hereby, for themselves and for their spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory

1 penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and
2 costs) of any nature whatsoever, from the beginning of time through the execution of this
3 Agreement, whether known or unknown, suspected or unsuspected, concealed or hidden,
4 including but not limited to all claims arising out of, based upon, or relating to Class
5 Representatives' employment with Defendant or the remuneration for (collectively, the "Class
6 Representatives' Claims"). This release does not apply to any Claims unrelated to the cell phone
7 expense reimbursement and related penalty claims being released under this Agreement that
8 Class Representatives may have to assert through a grievance/arbitration under any applicable
9 collective bargaining agreement, but Class Representatives are not currently aware of any such
10 claims other than a potential mass grievance related to accrual of vacation time and sick pay for
11 Transport Associates. This release also does not apply to any worker's compensation claims or
12 other claims that cannot be released by law.

13 59. Without limiting the generality of the foregoing, Class Representatives also
14 expressly release all claims or rights against Released Parties arising out of or relating to alleged
15 violations of any contracts, express or implied (including but not limited to any contract of
16 employment except collective bargaining agreements to the extent consistent with Paragraph 58
17 above); any contract or covenant of good faith and fair dealing (express or implied); any tort,
18 including but not limited to, negligence, fraud, misrepresentation and violation of California
19 Labor Code section 970, negligent infliction of emotional distress, intentional infliction of
20 emotional distress, defamation, "retaliation" claims and claims for violation of public policy,
21 any claim for improper or unauthorized wage deductions, failure to pay the applicable wage,
22 unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages,
23 overtime, and alleged "off the clock" work under federal and state law, including, but not
24 limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to
25 California Labor Section 203, damages or penalties pursuant to California Labor Code Section
26 226, meal period and rest break payments and penalties pursuant to California Labor Code
27 Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California
28 Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections

210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 *et seq.* (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order

1 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973
2 (handicap discrimination); (12) the Fair Labor Standards Act; (13) the California Civil Code;
3 (14) the California Labor Code; (15) the California Constitution; (16) the National Labor
4 Relations Act to the extent consistent with the release noted in paragraph 58; and (17) any other
5 federal, state, or local statute or legislation.

6 60. Class Representatives expressly waive and relinquish all rights and benefits
7 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
8 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
9 Code of the State of California states:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
12 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

16 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
17 full and complete release and discharge of all parties, Class Representatives and Class Counsel
18 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
19 without limitation, all Class Representatives' claims that Class Representatives knew of, as well
20 as all claims that they do not know or suspect to exist in their favor against the Released Parties,
21 or any of them, for the time period from the beginning of time to the execution of this
22 Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of
23 any such Class Representatives' claims except as modified above.

24 **F. Interim Stay of Proceedings**

25 61. Pending completion of all of the prerequisites necessary to effectuate this
26 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the
27 Action except such as are necessary to effectuate the Settlement.

28 **G. Procedure for Approving Settlement and Notice Process**

62. Motion for Preliminary Approval of Settlement, LWDA and CAFA Notices.

(a) Motion for Preliminary Approval: Class Representatives through Class Counsel will move the District Court for an order granting Preliminary Approval of the Settlement, and the Class Notice Form. Class Representatives through Class Counsel will draft and submit with the Motion for Preliminary Approval a proposed Order Granting Preliminary Approval of Settlement; Approval of Notice to Class; and Setting Hearing for Final Approval of Settlement. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. Class Counsel will provide copies of all documents to be filed with the Court to Defendant at least ten (10) business days before the documents are filed, for review and comment by Defendant. Defendant shall provide to Class Counsel any and all comments regarding the motion and proposed order at least one (1) business day prior to the filing date of such documents.

(b) LWDA, CAFA Notices: At or around the same time as they submit this Settlement Agreement to the Court for preliminary approval, Class Counsel shall submit a copy of this Settlement Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Final Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3). Within ten (10) days following the filing of the Motion for Preliminary Approval, Defendant shall serve a CAFA Notice upon the Attorney General of the State of California, the United States Attorney General, and the appropriate state official in each state in which a Class Member reportedly resides at the time of CAFA Notice according to Defendant's records and as updated following a National Change of Address search. The CAFA Notice shall provide notice of the proposed Settlement in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*

(c) Should the District Court decline to preliminarily approve all of the material provisions of the Settlement (including but not limited to the scope of Released Claims to be granted by Participating Settlement Class Members or the binding effect of the Settlement on Participating Settlement Class Members), the Settlement will be null and void and the Parties

1 will have no further obligations under it. However, the Parties will work together to address
2 and resolve any concerns raised by the District Court necessary to secure preliminary approval.

3 63. Appointment of Settlement Administrator. The Parties have agreed to the
4 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
5 mailing the Notice, using standard devices to obtain forwarding addresses, independently
6 reviewing and verifying documentation associated with any claims or opt-out requests,
7 resolving any disputes regarding the calculation or application of the formula for determining
8 the Individual Settlement Amounts, drafting and mailing the settlement checks to Final
9 Settlement Class Members, issuing 1099 Tax Forms, reporting to taxing authorities, due
10 diligence, reporting and remittance obligations, and performing such other tasks as set forth
11 herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator
12 shall also be responsible for issuing to Plaintiff, Final Settlement Class Members, and Class
13 Counsel any 1099 or other Tax Forms as may be required by law for all amounts paid pursuant
14 to this Agreement. The Settlement Administrator shall also be responsible for setting up all
15 necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate
16 government authorities.

17 64. Disputes Regarding Settlement Administration. Any and all disputes relating to
18 administration of the Settlement by the Settlement Administrator (except for disputes regarding
19 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
20 over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendant
21 notify the Court that all payments and obligations contemplated by this Settlement Agreement
22 have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties
23 will confer in good faith to resolve the dispute without the necessity of Court intervention.

24 65. Class Data. Within fifteen (15) business days after entry of the Preliminary
25 Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The
26 Settlement Administrator will run a check of the Class Members' addresses against those on file
27 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
28 Settlement Administrator will not be provided to Class Counsel and it will remain confidential,

1 it shall be used solely to administer the Settlement, and it will not be used or disclosed to
2 anyone, except as required by applicable tax authorities, pursuant to Defendant's express
3 written consent, or by order of the Court.

4 66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
5 Administrator to the Settlement Class Members, by first class mail within ten (10) business days
6 following the Settlement Administrator's receipt of the Class Data. The Settlement
7 Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses
8 of Settlement Class Members if any envelopes are returned undeliverable.

9 67. Returned Notices. The Settlement Administrator will take steps to ensure that the
10 Notice is correctly mailed to all Settlement Class Members, including utilization of the National
11 Change of Address Database maintained by the United States Postal Service to review the
12 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any
13 Settlement Class Member for whom an updated address is located within ten (10) calendar days
14 following both the Settlement Administrator learning of the failed mailing and its receipt of the
15 updated address. The Notice shall be identical to the original Notice, except that it shall notify
16 the Settlement Class Member that the exclusion (opt-out) request or objection must be returned
17 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the
18 Notice.

19 68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
20 if an envelope has not been returned within thirty (30) days of the mailing that the Settlement
21 Class Member received the Notice.

22 69. Disputes Regarding Class Data. Settlement Class Members are deemed to
23 participate in the Settlement, unless they submit a timely and valid Request for Exclusion. The
24 Notice will inform Settlement Class Members of his/her estimated number of Work Months
25 Worked during the Class Period and pay periods worked during the PAGA Period. Settlement
26 Class Members may dispute their Work Months Worked or pay periods worked if they feel their
27 estimated Work Months Worked or pay periods worked are not accurate by timely submitting
28 evidence to the Settlement Administrator. Defendant's records will be presumed determinative

absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's accepted number of Work Months Worked or pay periods worked. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Settlement Class Members will have until the Notice Response Deadline to dispute Work Months Worked, object or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Work Months Worked for any Settlement Class Member or pay periods worked for any Class Member receiving a PAGA Payment, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; however, in no event will Defendant be required to increase the Gross Settlement Amount.

70. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

71. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions of the Settlement related to the Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of the Settlement. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiffs, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement

1 Administrator, postmarked on or before the Notice Response Deadline. The Request for
2 Exclusion should state:

3 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
4 IN THE BOTONIS V. BIMBO BAKERIES LAWSUIT. I
5 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
6 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY
7 FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS
8 LAWSUIT."

9 Any Request for Exclusion must include the full name, address, telephone number, last
10 four digits of the social security number or date of birth, and signature of the Settlement Class
11 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
12 Settlement Administrator at the specified address. Any such Request must be made in
13 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
14 postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
15 Any Settlement Class Member who timely requests exclusion in compliance with these
16 requirements: (i) will not have any rights under this Agreement with respect to the Class
17 Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
18 entitled to receive any payments under this Agreement with respect to Class Claims; and (iii)
19 will not be bound by this Agreement, or the Judgment with respect to the Class Claims.

20 (b) Binding Effect on Final Settlement Class Members. Except for those
21 Settlement Class Members who exclude themselves in compliance with the procedures set forth
22 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
23 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
24 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
25 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
26 reasonableness, and adequacy of the Settlement.

27 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
28 other than Plaintiffs, may object to the terms of this Agreement with respect to the Class Claims

1 and may appear at the Final Approval Hearing and object whether or not they have filed a
2 written objection as outlined herein. To object, a Settlement Class Member shall inform the
3 Settlement Administrator, in writing, of his or her objection, which shall be postmarked by the
4 Notice Response Deadline at the address set forth in the Notice. Such objection shall include
5 the full name, address, telephone number, last four digits of the social security number or date
6 of birth, signature of the Objecting Settlement Class Member, and the basis for the objection,
7 including any legal support and each specific reason in support of the objection, as well as any
8 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
9 represented by counsel, the name and address of his or her counsel. If any Objecting Settlement
10 Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims,
11 that Objecting Settlement Class Member's written submission should include a request to be
12 heard, and the Court will determine whether Objecting Settlement Class Members will be
13 permitted to speak. The Settlement Administrator shall provide objections, if any, to Class
14 Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator
15 shall attach the same to its declaration of due diligence it files with the Court prior to the Final
16 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
17 receive an Individual Settlement Amount from the Settlement. Plaintiffs and Defendant shall
18 not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or
19 her separately-retained counsel related to any objections to the Settlement. Submitting an
20 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
21 preserved by becoming a party of record by timely and properly intervening or filing a motion
22 to vacate the judgment. Settlement Class Members and Aggrieved Employees may not opt-out
23 of the Settlement with respect to the PAGA Claims.
24

25 (d) Failure to Object. Any Settlement Class Member who desires to object
26 with respect to the Class Claims but fails to timely submit a written objection or appear at the
27 final approval hearing to request to be heard waives any right to object and will be foreclosed
28 from making any objection to this Settlement. Any Settlement Class Member who does not

1 timely and properly become a party of record by intervening or filing a motion to vacate the
2 judgment waives any and all rights to appeal from the Judgment, including all rights to any
3 post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment,
4 motion for new trial, or other appellate proceeding.

5 (e) Responses to Objections. Counsel for the Parties may file a response to
6 any objections submitted by Objecting Settlement Class Members.

7 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
8 the QSF of the Gross Settlement Amount, as described in Paragraph 49(a) that is necessary to
9 make all payments required under this Settlement, within ten (10) business days after the
10 Effective Date.

11 73. Distribution of Funds. No later than ten (10) calendar days after deposit of the
12 payment into the QSF, the Settlement Administrator will mail the payments to the Final
13 Settlement Class Members, the payment for the Attorneys' Fees and Costs to Class Counsel,
14 any Service Payment to the Class Representatives, the PAGA Payment to the LWDA, and will
15 pay itself the Settlement Administration Costs.

16 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
17 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
18 checks. If any Final Settlement Class Member's check is not cashed within that period, the
19 check will be void and a stop-payment will be issued with any fees from the stop-payment paid
20 from the QSF. All unclaimed funds (less stop-payment fees) shall be paid to the State of
21 California's Unclaimed Property Fund in the name of the Participating Class Member. The
22 Release of the Class Claims will be binding upon all Final Settlement Class Members regardless
23 of whether they cash their checks within the 180-day period. In the event that any settlement
24 check is returned to the Settlement Administrator within 180 days of mailing, the Settlement
25 Administrator will, within five (5) business days of receipt of the returned settlement check,
26 perform a skip trace to locate the individual. If a new address is located by these means, the
27 Administrator will have ten (10) business days to re-issue the check and will notify Defense
28 Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense

Counsel, Class Counsel, Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

75. No person shall have any claim against Defendant (or its designee), Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

76. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Final Approval

77. Upon execution of this Agreement and the preparation and approval of the Notice, Proposed Preliminary Approval Order, and Proposed Final Approval Order and Judgment, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on Attorneys' Fees, Costs and the Service Payments;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

(f) Not later than thirty-five (35) days before the Final Approval Hearing,

Class Representatives will file with the Court a motion for final approval of the Settlement. Class Counsel will send to Defendant's Counsel the draft Motion for Final Approval at least two weeks before filing it without the Court and will confer with Defendants' Counsel and use their best efforts to incorporate Defendant's reasonable changes.

(g) If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Class Representatives and Class Counsel for the PAGA Payment, Class Representatives Service Payments, the Class Counsel Fees Payment, and/or the Class Counsel Costs Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.

(h) After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

78. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Payment is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

79. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order and Judgment:

1 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
2 adequate, and directing consummation of its terms and provisions;

3 (b) Approving Class Counsel's application for an award of attorneys' fees and
4 reimbursement of litigation costs and expenses, the Service Payment to the Class
5 Representative, and the payment to the Settlement Administrator for costs of administering the
6 Settlement; and

7 (c) Entering judgment approving Settlement, thereby permanently barring all
8 Participating Class Members from prosecuting any Class Claims covered by the Releases set
9 forth in paragraph 4 against any of the Released Parties and permanently barring all Aggrieved
10 Employees and the LWDA from prosecuting any PAGA Claims covered by the Releases set
11 forth in paragraph 23 against any of the Released Parties.

12 **J. Voiding the Agreement**

13 80. If the Court fails or refuses to issue the Final Approval Order or fails to approve
14 any material condition of this Settlement Agreement which effects a fundamental change of the
15 Settlement (unless explicitly excepted herein), the entire Settlement Agreement shall be
16 rendered voidable and unenforceable as to all Parties herein at the option of either Party.

17 81. If four percent (4%) or more of the Settlement Class Members timely submit
18 Requests for Exclusion, Defendant shall have the option of terminating or modifying this
19 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
20 Defendant exercises such option, under this paragraph it shall be relieved of any obligation to
21 pay the Settlement Amount or any other obligations from the Settlement by giving notice to
22 Plaintiffs' Counsel and the Settlement Administrator within ten (10) days of the Notice
23 Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be
24 solely responsible for all Settlement Administration Costs incurred.

25 82. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will
26 have no further obligations under the Settlement, including any obligation by Defendant to pay
27 the Settlement Amount, or any amounts that otherwise would have been owed under this
28 Settlement.

83. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

K. Other Terms

84. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any claims covered by the Releases set forth in paragraphs 4 and 23.

85. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

86. Restriction on Publicity. Class Counsel and Plaintiffs agree to not engage in any affirmative or reactive press or publicity, including not having a press release or soliciting the media regarding this case or settlement of this case. Communications regarding this Settlement prior to the Final Approval Date shall be limited to Court-Approved Notices in the Action. After the Final Approval Date, Class Counsel and the Class Representatives agree that they will not make any direct or indirect comment or publication of the Settlement or of Defendant in terms of affirmative or responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters, disseminated updates, mass mailings, or any other comment or publication to the press, media, or public at large. Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of this Settlement and the related awards of attorneys' fees and costs, or to respond to communications from Settlement Class Members or their representatives about this Settlement, or to disseminate information to Class Members, or to prevent the Parties or their representatives from communicating with financial or legal advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state only that the Action has been settled on terms mutually agreeable to the Parties. Except as explicitly provided for in this paragraph, Class Counsel shall not discuss, promote,

1 and/or advertise the fact and/or terms of the Settlement and Class Counsel will strictly maintain
2 the confidentiality of the fact and/or terms of the Settlement except as to enforce this Settlement
3 Agreement or communicate with Settlement Class members or their representatives after
4 preliminary approval.

5 87. Parties' Authority. The signatories hereto represent that they are fully authorized
6 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
7 hereof.

8 88. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
9 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
10 such documents and to take such other action as may reasonably be necessary to implement the
11 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
12 best efforts, including all efforts contemplated by this Settlement Agreement and any other
13 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
14 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
15 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
16 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
17 and final approval of the settlement, and the final entry of judgment.

18 89. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
19 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
21 cause of action or rights released and discharged by this Settlement Agreement.

22 90. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
23 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
24 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
25 compromise the matters at issue in the operative Complaint to avoid further substantial expense
26 and the inconvenience and distraction of protracted and burdensome litigation. Defendant also
27 has taken into account the uncertainty and risks inherent in litigation, and without conceding
28 any infirmity in the defenses that it has asserted or could assert against Plaintiffs, has

determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

91. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

92. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and Aggrieved Employees:

Costa Kerestenzis
Sarah S. Kanbar
ckerestenzis@beesontayer.com
skanbar@beesontayer.com
520 Capitol Mall, Suite 300
Sacramento, California 95814-4717
Tel: (916) 325-2100; Fax: (916) 325-2120

To Defendant:

Michael Puma
Brian D. Fahy

michael.puma@morganlewis.com
brian.fahy@morganlewis.com
300 South Grand Avenue, 22nd Floor
Los Angeles, California 90071-3132
Tel: (213) 612-2500; Fax: (213) 612-2501

93. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement. Plaintiffs and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

94. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

95. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

96. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiffs and Defendant agree to seek the help of the mediator identified in this Agreement to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiffs or Defendant.

1 97. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment
2 pursuant to the terms of this Agreement, the Court shall retain exclusive and continuing equity
3 jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms,
4 conditions, intents, and obligations of this Agreement.

5 98. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
6 and applicable provisions of the Federal Rules of Evidence, this Agreement is intended by the
7 Parties to be, and shall be, enforceable, binding, and admissible in a court of law.

8 99. Choice of Law. This Settlement Agreement shall be governed by and construed,
9 enforced and administered in accordance with the laws of the State of California, without regard
10 to its conflicts-of-law rules.

11 100. Integration Clause. This Settlement Agreement contains the entire agreement
12 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
13 or contemporaneous agreements, understandings, representations, and statements, whether oral
14 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
15 hereunder may be waived except in writing.

16 101. Binding on Assigns. This Settlement Agreement shall be binding upon and inure
17 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
18 successors, and assigns.

19 102. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
20 because the members of the Settlement Class are numerous, it is impossible or impractical to
21 have each Final Class Member execute this Settlement Agreement. The Notice will advise all
22 Settlement Class Members of the binding nature of the releases provided herein and such shall
23 have the same force and effect as if this Settlement Agreement were executed by each Final
24 Settlement Class Member.

25 103. Counterparts. This Settlement Agreement may be executed in counterparts, and
26 when each Party has signed and delivered at least one such counterpart, each counterpart shall
27 be deemed an original, and, when taken together with other signed counterparts, shall constitute
28

one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

[Signatures on the Next Page]

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

7/12/2023
Dated: July __, 2023

DocuSigned by:

Tim Botonis

B39C856C94ED432

Timothy Botonis

Dated: July __, 2023

Liam Patrick Meikle

DEFENDANT:

BIMBO BAKERIES USA, INC.

Dated: July __, 2023

By: _____
Title: _____

APPROVED AS TO FORM:

CLASS COUNSEL:

Dated: July __, 2023

BEESON, TAYOR & BODINE, APC

Costa Kerestenzis

Sarah S. Kanbar

Attorneys for Plaintiffs and the Class

DEFENDANT'S COUNSEL:

MORGAN, LEWIS & BOCKIUS LLP

Dated: July __, 2023

Michael Puma

Brian D. Fahy

Attorneys for Defendant, Bimbo Bakeries USA, Inc.

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[Signatures on the Next Page]

APPROVAL AND EXECUTION BY PARTIES:

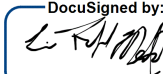
CLASS REPRESENTATIVE:

Dated: July __, 2023

Timothy Botonis

7/12/2023

Dated: July __, 2023

DocuSigned by:

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Liam Patrick Meikle

DEFENDANT:

BIMBO BAKERIES USA, INC.

Dated: July __, 2023

By: _____
Title: _____

APPROVED AS TO FORM:

CLASS COUNSEL:

Dated: July __, 2023

BEESON, TAYOR & BODINE, APC

Costa Kerestenzis
Sarah S. Kanbar
Attorneys for Plaintiffs and the Class

DEFENDANT'S COUNSEL:

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CLASS REPRESENTATIVE:

Dated: July __, 2023

Timothy Botonis

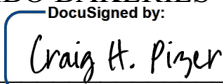
Dated: July __, 2023

Liam Patrick Meikle

DEFENDANT:

BIMBO BAKERIES USA, INC.

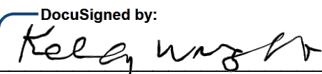
Dated: July 13, 2023

DocuSigned by:

By: Craig Pizer

Title: Vice President Legal and General Counsel

BIMBO BAKERIES USA, INC.

Dated: July 13, 2023

DocuSigned by:

By: Kelly Wright

Title: Vice President Human Relations

APPROVED AS TO FORM:

CLASS COUNSEL:

Dated: July __, 2023

BEESON, TAYOR & BODINE, APC

Costa Kerestenzis
Sarah S. Kanbar
Attorneys for Plaintiffs and the Class

DEFENDANT'S COUNSEL:

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[Signatures on the Next Page]

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: July __, 2023

Timothy Botonis

Dated: July __, 2023

Liam Patrick Meikle

DEFENDANT:

BIMBO BAKERIES USA, INC.

Dated: July __, 2023

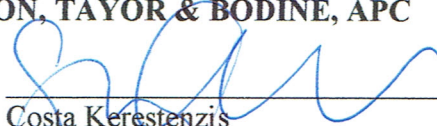
By: _____
Title: _____

APPROVED AS TO FORM:

CLASS COUNSEL:

Dated: July 13, 2023

BEESON, TAYOR & BODINE, APC



Costa Kerestenzis
Sarah S. Kanbar
Attorneys for Plaintiffs and the Class

DEFENDANT'S COUNSEL:

MORGAN, LEWIS & BOCKIUS LLP

Dated: July __, 2023

Michael Puma
Brian D. Fahy
Attorneys for Defendant, Bimbo Bakeries USA, Inc.

MORGAN, LEWIS & BOCKIUS LLP

Dated: July 13, 2023



Michael Puma
Brian D. Fahy
Attorneys for Defendant, Bimbo Bakeries USA, Inc.

EXHIBIT 1

NOTICE OF PENDING CLASS AND REPRESENTATIVE ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Botonis et al. v. Bimbo Bakeries USA, Inc., Case No. 2:22-cv-01453-DJC-DB

If you are or were employed by Bimbo Bakeries USA, Inc. in California as a Transport Associate (also referred to as Drivers, including Relief Drivers) or Route Sales Professional or any associate doing similar work¹ during the period May 10, 2018 through August 26, 2023, a pending class action settlement may affect your rights.

A court authorized this notice. This is not a solicitation from a lawyer.

Plaintiffs Liam Patrick Meikle and Tim Botonis (“Plaintiffs”), initiated a lawsuit against Bimbo Bakeries USA, Inc. (“Defendant”), alleging that Defendant: (a) failed to reimburse business expenses, specifically expenses allegedly incurred when class members were allegedly required to use their personal cell phones for work-related purposes without being provided reimbursement; (b) failed to provide accurate, itemized wage statements; (c) failed to pay wages upon termination/severance; (d) engaged in unfair competition; and (e) are subject to penalties under the Private Attorneys General Act (“PAGA”) based on those allegations. This Notice Packet explains a proposed settlement of a lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this Notice Packet because you may be a member of a class on whose behalf this lawsuit has been brought on behalf of all persons who are or were employed by Defendant in the State of California as a Transport Associate (also referred to as Drivers, including Relief Drivers) or Route Sales Professional or any associate doing similar work² during the period May 10, 2018 through August 26, 2023 (the “Settlement Class”).

The Court has not decided that Defendant did anything wrong. Defendant denies any wrongdoing and asserts that it properly provided expense reimbursement to its employees in accordance with the law.

The parties have decided to settle the lawsuit. Before you can receive any money, the Court must approve the settlement. You have a choice to make now:

Your Legal Rights and Options with Regard to this Pending Class Action Settlement

Do Nothing	You will be bound by the Settlement and will be entitled to a monetary Settlement Payment, if the Court approves the Settlement.
Make An Objection	If you wish to object to the Settlement, you send your written objections to the Settlement Administrator on or before [REDACTED]. If the Court overrules your objection, you will be bound by the Settlement. Further instructions on how to object to the Settlement are included in this Notice.

¹ Employees encompassed within the definition of Aggrieved Employees include but are not limited to the following: Bakery RSR; Commission Sales Representative; Relief Driver; Relief Drivers; Relief Route Drivers; Route Relief; Route Sales Representative; Route Sales Representative-Express Routes; Route Sales Representatives; Vacation Relief RSR.

² See positions identified in footnote 1.

Request Exclusion	If you request to be excluded from the Settlement, you must mail your request for exclusion to the Settlement Administrator on or before [REDACTED]. If you request exclusion, you will not receive any money and you will not be bound by the Settlement in this Action, except that you cannot opt out of the PAGA settlement and will be bound by the PAGA settlement and release and will receive money for the PAGA settlement if you worked in a covered position during the PAGA period regardless of whether you opt out of the class settlement. Further instructions on how to request exclusion from the Settlement are included in this Notice.
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Your options are explained in this notice.

I. WHY IT IS IMPORTANT TO READ THIS NOTICE?

You are receiving this notice because Defendant's records show that you are a member of the Class conditionally certified by Judge Daniel J. Calabretta on [date of preliminary approval] in a case known as *Tim Botonis, et al., v. Bimbo Bakeries, Inc.*, pending in the United States District Court for the Eastern District of California, Case No. 2:22-CV-01453-DJC-DB. You should read this notice carefully as it may affect your rights.

II. WHY AM I RECEIVING THIS NOTICE?

Plaintiffs filed a complaint against Defendant alleging violations of the California Labor Code and civil penalties under the Private Attorney General Act ("PAGA"). You are receiving this Notice because Defendant's records show you are a currently or were formerly employed as a Transport Associate (also referred to as Drivers, including Relief Drivers) or Route Sales Professional or any associate doing similar work³ during the period May 10, 2018 through August 26, 2023.

III. HOW WAS A SETTLEMENT REACHED?

Following litigation and a full-day of settlement negotiations at mediation, and after taking into account the risks and costs attendant to further litigation and the substantial benefits to be received pursuant to the Settlement, the Parties have concluded that this Settlement is fair. In particular, Plaintiffs and their attorneys believe the Settlement confers substantial benefits to the Class, is a fair, adequate and reasonable settlement, and is in the best interest of the Class.

The Court approved the Settlement on a preliminary basis on [date of preliminary approval]. A summary of the terms of the preliminarily approved Settlement is set forth below. The Settlement Agreement ("Settlement Agreement") contains all of the additional details of the Settlement. Instructions about how to obtain a copy of the Settlement Agreement are included at the end of this Notice in the "How Do I Get More Information?" section.

³ See positions identified in footnote 1.

IV. WHAT ARE THE TERMS OF THE PRELIMINARILY APPROVED SETTLEMENT?

The total settlement amount in this case is \$875,000.00. Of that amount, the Parties estimate that \$11,765.00, but not to exceed \$13,000.00 will be used to pay the Settlement Administrator for the cost of preparing, mailing, and tracking the mailing of this Notice and gathering and reporting on the individuals, if any, who ask to be excluded from the Settlement. Up to \$130,000.00, or less than 15% of the Gross Settlement Amount, will be allocated towards Plaintiffs' attorneys fees and up to \$10,000.00 will be allocated towards expenses incurred in the course of litigation. Up to \$10,000.00 will be paid as a Class Representative Service Awards, with \$5,000.00 to each Plaintiff for the risks and efforts they undertook in filing and prosecuting this Action on behalf of the Class. A payment in the amount of \$7,500.00 will be made to the California Labor and Workforce Development Agency pursuant to Plaintiffs' claim for PAGA penalties. All of the above payments are subject to Court approval at the Settlement Hearing.

If the Court does award all of these amounts, the Net Settlement Amount after these payments will be approximately \$705,735.00. Your share of this amount is based on the proportion of the Work Months that you worked during the Class Period.

In addition to the monetary terms, as part of the Settlement, Defendant has issued a revised expense reimbursement policy that will note the right of California employees to submit requests for expense reimbursement in instances when employees believe they are required to use their personal cell phones for reasonable and necessary work-related purposes. Defendant also provided communications-related updates to company-issued devices, (e.g., tablets for Transport Associates and handheld computers for Route Sales Professionals) that enabled texting and/or talking capabilities.

V. HOW WILL MY SHARE BE CALCULATED?

Settlement Class Members' payment will be calculated as follows: The New Settlement Amount will be distributed to Settlement Class Members on a pro-rata basis based upon their share of Work Months Worked during the Class Period.

Your Individual Settlement Amount is currently estimated at \$_____. Your estimated pro-rata share of the Net Settlement Amount is: _____%. Your estimated pro-rata share may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement. The Net Settlement Amount to be distributed to all Class Members who do not opt-out of the settlement is currently estimated to be \$705,735.00.

Your estimated award is based on your pro-rata percentage of the Net Settlement Amount based on your Work Months Worked as an employee in California during the Class Period, as a percentage of all of the Class Members' Work Months Worked during the Class Period. Defendant's records show that during the Class Period (between May 10, 2018 through August 26, 2023) you had a total number of Work Months Worked of _____.

Defendant's records will control unless you provide documentation that establishes Defendant's records are in error. If you do not dispute the amount of the above Work Months worked, you need not do anything. If you dispute the amount of the above months worked, you must provide documentation (such as pay stubs or W-2) to the Settlement Administrator showing your Work Months worked on or before August 26, 2023. If there is a dispute about your Work Months worked, the parties will attempt to resolve the dispute. If the parties cannot resolve the dispute, the Settlement Administrator will make the final determination.

Each Settlement Class Member's Settlement Payment shall be allocated as follows: 100% as expense reimbursement, interest, and civil penalties, from which no taxes will be withheld, to be subject to reporting on a 1099 basis. Settlement Class Members shall be responsible for the tax consequences of all payments received by them, for filing returns, reporting all income received to state and federal taxing authorities and for payment of any other applicable taxes due. Settlement Class Members are advised to seek tax advice as to any amounts they receive pursuant to the Settlement Agreement.

In addition, if you worked one or more pay periods during the time period of May 10, 2021 through August 26, 2023, you will receive an additional amount in connection with Plaintiffs' claim for civil penalties under the Private Attorney General Act ("PAGA"). \$10,000.00 of the Gross Settlement Amount has been designated to the PAGA Claims. Twenty-five percent (25%) of the \$10,000.00, or \$2,500.00 shall be paid out to Settlement Class Members. Each Settlement Class Member shall receive a portion of the \$2,500.00 proportionate to the number of pay periods worked by the Settlement Class Member during the PAGA Period compared to the total number of pay periods worked by all Settlement Class Members during the PAGA Period.

Please contact the Settlement Administrator at [Toll-Free Number] to update your mailing address if the address printed on the Notice is incorrect or if you are moving to a new address.

VI. WHAT ARE ALL MY OPTIONS?

1. Do Nothing

If you wish to participate in the Settlement and receive a monetary payment under the terms of the Settlement, you do not need to take any action in response to this notice. ***If you are satisfied with the proposed Settlement, you do not need not appear at the Settlement Hearing.***

Each Settlement Class Member will receive a check if the Settlement becomes final. The checks will be valid and negotiable for one hundred eighty (180) days from issuance. If not cashed in 180 days, the checks shall be distributed to the California State Controller's Office in the name of the Settlement Class Member.

If you receive a monetary payment under the Settlement as a Settlement Class Member, you will be providing a Release of Claims to Defendant and the Released Parties. The Released Claims are described below in Section VII.

2. File An Objection

You may oppose or object to the proposed Settlement or any aspect of it that you think is unfair in writing. You may also appear at the Settlement Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. The location, date and time of the Settlement Hearing is set forth in Section VIII of this Notice.

Only individuals who file written objections may address their objections to the Court at the Settlement Hearing. All written objections, supporting papers and/or notices of intent to appear at the Settlement Hearing must: (1) clearly identify the Action by name (*Tim Botonis et al. v. Bimbo Bakeries USA, Inc.*) and case number (2:22-CV-01453-DJC-DB); and (2) be postmarked for service by mail and sent to the Settlement Administrator on or before [45 calendar days from the mailing of the notice]. The addresses for Parties' counsel are as follows:

Class Counsel:	Counsel for Defendant:
Costa Kerestenzis Sarah S. Kanbar Beeson, Tayer & Bodine, APC 520 Capitol Mall, Suite 300 Sacramento, CA 95814 (916) 325-2100 ckerestenzis@beesontayer.com skanbar@beesontayer.com	Michael Puma Brian D. Fahy Morgan, Lewis & Bockius, LLP 300 South Grand Avenue, 22nd Floor Los Angeles, California 90071-3132 Tel: (213) 612-2500; Fax: (213) 612-2501 michael.puma@morganlewis.com brian.fahy@morganlewis.com

Note: If you do not send in your written objection in the manner provided above you will be bound by the Settlement and will waive your objections to the Settlement (either before the trial court or the appellate court) and will not be able to assert them.

3. Request Exclusion

You may request exclusion from the Settlement, which means that you will not be bound by the Settlement, will waive any objections to the Settlement and will not be entitled to any money from the Settlement should it receive final approval from the Court. To be valid, your request for exclusion must: (1) be in writing and postmarked for service by mail to the Settlement Administrator no later than [45 **calendar days from the mailing of the notice**]; (2) list your name, address, telephone number and date of birth or last four digits of your social security number, which must match up with the social security number and either first or last name in Defendant's records; (3) have a signature and date; and (4) state "I wish to be excluded from the settlement class in the *Tim Botonis et al. v. Bimbo Bakeries USA, Inc.* lawsuit. I understand that if I ask to be excluded from the settlement class, I will not receive any money from the settlement of this lawsuit." However, even if you opt out of the class action settlement by following these steps, you cannot opt out of the PAGA portion of the settlement and will be bound by the PAGA settlement and release and will receive money for the PAGA settlement if you worked in a covered position during the PAGA period regardless of whether you opt out of the class settlement.

DEFENDANT WILL NOT RETALIATE AGAINST YOU REGARDING THIS SETTLEMENT, WHETHER YOU ACCEPT THE SETTLEMENT, FILE AN OBJECTION OR REQUEST EXCLUSION FROM THE SETTLEMENT

VII. WHAT CLAIMS ARE BEING RELEASED?

As of the Effective Date (as defined in the Settlement Agreement), the Settlement Class Members, as well as the Plaintiffs, shall provide Defendant, their employees, officers, owners, shareholders, (as well as any of Defendant's parent companies, subsidiaries, and/or affiliated entities (the "Released Parties") with a release of claims defined as "Released Claims" as defined in the Settlement Agreement.

The Claims covered by the release shall include any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, penalties, and causes of action, of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type or amount of relief or damages claimed, which are based on or arise out of or relate in any

way to the allegations which were pled in the operative Complaint and the PAGA Claims or that could have been pled based on the facts alleged therein, or could have been asserted therein up through August 26, 2023. Specifically, you are releasing any statutory, common law, and equitable claims that were pled or that could have been pled based on Defendant's alleged failure to reimburse Aggrieved Employees and Class members for business expenses, specifically for the alleged use of their personal cell phones for work-related purposes arising under the Cal. Labor Code, including, §§ 201-204, 226, 226.2, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2802, 2698-2699.5, Cal. Business & Professions Code §§ 17200, et seq., Cal. Civil Code §§ 3287-3288, and Cal. Code of Civil Procedure §1021.5.

VIII. WHEN WILL THE SETTLEMENT BE FINALIZED?

A hearing (the "Settlement Hearing") will be held before the United States District Court for the Eastern District of California, on [Date of Final Approval Hearing], at [] a.m., in Courtroom 10 (13th Floor) located at 501 "I" Street, Sacramento, CA 95814, to determine whether the proposed Settlement is fair, adequate and reasonable and should be finally approved by the Court. The Settlement Hearing may be adjourned by the Court from time to time as the Court may determine without further notice.

IX. HOW DO I GET MORE INFORMATION?

All inquiries regarding this Notice should be directed to the Settlement Administrator at: [Toll-free number] or you can contact Class counsel at 916.325.2100.

Additionally, the pleadings and other records in this litigation may be examined in person at the Clerk's Office, located at the United States District Court for the Eastern District of California, Room 4-200 on the 4th floor of the Robert T. Matsui United States Courthouse, 501 "I" Street, Sacramento 95814 between the hours of 9:00 a.m. and 4:00 p.m. daily, excluding Court holidays.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH ANY INQUIRIES.