

SETTLEMENT AGREEMENT

This settlement agreement (“Settlement” or “Agreement”) is made and entered into between Plaintiff Pablo Reyes Feliciano (“Plaintiff”), acting in his capacity as private attorney general, and Defendant John Moons dba Moonlight Dairy (“Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. “The Action” means the matter entitled *Pablo Reyes Feliciano v. John Moons dba Moonlight Dairy*, Case No. VCU292586, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency, dated July 19, 2022 (“1st LWDA Notice”, and supplemental correspondence, dated July 20, 2023 (“2nd LWDA Notice”) (Collectively the 1st LWDA Notice and 2nd LWDA Notice are referred to herein as the “LWDA Notices”).
2. “Aggrieved Employees” consist of all John Moons dba Moonlight Dairy’s non-exempt employees who worked for John Moons dba Moonlight Dairy in California at any time from July 19, 2021 to either (i) the date of court grants approval of this Settlement or (ii) June 3, 2024, whichever is earlier.
3. “Defendant” means John Moons dba Moonlight Dairy.
4. “Court” means the Superior Court of California for the County of Tulare.
5. “Effective Date” means the date upon which the Parties sign the Settlement Agreement.
6. “Individual Settlement Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.
7. “LWDA” means the California Labor and Workforce Development Agency.
8. “Gross Settlement Amount” is a non-reversionary sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00), which represents the total amount payable under this settlement by Defendant (subject to the Escalator Clause described below), including, without limitation,

payments to all Aggrieved Employees, payment to the LWDA, and payment of Plaintiff's attorneys' fees and costs.

9. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Courts approval) are subtracted from the Gross Settlement Amount: (a) Plaintiff's attorneys' fees up to approximately thirty-five percent of the Gross Settlement Amount, currently estimated at \$17,500.00 (b) Plaintiff's reasonable verified litigation costs up to \$9,600.00, and (c) Settlement Administration costs and expenses of up to \$4,500.00.

10. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2689, *et seq.*

11. "PAGA Period" means the time period between July 19, 2021 and April 15, 2024.

12. "PAGA Released Claims" means any and all PAGA claims that were pled in the operative complaint in the Action and the LWDA Notices.

13. "Parties" means Plaintiff and Defendant.

14. "Plaintiff" means Pablo Reyes Feliciano.

15. "Plaintiff's Counsel" means Daniel J. Brown and Jessica Flores of Stansbury Brown Law, PC.

II. RECITALS

1. Plaintiff alleges that Defendant failed to provide the Aggrieved Employees with accurate wage statements, failed to provide compliant meal and rest periods or premium pay in lieu thereof, failed to pay all minimum and overtime wages, failed to include incentive payments in determining the rate of overtime pay causing Aggrieved Employees to be underpaid all overtime wages, and consequently failed to pay all wages at separation of employment. Plaintiff also alleged that Defendant failed to reimburse Aggrieved Employees for plastic boots purchased for work purposes and for personal cell phone use required for the performance of their business duties. Plaintiff alleges that Defendant is therefore liable for civil penalties under PAGA. Defendant

denies these allegations. More specifically, Defendant alleges that it has robust policies regarding meal periods and rest breaks and that it provided all legally required meal and rest breaks pursuant to those policies; that it fully compensated employees for all wages and premiums due; employees never had to use their personal phones for work purposes; not all Aggrieved Employees purchased plastic boots and not all duties performed by Aggrieved Employees required plastic boots and that it provided employees with accurate wage statements. In making this Settlement, Defendant does not admit to the sufficiency of any claims, allegations, assertions, or contentions made against them in the Action.

2. On July 19, 2022, Plaintiff provided a written notice of his intent to file a claim for civil penalties under PAGA to the LWDA and Defendant, alleging the Defendant violated a variety of California Labor Codes, as described in Section II.1. On July 20, 2023, Plaintiff provided supplemental written notice to the LWDA and Defendant of his allegation that Defendant failed to compensate Plaintiff and other Aggrieved Employees for all minimum wages for time spent putting on protective wear prior to clocking in for each shift. On the same date, Plaintiff provided supplemental written notice to the LWDA and Defendant of his allegation that Defendant failed to make semi-monthly payments on a regular day designated in advance as required by Labor Code § 204.

3. On July 19, 2022, Plaintiff filed a class action complaint entitled *Pablo Reyes Feliciano v. John Moons dba Moonlight Dairy*, et al., Tulare County Superior Court, Case No. VCU292586, alleging causes of action for: (1) Meal Period Violations; (2) Rest Period Violations; (3) Failure to Reimburse Necessary Business Expenses (4) Wage Statement Violations; (5) Waiting Time Penalties; (6) Unfair Competition; and (7) Failure to Pay All Overtime Wages.

4. On October 6, 2022, Plaintiff amended his complaint to add an eighth cause of action for minimum wage violations and a ninth cause of action for civil penalties under the Private Attorneys General Act.

5. On August 18, 2023, Plaintiff further amended his complaint to add an additional basis for minimum wage violations and an additional basis for penalties under PAGA based on the supplemental written notice to the LWDA.

6. On August 7, 2023 the Parties' counsel filed a Stipulation to Arbitrate Plaintiff's Individual Claims Inclusive of Plaintiff's Individual PAGA Claims pursuant to a valid arbitration agreement entered into between Plaintiff and Defendant.

7. On August 9, 2023, the Court approved the Stipulation and ordered the Parties to arbitration. The Court retained jurisdiction of the representative PAGA action.

8. Prior to agreeing to arbitration, the Parties agreed to participate in a full-day mediation with Mark Keppler, Esq. (Ret) to take place on May 4, 2023 via "Zoom" videoconference. Plaintiff propounded informal discovery requests to Defendant in anticipation of the mediation pertaining to Plaintiff and the other aggrieved employees' time and pay records amongst other information and documents in order to allow for Plaintiff's counsel to investigate Plaintiff's allegations and value the PAGA claim.

9. On May 4, 2023, the Parties participated in a mediation with Mr. Keppler. While the Parties did not reach a settlement, in the months that followed the Parties engaged in formal discovery through arbitration and further settlement discussions, eventually leading to a tentative settlement of the PAGA claims.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission:** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This

Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

2. **Gross Settlement Amount:** Defendant shall pay Fifty Thousand Dollars and Zero Cents (\$50,000.00) as the non-reversionary Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount (subject to the Escalator Clause below).

3. **Escalator Clause:** Defendant represents that as of March 21, 2024, Aggrieved Employees worked combined 2,300 pay periods during the PAGA Period. If the actual number of pay periods worked at the close of the PAGA Period is ten percent (10%) more than 2,300 pay periods, Defendant shall either: (1) increase the Gross Settlement Amount on a pro-rata basis equal to the increase in the number of pay periods above 10 % (e.g., if the number of pay periods or Aggrieved Employees increases by 12%, Defendant will increase the Gross Settlement Amount by 2%); or (2) to cut off the PAGA Period to a date that will not trigger an additional payment under these provisions.

4. **Net Settlement Amount:** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

- a. **Plaintiff's Attorneys' Fees and Costs:** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to approximately thirty-five percent of the Gross Settlement Amount (currently estimated to be \$17,500.00) and actual costs incurred in prosecuting this Action, up to \$9,600.00. In the event the Court approves a net payment less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). Defendant will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

- b. Payment to Plaintiff for Enhancement: Defendant will not oppose Plaintiff's request of up to (\$1,000.00) for Plaintiff's Enhancement Payment, subject to Court approval, in recognition of Plaintiff's contributions to the Lawsuit, and service to the Settlement Class. Defendant will report this payment on IRS Form 1099 issued to Plaintiff.
- c. Up to Four Thousand Five Hundred Dollars and Zero Cents (\$4,500.00) from the Gross Settlement Amount for the Settlement Administrator's services.

5. **Allocation of Net Settlement Amount:** The Net Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA period.

6. **PAGA Release:** Upon entry of an Order approving the Settlement, Plaintiff and the Aggrieved Employees will release any and all PAGA Released Claims against Defendant, its past or present officers, directors, and shareholders (collectively, the "Released Parties") based on the facts pled in the operative complaint and LWDA Notices that arose during the PAGA Period, including for civil PAGA penalties for violations of Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804, and 2698 *et seq.* ("PAGA Released Claims"). Upon entry of the Order approving the settlement and judgement entered thereon and conditioned on full payment of the Gross Settlement Amount, Plaintiff and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **Releases Effective Upon Full Payment:** The Release identified in Paragraph 6 will become effective upon full payment of the Gross Settlement Amount pursuant to section IV of this Settlement.

8. **Covenants and Representation by Plaintiff:**

- a. Plaintiff represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.
- b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of the Settlement and the consequences of signing this Settlement.

9. **Judgement:** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering an order as set forth herein. The order will not release or bar any claims other than the PAGA Released Claims as to Aggrieved Employees. The Court's entry of judgment shall not be deemed a finding against or an admission by Defendant of any liability. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for approval of this Settlement.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator:** The Parties agree to use Apex Class Action LLC to administer the Settlement ("Settlement Administrator") and to Plaintiff's Counsel seeking Court approval to pay up to Four Thousand Five Hundred Dollars and Zero Cents (\$4,500.00) from the Gross Settlement Amount for the Settlement Administrator's services.

2. **Provision of Information for Aggrieved Employees:** The Settlement Administrator shall provide counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to calculate said

payments. Defendant shall provide the Settlement Administrator with the information necessary for the Settlement Administrator to calculate the Individual Settlement Payments within ten (10) days of the Court approval of the Settlement. The Settlement Administrator shall obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments:** Upon compiling the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

No later than thirty (30) days after Court approval of the Settlement, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with the Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail. Each Individual Settlement Payment shall be deemed penalties and reported using IRS Form 1099.

Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be transferred to the Visalia Rescue Mission.

4. **Undeliverable Notices:** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any Checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Skip-Trace or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

5. **Payment of Remainder:** No later than thirty (30) days after Court approval of the Settlement, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Plaintiff's Enhancement Payment; and (4) Settlement Administrator fees and expenses.

6. **Accounting:** Within fourteen (14) business days following the initial mailing of the Individual Settlement Payments, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences:** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **MISCELLANEOUS PROVISIONS**

1. **Successors:** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

2. **Costs and Fees:** The Parties shall bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

3. **Governing Law:** This Settlement shall be construed under and governed by the laws of the State of California. Any questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by

California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Tulare.

4. **Nullification of Settlement:** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

5. **Amendment or Modification:** This Settlement may be amended or modified only by written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

6. **Authorization to Enter into Settlement:** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If they are unable to reach agreement on the form or content on any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

7. **Execution and Counterparts:** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

8. **Acknowledgement that the Settlement is Fair and Reasonable:** The Parties believe this settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an

opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

9. **Waiver:** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

10. **Enforcement of Action:** The Parties agree that the Tulare County Superior Court shall have jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure Section 664.6. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

11. **Mutual Preparation:** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one or more of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

12. **Representation by Counsel:** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

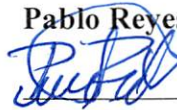
13. **Cooperation and Execution of Necessary Documents:** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

14. **Binding Agreement:** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: ^{JULY} ~~April~~ 3, 2024

Pablo Reyes Feliciano



Pablo Reyes Feliciano, Plaintiff

Dated: ~~April~~ _____, 2024

July 24

John Moons dba Moonlight Dairy



John Moons

APPROVED AS TO FORM:

July 3, 2024

Dated: April _____, 2024

Stansbury Brown Law PC



Daniel J. Brown, Esq.
Attorney for Plaintiff

Dated: April _____, 2024

Sagaser, Watkins & Wieland PC



Charles P. Hamamjian, Esq.
Attorneys for Defendant