

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, SAYDA MENDIVIL, as an aggrieved employee,
and on behalf of all other aggrieved employees

LITTLER MENDELSON, P.C.

Andrew H. Woo, Bar No. 261120

awoo@littler.com

5100 North Palm Avenue, Suite 302

Fresno, California 93704-2225

Tel: (559) 244-7500

Facsimile: (559) 244-7525

Attorneys for Defendant, HG FOODS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

SAYDA MENDIVIL, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

HG FOODS, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: VCU296223

[Assigned for all purposes to the Hon. Gary
M. Johnson in Dept. 7]

**JOINT STIPULATION RE:
REPRESENTATIVE ACTION
SETTLEMENT**

ACTION FILED: October 20, 2022
TRIAL DATE: None Set

1 **JOINT STIPULATION RE: REPRESENTATIVE ACTION SETTLEMENT**

2 This Joint Stipulation Re: Representative Action Settlement (“Settlement,” “Agreement,”
3 or “Settlement Agreement”) is made by and between plaintiff Sayda Mendivil (“Plaintiff”), on
4 one hand; and defendant HG Foods, LLC (“Defendant”), on the other hand. The Agreement
5 refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

6 **I. DEFINITIONS**

7 **A. “Action”** means Plaintiff’s lawsuit seeking PAGA civil penalties against
8 Defendant, captioned *Sayda Mendivil v. HG Foods, LLC*, Case No. VCU296223, initiated on
9 October 20, 2022, and pending before the Superior Court of the State of California, County of
10 Tulare.

11 **B. “Agreement,” “Settlement” or “Settlement Agreement”** means this Joint
12 Stipulation Re: Representative Action Settlement, and its exhibits, attached hereto and
13 incorporated herein.

14 **C. “Aggrieved Employees”** means all persons employed by Defendant as non-
15 exempt employees, either directly or through any subsidiary, staffing agency, or professional
16 employer organization, who were employed with Defendant in California during the PAGA
17 Period.

18 **D. “Aggrieved Employee List”** means a complete list of all Aggrieved Employees
19 that Defendant will diligently and in good faith compile from its records and provide to the
20 Settlement Administrator after the Court grants preliminary approval of the Settlement. The
21 Aggrieved Employee List will include information regarding the Aggrieved Employees compiled
22 from Defendant’s records and provided to the Settlement Administrator in a Microsoft Excel
23 spreadsheet, including each Aggrieved Employee’s: (1) full name; (2) last known address; (3)
24 last known phone number; (4) social security number; and (5) hire date(s), termination dates(s)
25 (as applicable), and re-hire date(s) (as applicable).

26 **E. “Aggrieved Employee Address Search”** means the Administrator’s
27 investigation and search for current Aggrieved Employees’ mailing addresses using all
28 reasonably available sources, methods and means including, but not limited to, the National

1 Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved
2 Employees.

3 **F. "Approval Order"** means the Court Order Granting Approval of PAGA
4 Settlement.

5 **G. "Court"** means the Superior Court of the State of California for the County of
6 Tulare.

7 **H. "Defendant"** means HG Foods, LLC.

8 **I. "Defense Counsel"** means Andrew H. Woo of Littler Mendelson, P.C.

9 **J. "Effective Date"** means the date by which the last of the following has occurred:
10 (a) the Court has entered a judgment approving the settlement, and (b) the judgment becomes
11 final, meaning that the State of California has not filed an objection or sought to intervene, and
12 the judgment has been entered.

13 **K. "Gross Settlement Amount"** means the settlement amount of Three Hundred
14 Fifty-Seven Thousand Five Hundred Dollars and Zero Cents (\$357,500.00), as the same may be
15 escalated pursuant to Paragraph III(K)(2) of this Agreement. The Gross Settlement Amount
16 represents a global settlement of all allegations, claims, and causes of action asserted in the
17 Actions and will include all the following: Plaintiff's Counsel Attorneys' Fees (subject to Court
18 approval), Plaintiff's Counsel Attorneys' Costs (subject to Court approval), Plaintiff's
19 Enhancement Payment (subject to Court approval), Settlement Administration Costs (subject to
20 Court approval), LWDA PAGA Payment, and Individual PAGA Payments.

21 **L. "Individual PAGA Payment"** means the 25% of the Net Settlement Amount to
22 be paid to the Aggrieved Employees.

23 **M. "Individual Settlement Payment(s)"** means the *pro rata* amount payable to each
24 Aggrieved Employee from the 25% of the Net Settlement Amount to be calculated based on the
25 number of Pay Periods worked by the Aggrieved Employee.

26 **N. "Judgment"** means the judgment entered by the Court based upon the Final
27 Approval.

28 ///

1 **O. “LWDA”** means the California Labor and Workforce Development Agency, the
2 agency entitled, under Labor Code section 2699, subd. (i).

3 **P. “LWDA PAGA Payment”** means the 75% of the Net Settlement Amount to be
4 paid to the LWDA under Labor Code section 2699, subd. (i).

5 **Q. “Net Settlement Amount”** means the Gross Settlement Amount, less the
6 following payments, in the amounts approved by the Court: Plaintiff’s Counsel’s Attorneys’
7 Fees, Plaintiff’s Counsel’s Attorneys’ Costs, Plaintiff’s Enhancement Payment and Settlement
8 Administration Costs.

9 **R. “Operative Complaint”** means the complaint filed by Plaintiff in the Tulare
10 County Superior Court on October 20, 2022.

11 **S. “PAGA”** means the Private Attorneys General Act of 2004 as codified in
12 California Labor Code section 2698, *et seq.*

13 **T. “PAGA Notice”** means Plaintiff’s letter to Defendant and the LWDA
14 providing notice pursuant to Labor Code section 2699.3, subd. (a).

15 **U. “PAGA Payment Letter”** means a letter that the Settlement Administrator will
16 send to each Aggrieved Employee with his or her Individual Settlement Payment, which explains
17 the reason for the Individual Settlement Payment, substantially in the form attached hereto as
18 Exhibit “A,” excluding any revisions by the Court.

19 **V. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
20 from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
21 LWDA in settlement of PAGA claims.

22 **W. “PAGA Period”** means the period from August 11, 2021 through the date of
23 Approval Order, subject to the escalator clause in paragraph III(K)(2) of this Agreement.

24 **X. “PAGA Released Claims”** means the claims being released by Plaintiff,
25 Aggrieved Employees and, to the extent permitted by law, the State of California, and as
26 described in section III(I)(1) of this Agreement.

27 **Y. “Pay Period”** means any pay period when an Aggrieved Employee worked at any
28 time as an employee for Defendant in a non-exempt, hourly-paid position during the PAGA

1 Period, based on timekeeping data and applicable hire dates, re-hire dates (as applicable), and
2 termination dates (as applicable).

3 **Z. “Parties”** means, collectively, Plaintiff and Defendant.

4 **AA. “Plaintiff” or “Named Plaintiff”** shall refer to Sayda Mendivil.

5 **BB. “Plaintiff’s Counsel”** means: David D. Bibiyan and Vedang J. Patel of Bibiyan
6 Law Group, P.C.

7 **CC. “Plaintiffs’ Counsel’s Attorneys’ Costs”** means the amount not to exceed
8 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), according to proof and subject to
9 approval by the Court. Plaintiff’s Counsel’s Attorneys’ Costs will be paid from, and not in
10 addition to, the Gross Settlement Amount. The amount of Plaintiff’s Counsel’s Attorneys’ Costs
11 shall include all past and future attorneys’ costs to Plaintiff’s Counsel—including, without
12 limitation, all costs expended by Plaintiff’s Counsel in defending the Settlement and securing
13 approval of the Settlement (including any appeals).

14 **DD. “Plaintiffs’ Counsel’s Attorneys’ Fees”** means the amount not to exceed one
15 third (1/3) of the Gross Settlement Amount which, subject to escalation pursuant to section
16 III(K)(2) of this Agreement and approval by the Court, amounts to \$119,166.67. Plaintiff’s
17 Counsel’s Attorneys’ Fees will be paid from, and not in addition to, the Gross Settlement
18 Amount. The amount of Plaintiff’s Counsel’s Attorneys’ Fees shall include all past and future
19 attorneys’ fees to Plaintiff’s Counsel—including, without limitation, all time expended by
20 Plaintiff’s Counsel in defending the Settlement and securing approval of the Settlement
21 (including any appeals).

22 **EE. “Plaintiff’s Enhancement Payment”** means the payment of up to \$7,500.00 to
23 Plaintiff for initiating the Action and providing services in support of the Action, subject to Court
24 approval and paid out of the Gross Settlement Amount.

25 **FF. “Released Parties”** shall refer to Defendant and its former, present and future
26 owners, parents, subsidiaries, affiliated companies, and all of their current, former and future
27 officers, directors, members, managers, executive-level employees, consultants, partners,
28

1 shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal
2 representatives

3 **GG. “Settlement Administration Costs”** means the costs payable from the Gross
4 Settlement Amount to the Settlement Administrator for administering this Settlement. All
5 Settlement Administration Costs shall be paid from, and not in addition to, the Gross Settlement
6 Amount. The Settlement Administration Costs include, but are not limited to, the required tax
7 reporting on the Individual Settlement Payments, the issuance of appropriate tax forms, as
8 needed, the confirmation/audit of claims for payments for compliance with the Settlement, the
9 calculation and distribution of all payments to be made pursuant to the Settlement, and the
10 provision of reports and declarations. The Settlement Administration Costs are currently
11 estimated to be no more than \$5,500.00. If the actual amount of the Settlement Administration
12 Costs is less than \$5,500.00, the difference between \$5,500.00 and the actual Settlement
13 Administration Costs shall be a part of the Individual PAGA Payment. If the Settlement
14 Administration Costs exceed \$5,500.00, then such excess will be paid solely from the Gross
15 Settlement Amount and Defendant will not be responsible for paying any additional funds in
16 order to pay these additional costs.

17 **HH. “Settlement Administrator”** or **“Administrator”** means the third-party
18 administrator mutually agreed upon by the Parties and approved by the Court that will be
19 responsible for the administration of the Settlement. The Parties will obtain a not-to-exceed quote
20 from the mutually acceptable qualified settlement administrator for claims administration costs.
21 The Settlement Administrator mutually agreed upon by the Parties is Phoenix Class Action
22 Administration Solutions (“Phoenix”).

23 **II. BACKGROUND**

24 **A. The Action.** On August 11, 2022, Plaintiff filed with the LWDA and served on
25 Defendant a notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a proxy
26 of the LWDA to recover civil penalties on behalf of other non-exempt, hourly-paid employees
27 for various Labor Code violations (“PAGA Notice”). On April 20, 2023, after sixty-five (65)
28 days had passed without any action by the LWDA with respect to the alleged Labor Code

violations, Plaintiff filed this representative action under PAGA against Defendant for the Labor Code violations set out in the PAGA Notice (the “Action”).

B. Informal Discovery. Shortly thereafter, the Parties agreed to exchange informal discovery and attend an early mediation, in which Plaintiff was provided with, among other things: (1) payroll records and time entries for non-exempt, hourly paid employees within the period from August 11, 2021 through March 20, 2024; (2) data points including the number of Aggrieved Employees, the number of pay periods, the number of Aggrieved Employees separated from employment, and the number of shifts during the period from August 11, 2021 through March 20, 2024, the average rate of pay and the average regular rate of pay; (3) the applicable employee handbooks and policies of Defendant; (4) Plaintiff’s time records, paystubs and personnel file.

C. Mediation. On March 20, 2024, the Parties participated in a full-day mediation before mediator Katherine Edwards, Esquire, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluation, the Parties reached this Settlement to resolve the Action.

D. Plaintiff’s Position as to Settlement. Plaintiff’s Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action, and have concluded that the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of Aggrieved Employees, and to the extent permitted by law, the State of California, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiff’s allegations, and the substantial benefits to be received by Aggrieved Employees.

E. Defendant’s Position as to Settlement. Defendant and the Released Parties deny that they have engaged in any unlawful activity, deny that they have failed to comply with the law in any respect, and deny that they have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly

1 disputed claims. Nothing in this Agreement is intended or will be construed as an admission of
2 liability or wrongdoing by Defendant or the Released Parties. This Settlement and the fact that
3 Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be
4 admissible in connection with, any litigation (other than solely in connection with effectuating
5 the Settlement pursuant to this Agreement).

6 **III. TERMS OF SETTLEMENT**

7 **A. All Terms Subject to Court Approval.** The Court has jurisdiction over the
8 Parties and the subject matter of the Action. The Action includes claims that, if proven, would
9 authorize the Court to grant relief pursuant to the applicable statutes. This Agreement shall be
10 submitted to the Court for approval and final judgment. The Parties agree that upon the
11 occurrence of the dismissal of this case pursuant to the terms of this Agreement, this Settlement
12 Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6
13 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all
14 Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation
15 of the Settlement Agreement. Should the Court not grant approval of the Settlement as described
16 in this Settlement Agreement, then the entirety of this Settlement Agreement shall be null and
17 void. Notwithstanding the foregoing, the Parties agree to meet and confer to address any Court
18 concerns regarding the Settlement, including the filing of any supplemental briefs, amended
19 settlement agreement(s), or other documents mutually acceptable by the Parties and their counsel.

20 **B. Gross Settlement Amount.** Defendants shall pay the Gross Settlement Amount
21 of Three Hundred Fifty-Seven Thousand Five Hundred Dollars and Zero Cents (\$357,500.00) to
22 settle the PAGA Action, unless escalated pursuant to section III(K)(2) of this Agreement. The
23 Gross Settlement Amount will be to satisfy all of Defendant's liabilities arising from the
24 Settlement. No portion of the Gross Settlement Amount shall revert to Defendant.

25 **C. Plaintiff's Counsel's Attorneys' Fees and Costs.** Plaintiff's Counsel shall apply
26 for an award of Plaintiff's Counsel's Attorneys' Fees and Plaintiff's Counsel's Attorneys' Costs,
27 as described and defined in this Agreement. Defendant will not oppose Plaintiff's request
28 consistent with this Settlement. Awards of Plaintiff's Counsel's Attorneys' Fees and Plaintiff's

Counsel's Attorneys' Costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain approval of this Settlement. There will be no additional charge of any kind to either the Aggrieved Employees or request for additional consideration from Defendant for such work unless Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve Plaintiff's Counsel's Attorneys' Fees and Plaintiff's Counsel's Attorneys' Costs in an amount less than the amounts provided herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

D. Plaintiff's Enhancement Payment. Plaintiff will request and apply for the Enhancement Payment referred to in Paragraph I(EE) of this Agreement in exchange for general releases referred to in Paragraph III(I)(4). Specifically, Plaintiff will apply for a payment of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). The Enhancement Payment shall be paid from, and not in addition to, the Gross Settlement Amount. Any amounts not awarded by the Court under this provision shall be included in the Individual PAGA Payment. Defendant agrees not to oppose any such application which is consistent with this paragraph.

E. LWDA PAGA Payment. Subject to Court approval, the Parties agree that an amount equal to seventy-five percent (75%) of the PAGA Penalties (no less than \$150,250.00) will be paid to the LWDA in settlement of all representative claims alleged by or on behalf of Plaintiff and the Aggrieved Employees. Should the Court grant Plaintiff's Counsel's Attorneys' Fees, Plaintiff's Counsel's Attorneys' Costs, Plaintiff's Enhancement Payment and Settlement Administration Costs, and should the Settlement not be escalated pursuant to section III(K)(2) of this Agreement, the amount paid to the LWDA will be no less than \$150,250.00 (75%), and no less than \$50,083.33 (25%) of the Net Settlement Amount will be available for Individual Settlement Payments to Aggrieved Employees.

1) **Individual Settlement Payments.** Subject to Court approval, the Parties agree that an amount equal to twenty-five percent (25%) of the PAGA Penalties (Aggrieved Employees' Portion) which, unless the Settlement is escalated pursuant to section III(K)(2) of

1 this Agreement, amounts to no less than \$50,083.33, will be paid to the Aggrieved Employees in
2 settlement of the PAGA Released Claims. Individual Settlement Payments will be calculated and
3 apportioned from the Aggrieved Employees' Portion based on the number of Pay Periods an
4 Aggrieved Employee worked during the PAGA Period. The Settlement Administrator will
5 determine the total number of Pay Periods worked by each Aggrieved Employee during the
6 PAGA Period based on the data provided by Defendant in the Aggrieved Employee List and the
7 aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period.
8 To determine each Aggrieved Employee's Individual Settlement Payment, the Parties agree that
9 the Settlement Administrator will use the following formula: Individual Settlement Payment =
10 (Aggrieved Employee's Pay Periods worked during the PAGA Period / Aggregate Number of
11 Aggrieved Employees' Pay Periods worked during the PAGA Period) x (0.25 x PAGA
12 Penalties). Defendant agrees this formula is reasonable and that the payments are designed to
13 provide a fair settlement to each Aggrieved Employee in light of the uncertainties regarding the
14 penalties alleged to be owed and the calculation of such amounts.

15 **F. Tax Treatment of Settlement Payments.** All Individual Settlement Payments
16 will be characterized as civil penalties, and IRS Forms 1099-MISC will be issued as necessary.
17 The payment of Plaintiff's Counsel's Attorneys' Fees and Plaintiff's Counsel's Attorneys' Costs
18 will also be reported on IRS Forms 1099-MISC. The Settlement Administrator will issue all such
19 forms.

20 **G. Aggrieved Employees' Tax Liability.** Other than the reporting requirements set
21 forth in this Agreement, the Aggrieved Employees shall be responsible for the reporting and
22 payment of any federal, state, and/or local income or other tax or any other withholdings, if any,
23 on any of the payments made pursuant to this Agreement. Counsel for Plaintiff and Defendant
24 make no representations, and it is understood and agreed that Counsel for Plaintiff and Defendant
25 have made no representations as to the taxability of any portions of the Individual Settlement
26 Payments to any Aggrieved Employee, the payment of any costs or an award of attorney fees, or
27 any payments to Plaintiff. The PAGA Payment Letter (Exhibit "A") will inform Aggrieved
28 Employees of the opportunity to seek their own tax advice in connection with their receipt of

Individual Settlement Payments.

H. Defendants' Tax Liability. The Parties do not expect there to be any employer side taxes arising from this Settlement because this a settlement of a representative action for civil penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount, such taxes will be funded by the Gross Settlement Amount.

I. Waivers and Releases

1) PAGA Released Claims. Effective only upon the entry of an Order granting approval of this Settlement, entry of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount to effectuate the Settlement, to the extent permitted by law, the LWDA and the State of California, by and through Plaintiff as an agent and proxy of the LWDA, release the Released Parties, for the duration of the PAGA Period, any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties that were alleged or which could have been alleged based on the factual allegations in the Operative Complaint and in the PAGA Notice, including all claims for civil penalties based upon or arising out of California Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699, in connection with alleged violations of California Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others, as well as any and all claims for liquidated damages, penalties, interest, fees, and costs based on the foregoing.

2) Exclusions to the PAGA Released Claims. The releases above expressly exclude all other claims, including all claims for wage and hour violations, all non-PAGA claims, as well as, without limitation, claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and any other claims arising outside of the PAGA Period.

3) Aggrieved Employees are bound by the Settlement. Because there is no right to opt out of a PAGA settlement, all Aggrieved Employees will receive a proportional distribution from the Settlement monies and will be bound by this Settlement Agreement, upon

1 its approval by the Court, regardless of whether they negotiate their settlement check. The Parties
2 agree that there is no statutory right for any Aggrieved Employee to object, opt out, or otherwise
3 exclude himself or herself from the Settlement Agreement. Except as otherwise stated, Plaintiff
4 will vigorously defend against any attempt by any Aggrieved Employee or by any entity or
5 agency to intervene in this matter or object to/opt-out.

6 4) General Release by Plaintiff. Effective only upon the entry of an Order
7 granting approval of the Settlement, entry of Judgment, and payment by Defendant to the
8 Settlement Administrator of the full Gross Settlement Amount, in addition to the PAGA Released
9 Claims, Plaintiff makes the additional following General Release: Plaintiff will fully and finally
10 release the Released Parties from any and all claims, known and unknown, under federal, state
11 and/or local law, statute, ordinance, regulation, common law, or other source of law, including
12 but not limited to claims arising from or related to her respective employment with Defendant
13 and her respective compensation while being an employee of Defendant through the date of
14 signing this Settlement Agreement. Released claims include, but are not limited to, all claims
15 arising from or reasonably related to the Action, whether pleaded or not pleaded. ("Plaintiff's
16 Released Claims"). This release excludes the release of claims not permitted by law.

17 5) Plaintiff's Waiver of Rights Under California Civil Code Section 1542. As
18 partial consideration for the Plaintiff's enhancement payment, Plaintiff's Released Claims shall
19 include all such claims, whether known or unknown. Thus, even if Plaintiff discovers facts and/or
20 claims in addition to or different from those that she now knows or believes to be true with respect
21 to the subject matter of the Plaintiff's Released Claims, those claims will remain released and
22 forever be barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly
23 waives and relinquishes the provisions, rights and benefits of California Civil Code section 1542,
24 which reads:

25 **A general release does not extend to claims that the creditor or releasing**
26 **party does not know or suspect to exist in his or her favor at the time of**
27 **executing the release and that, if known by him or her, would have materially**
28 **affected his or her settlement with the debtor or released party.**

1 6) Plaintiff's Counsel. As of the Effective Date, and except as otherwise
2 provided by this Settlement and the Judgment, Plaintiff's Counsel waive any claim to costs and
3 attorneys' fees and expenses against Defendant or the Released Parties arising from or related to
4 the Actions.

5 **J. Settlement Administration**

6 1) Settlement Administrator's Duties in General. The Settlement
7 Administrator shall be responsible for: (a) processing the data provided by Defendant to be used
8 in calculating the Individual Settlement Payments; (b) preparing, printing, and mailing to the
9 Aggrieved Employees the PAGA Payment Letter (attached hereto as Exhibit "A"), as well as
10 following up with reasonable skip tracing; (c) calculating and mailing Individual Settlement
11 Payments to Aggrieved Employees; (d) filing any required federal and state tax forms and related
12 agency reporting; (e) filing any required reports with the Court; and (f) all other tasks described
13 in this Agreement, as to which the Parties mutually agree, and/or which the Court orders the
14 Settlement Administrator to perform.

15 2) Delivery of the Aggrieved Employee List. Within fourteen (14) calendar
16 days after the Effective Date, Defendant will provide the Aggrieved Employee List to the
17 Settlement Administrator. The Administrator shall maintain the Employee List as private and
18 confidential and shall not disclose such data to any persons or entities other than Defendant's
19 Counsel. The Employee List is being supplied solely to be used for settlement notification and
20 settlement administration purposes, and shall not be used for any other purpose by the
21 Administrator. The Parties agree that the Employee List will not be used to solicit Aggrieved
22 Employees to file any claim, charge, or complaint of any kind whatsoever against Defendant or
23 any other Released Parties and will only be used to administer the Settlement under the terms
24 provided herein. The Employee List shall not be disclosed to Plaintiff's Counsel, except that
25 relevant information of individual Aggrieved Employees can be provided to Plaintiff's Counsel
26 if necessary for Plaintiff's Counsel to respond to inquiries or requests from individual Aggrieved
27 Employees. No later than three (3) days after receipt of the Employee List, the Administrator
28 shall notify counsel for the Parties that the information in the Employee List has been received.

1 3) Funding of the Gross Settlement Amount. Within thirty (30) calendar days
2 after the Effective Date, Defendant shall fund one half of the Gross Settlement Amount
3 (\$178,750) by depositing it into a settlement fund to be established by the Settlement
4 Administrator. Within one hundred twenty (120) calendar days after the Effective Date,
5 Defendant shall fund the second half of the Gross Settlement Amount (\$178,750). Defendant's
6 obligation to timely fund the settlement is conditioned upon the Settlement Administrator
7 providing Defendant and Defendant's counsel with wire instructions for depositing the Gross
8 Settlement Amount and verbally verifies the authenticity of those wire instructions with
9 Defendant and Defendant's counsel by a telephone call at least seven (7) calendar days prior to
10 the date the transfer is due, initiated by Defendant's counsel using the Settlement Administrator's
11 telephone number published on its known website.

12 4) Distribution of Settlement Payments. Within seven (7) calendar days after
13 Defendant deposits fully the Gross Settlement Amount into a settlement fund, the Settlement
14 Administrator will issue payments to: (a) the Aggrieved Employees; (b) the LWDA; (c)
15 Plaintiff's Counsel for the Attorneys' Fees Payment and Plaintiff's Counsel's Attorneys' Costs
16 Payment; and (d) the Settlement Administrator. The Settlement Administrator will mail
17 Individual Settlement Payments to the Aggrieved Employees, along with the PAGA Payment
18 Letter (attached as Exhibit "A"), via regular First-Class U.S. Mail, using the most current, known
19 mailing addresses identified in the Aggrieved Employees List. The Settlement Administrator will
20 also issue a payment to itself for Court-approved services performed in connection with the
21 Settlement twenty (20) calendar days after the Effective Date.

22 5) Reports Regarding Settlement Administration. The Settlement
23 Administrator will provide Defendant's Counsel and Plaintiff's Counsel reports regarding the
24 administration of the Settlement Agreement as needed or requested.

25 6) Procedures for Uncashed Checks. Checks for Individual Settlement
26 Payments shall be negotiable for one hundred eighty (180) calendar days from the date of their
27 issuance. If a check is returned to the Settlement Administrator as undeliverable during the 180-
28 day period, the Settlement Administrator shall take all reasonable efforts to identify the

1 Aggrieved Employee's correct address, including the performance of a "skip-trace." If an
2 updated address can be identified, the Settlement Administrator shall issue another check to the
3 Aggrieved Employee and mail it to the Aggrieved Employee at his or her updated address. An
4 Aggrieved Employee who failed to receive their Individual Settlement Payment check despite
5 the procedures described herein shall nevertheless remain bound by the Settlement and the
6 release of the PAGA Released Claims contained herein. The funds represented by Individual
7 Settlement Payment checks remaining uncashed for more than 180 days after issuance
8 (collectively, the "Uncashed Settlement Checks") shall be canceled and funds associated with
9 such checks shall be transmitted to the California State Controller's Office, Unclaimed Property
10 Division in the name of each Aggrieved Employee thereby leaving no unpaid residue pursuant
11 to the requirements of Code of Civil Procedure section 384.

12 7) Notice to the LWDA. Before or concurrent with Plaintiff's filing of this
13 Agreement for approval, Plaintiff's Counsel will send this agreement to the LWDA pursuant to
14 Section 2699(1)(2) of the California Labor Code. Plaintiff or Plaintiff's Counsel will also file a
15 declaration in support of the motion for Settlement Approval confirming that he has submitted
16 the Settlement to the LWDA in compliance with Labor Code § 2699(1). Upon entry of judgment
17 by the Court, Plaintiff's Counsel shall submit a copy of the judgment to the LWDA.

18 8) Declaration of Payment. Within two hundred forty (240) calendar days
19 after the Effective Date, the Settlement Administrator shall prepare a declaration of payment
20 stating that all payments required under the Settlement have been made. Plaintiff's Counsel shall
21 file the Settlement Administrator's declaration with the Court if requested by the Court.

22 9) Declaration Regarding Uncashed Settlement Check Funds. Within ten
23 (10) calendar days after the date the Settlement Administrator transfers the total amount of funds
24 represented by the Uncashed Settlement Checks to the Unclaimed Property Division, the
25 Settlement Administrator will prepare a declaration stating the total amount of funds represented
26 by the Uncashed Settlement Checks and confirming that the procedures for the treatment of
27 Uncashed Settlement Checks established by this Agreement have been followed. Plaintiff's
28

Counsel shall file the Settlement Administrator's declaration with the Court if requested by the Court.

K. Miscellaneous Provisions

1) Acknowledgement that the Settlement is Fair, Adequate, and Reasonable.

The Parties and their respective counsel believe that this Settlement is a fair, adequate, and reasonable settlement of the Actions, and they have arrived at this Settlement through arm's-length negotiations, taking into account all relevant factors, present and potential.

2) Increase in Pay Periods. Defendant represents that there are no more than 10,228 Pay Periods worked by Aggrieved Employees during the PAGA Period. If the actual number of Pay Periods worked by Aggrieved Employees during the PAGA Period is more than 10% greater than this number (i.e., if there are more than 11,251 Pay Periods), then either: (i) Defendant shall increase the Gross Settlement Amount in proportion to the increase in Pay Periods over the 10% threshold (e.g., if the number of Pay Periods worked by Aggrieved Employees during the PAGA Period is 12% greater than 10,228, or 1,227 Pay Periods greater than 10,228, then Defendant shall increase the Gross Settlement Amount by 2%, or \$7,150.00)); or (ii) the PAGA Period shall end on the date the number of Pay Periods worked by Aggrieved Employees reaches 11,251.

3) Mutual Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. Such cooperation shall include, but is not limited to, the execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement or as requested by the Court. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court Order, or otherwise, to effectuate this Agreement and the terms set forth herein.

4) Motion for Approval. Plaintiff's Counsel shall be responsible for expeditiously finalizing and filing the motion for approval of this Settlement after the full execution of this Settlement Agreement and, if necessary, obtaining soonest available hearing date for the motion and appearing in Court to advocate in favor of the motion. Should this

1 Settlement Agreement be approved by the Court, Plaintiff's Counsel is responsible for delivering
2 the Court's Approval Order to the Administrator. Counsel shall endeavor in good faith to provide
3 copies of the motion for approval of this Settlement to Counsel at least five (5) calendar days
4 prior to filing it with the Court. The Parties agree to provide any and all notices to the LWDA
5 required to effectuate this Settlement, including but not limited to the notice required by
6 California Labor Code section 2699 subdivision (l)(2).

7 5) No Admissions by the Parties. Plaintiff has claimed and continues to claim
8 that the PAGA Released Claims have merit and give rise to liability on the part of Defendant.
9 Defendant claims that the PAGA Released Claims have no merit and do not give rise to liability.
10 This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and
11 no documents referred to herein and no action taken to carry out this Agreement shall constitute
12 an admission on behalf of Defendant of any form of liability or the accuracy of any allegation
13 made by Plaintiff or Plaintiff's Counsel.

14 6) Amendment or Modification. This Agreement, and any and all parts of it,
15 may be amended, modified, changed, or waived only by an express written instrument signed by
16 all Parties or their successors-in-interest.

17 7) Mutual Drafting of Agreement. The Parties agree that the terms of this
18 Agreement and the accompanying exhibits are the result of substantial, arm's-length
19 negotiations, and that this Agreement shall not be construed in favor of or against any of the
20 Parties by reason of the extent to which any of the Parties or their respective counsel participated
21 in the drafting of this Agreement.

22 8) Attorney Authorization. Counsel for the Parties warrant and represent that
23 they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
24 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its
25 terms, and to execute any other documents required to effectuate the terms of this Settlement.

26 9) Binding on Successors and Assigns. This Agreement is binding upon, and
27 inures to the benefit of, the Parties' successors and assigns.

28 ///

1 10) Governing Law. This Agreement shall be governed by and interpreted
2 according to the laws of the State of California.

3 11) Exhibit(s) Incorporated by Reference. The terms of this Agreement
4 include the terms set forth in any attached exhibit(s), which are incorporated by reference as
5 though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

6 12) Invalidity of Any Provision. The Parties request the Court that, before
7 declaring any provision of this Agreement invalid, the Court first attempts to construe the validity
8 of the provision(s) to the fullest extent possible consistent with applicable precedents so as to
9 define all provisions of this Settlement valid and enforceable.

10 13) Notices. Whenever this Agreement requires or contemplates that one of
11 the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-
12 day (excluding Saturdays, Sundays, and holidays) express delivery service addressed to the
13 address of the Party's counsel appearing in this Agreement.

14 14) Jurisdiction of the Court. The Parties agree that the Court shall retain
15 jurisdiction under Code of Civil Procedure section 664.6 with respect to the interpretation,
16 implementation, and enforcement of the terms of this Agreement and all orders and judgments
17 entered in connection therewith, and the Parties and their respective counsel hereto submit to the
18 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement
19 embodied in this Agreement and all orders and judgments entered in connection therewith.

20 15) Binding Agreement. The Parties intend that this Agreement shall be fully
21 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
22 any proceeding solely to enforce its terms, notwithstanding any mediation confidentiality
23 provisions that otherwise might apply under federal or state law.

24 16) Confidentiality. Plaintiff, Defendant, Plaintiff's Counsel and Defendant's
25 Counsel agree that they shall not disclose or discuss with any member or representative of the
26 press or media the conditions or terms of this Settlement Agreement or of the settlement. They
27 further agree that they will not issue any press releases or comment for publication in any media
28 (including, but not limited to, print media, electronic media, or the internet). They will not cause,

1 encourage, or in any way facilitate any comment for publication in any media relating to the
2 litigation, or on the terms of this Settlement Agreement or the negotiations which culminated in
3 this Settlement Agreement. However, Plaintiff, Defendant, Plaintiff's Counsel and Defendant's
4 Counsel are not prohibited from disclosing information in the public record and nothing shall
5 restrict Plaintiff's Counsel from communicating with the Aggrieved Employees should they
6 inquire regarding the settlement in accordance with Plaintiff's Counsel's ethical obligations owed
7 to Aggrieved Employees.

8 17) Entire Agreement. This Agreement and any attached exhibits constitute
9 the entirety of the Parties' settlement terms as it pertains to this subject matter (*i.e.*, settlement
10 and release of the PAGA Released Claims by Aggrieved Employees). No other prior or
11 contemporaneous written or oral agreements may be deemed binding on the Parties as it pertains
12 to this limited subject matter.

13 18) Counterparts. This Agreement may be executed in one or more
14 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
15 of the signature page, will be deemed to be one and the same instrument provided that counsel
16 for the Parties to this Agreement exchange among themselves copies or originals of the signed
17 counterparts.

18 19) Advice of Counsel. The Parties to this Agreement are represented by
19 competent counsel, and they have had an opportunity to consult with counsel. The Parties to this
20 Agreement agree that it reflects their good faith compromise of the claims raised in the Actions,
21 based upon their assessment of the mutual risks and costs of further litigation and the assessments
22 of their respective counsel.

23 20) Parties' Authority. The signatories to this Agreement, including any
24 person executing on behalf of a corporate signatory, warrant and represent that they are fully
25 authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions
26 of the Agreement.

27 **IT IS SO AGREED:**

28 [SIGNATURE PAGE FOLLOWS]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 10/31, 2024



SAYDA MENDIVIL
Plaintiff

Dated: 11/30/, 2024



HG FOODS, LLC
Defendant
By: Jennifer Geiger
Its: Member

AGREED AS TO FORM:

Dated: November 1, 2024

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff Sayda Mendivil

Dated: December 2, 2024



ANDREW H. WOO
Counsel for Defendant HG Foods, LLC