

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Joint Stipulation and Settlement Agreement is between Plaintiff Jesus Aldana (“Plaintiff”) on behalf of himself, others similarly situated, and other aggrieved employees and Defendant Lyrical Foods, Inc. d/b/a Kite Hill Co. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Joint Stipulation and Settlement Agreement, the terms below have the following meaning:

- A. **Administration Costs**: All administrative costs incurred by the Settlement Administrator to administer this Settlement including the cost of notice to the Class Members, settlement administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement, which is currently estimated at \$8,250.00 and shall not exceed \$10,000.00. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award**: The amount, not to exceed one-third (1/3) of the Gross Settlement Amount, including any interest, or \$108,333.33, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Case or Action**: The lawsuit filed by Plaintiff Jesus Aldana on January 7, 2022, entitled *Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.*, Case No. 22CV005107, in the Superior Court of California, County of Alameda.
- E. **Class**: All current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the period from July 12, 2017, to December 31, 2022.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation.
- G. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- H. **Class Period**: The time period from July 12, 2017, to December 31, 2022.

- I. **Class Representative or Plaintiff:** Jesus Aldana.
- J. **Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff for his service as Class Representative, which will not exceed \$10,000.00. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Class Representative Enhancement Payment is subject to the approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- K. **Complaint:** The complaint filed by Plaintiff Jesus Aldana in the Superior Court of California, County of Alameda, on January 7, 2022, in the case entitled *Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.*, Case No. 22CV005107 as well as the Amended Class Action Complaint.
- L. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000.00. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- M. **Counsel for Defendant:** Attorneys Paul M. Teinert and Traci G. Choi of Ross, Wolcott, Teinert & Prout LLP
- N. **Court:** The Superior Court of California, County of Alameda.
- O. **Defendant:** Lyrical Foods, Inc. d/b/a Kite Hill Co.
- P. **Effective Final Settlement Date:** “Effective Final Settlement Date” shall mean the date this Agreement is approved as provided herein and the Court’s order granting Final Approval and entry of Judgment becomes final or May 1, 2024, whichever is later. For purposes of this Agreement, becomes “final” shall mean the later of: (a) the day the court enters judgment if there are no objections or intervenors; (b) if there are objectors or intervenors, the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (c) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (d) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.

- Q. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA Payment that consists of all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of Defendant within the State of California during the period from January 20, 2022, to December 31, 2022 (“PAGA Timeframe”).
- R. Exclusion Form:** The “Election Not to Participate In (“Opt Out” From) Class Action Settlement,” substantially like the form attached hereto as **Exhibit B**, subject to Court approval.
- S. Final Approval, Final Approval Order, Judgment or Final Judgment:** “Final Approval” or “Final Approval Order” means the final order entered by the Court following the Final Fairness and Approval Hearing. “Judgment” or “Final Judgment” means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- T. Gross Settlement Amount:** The total value of the Settlement is a non-reversionary Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and the Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant’s portion of payroll taxes as the Class Members’ current or former employer is not included in the Gross Settlement Amount and will be a separate obligation of Defendant. In no event shall Defendant be liable for the payment of any amounts exceeding the Gross Settlement Amount with the exception of the employer’s share of payroll taxes due and payable as a result of the Settlement. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- U. Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to be mailed their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will be mailed an Individual Settlement Share automatically, without the return of a claim form.
- V. LWDA:** California Labor and Workforce Development Agency.

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- W. Net Settlement Amount:** The total amount of money available for payout to Participating Class Members, which is the Gross Settlement Amount less the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, Administration Costs, and the PAGA Payment. In other words, the Net Settlement Amount is the portion of the Gross Settlement Amount that will be distributed to Class Members who do not request exclusion from the Settlement.
- X. Notice:** The “Notice of Class Action and PAGA Settlement” to be provided to all Class Members regarding the terms of this Settlement, substantially like the form attached hereto as **Exhibit A**, subject to Court approval. The Notice shall constitute class notice pursuant to California Rules of Court, rule 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rules of Court, rule 3.766.
- Y. Notice Packet:** The Notice and Exclusion Form.
- Z. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (California Labor Code section 2698, *et seq.*).
- AA. PAGA Payment:** The PAGA Payment consists of Twenty Thousand Dollars (\$20,000.00) of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Action. Seventy-five percent (75%) of the PAGA Payment (\$15,000.00) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment (\$5,000.00) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below. Pursuant to California Labor Code § 2699(1)(2), settlement of a PAGA action must be approved by the Court and a copy of the proposed Settlement will be provided to the LWDA at the same time that it is submitted to the Court. In the event the LWDA objects to the Settlement, the Parties will meet and confer with the Court and the LWDA to reach a penalty allocation acceptable to all Parties that does not materially alter the terms of this Settlement.
- BB. PAGA Released Claims:** Upon final approval by the Court and upon funding of the Gross Settlement Amount, the claims released by Plaintiff, as an agent and proxy of the LWDA, in exchange for the consideration provided by this Agreement, will include:
1. Any and all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*, against the Released Parties for work performed during the PAGA Timeframe and based on or arising out of alleged violations of Labor Code sections alleged in Plaintiff’s letter to the LWDA, dated January 20, 2023, and the Action, or which could have been alleged under the same or similar facts pleaded in Plaintiff’s letter to the LWDA or the Action, including but not limited to claims for unpaid wages of any type, unpaid overtime, unpaid

minimum wages, untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest periods, non-compliant wage statements, unreimbursed business expenses, failure to maintain payroll records, failure to pay premiums, failure to pay sick time, and claims for interest, penalties (including but not limited to wait time penalties), or premiums in connection therewith, as well as any claims based on the California Labor Code and California Wage Orders, or California Business and Professions Code alleged (specifically California Business and Professions Code §§ 17200 – 17208, California Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, and 2802);

2. Any and all claims that Defendant is liable for the attorney's fees and costs incurred in the prosecution of this Action;
3. Any and all claims that Defendant is liable for any other remedies, penalties, or interest based on the facts alleged in the Complaint;
4. Any and all claims that Plaintiff may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney's fees and costs to Plaintiff's Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and allocation of the Class Representative Enhancement Payment pursuant to this Settlement Agreement. The release of the PAGA Released Claims shall be effective during the entirety of the PAGA Period.

CC. Participating Class Members: All Class Members who do not submit valid and timely requests to exclude themselves from the Class portion of this Settlement.

DD. Parties: Plaintiff Jesus Aldana, individually and as the Class Representative, and Defendant Lyrical Foods, Inc. d/b/a Kite Hill Co.

EE. Preliminary Approval or Preliminary Approval Order: The order entered by the Court following the Preliminary Approval Hearing approving the proposed Settlement, authorizing the mailing of the Notice Packet by the Settlement Administrator, and setting the date of the Final Approval Hearing.

FF. Qualified Settlement Fund ("QSF"): A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.*, which is established by the Settlement Administrator for the benefit of Participating Class Members, Eligible Aggrieved Employees, Plaintiff and Class Counsel.

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GG. Released Claims: Upon final approval by the Court and funding of the Gross Settlement Amount, the claims released by Plaintiff and the Participating Class Members, in exchange for the consideration provided by this Agreement, will include all claimed based on the factual allegations contained in the Complaint against the Released Parties, for work performed during the Class Period, including the following: (1) Failure to Pay Overtime Wages (Labor Code §§ 510 and 1198); (2) Failure to Provide Timely Off-Duty Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Labor Code §§ 1194 and 1197); (5) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201 and 202); (6) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (7) Failure to Reimburse for Reasonable Business Expenses (Labor Code §§ 2800 and 2802); (8) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*); and (9) Violation of Labor Code §§ 2698 *et seq.*

HH. Released Parties: Defendant Lyrical Foods, Inc. d/b/a Kite Hill Co. and its affiliated companies and their respective parent companies, subsidiaries, affiliates, shareholders (including SEMCAP and Arborview), members, owners, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

II. Response Deadline: Forty-five (45) calendar days from the initial mailing of the Notice Packet.

JJ. Settlement Administration: The Settlement Administrator will mail the Notice Packet by first-class U.S. mail to all current employee Class Members at the addresses Defendant has on file for those Class Members or at the address obtained via the search of the NCOA database, below. The Notice Packet will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt out of (exclude themselves from) the Settlement. Any Class Member who does not receive a Notice Packet after the Settlement Administrator has taken the steps outlined above will still be bound by the Settlement and/or Judgment.

KK. Settlement Administrator: The third-party administrator agreed upon by the Parties to administer this Settlement is Phoenix Class Action Administration Solutions.

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II. RECITALS

- A. Procedural History.** On January 7, 2022, Plaintiff filed a wage-and-hour class action complaint against Defendant in the Alameda County Superior Court entitled *Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.*, Case Number 22CV005107, alleging the following causes of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of Business & Professions Code section 17200, *et seq.* On January 20, 2023, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions. The Parties stipulated to file a First Amended Complaint adding the following cause of action: violation of Labor Code section 2698, *et seq.* (PAGA).
- B. Investigation and Discovery.** Prior to mediation, the Parties conducted significant investigation and discovery of the relevant facts and law. Specifically, Defendant produced documents relating to its wage-and-hour policies, practices, and procedures, including those regarding meal and rest periods, overtime, and other payroll and operational policies. As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. Plaintiff also interviewed Class Members who worked for Defendant throughout the Class Period. A major catalyst to settlement was Defendant's past and present financial condition. Defendant disclosed and Plaintiff's expert CPA verified the financial records to determine that the settlement was fair and reasonable. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- C. Mediation.** Plaintiff and Class Counsel have engaged in good faith, arm's-length negotiations with Defendant concerning possible settlement of the claims asserted in the Action. Specifically, on November 17, 2022, the Parties participated in a mediation with Lynn Frank, Esq., a well-respected mediator with considerable experience mediating wage-and-hour class actions. This mediation took place only after the Parties informally exchanged extensive information and data, described in Section II(B) above. After a full day of negotiation, under the auspices of the mediator, the Parties reached a settlement of the Action.

- D. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have considered the uncertainty and risks, the potential outcome, and the difficulties and delays inherent in further litigation. Plaintiff and Class Counsel conducted extensive settlement negotiations, including formal mediation on November 17, 2022. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- E. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims and PAGA Released Claims.
- F. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Action and denies that for any purpose other than settlement, the Action is appropriate for class or PAGA treatment. Defendant also asserts several defenses to the claims, and maintains, among other things, that it has complied with Federal and California law in all aspects. Neither this Agreement nor any document referred to or contemplated herein, nor any statements, discussions, or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any liability, culpability, negligence, or wrongdoing whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- G. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, if this Settlement is finally approved by the Court, none of Plaintiff, Participating Class Members, Eligible Aggrieved Employees, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiff, Participating Class Members, and

Eligible Aggrieved Employees have resolved and are forever barred from re-litigating the Released Claims and PAGA Released Claims, respectively.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendant is obligated to pay under this Settlement Agreement is Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00).
- B. Notice to the Labor and Workforce Development Agency.** On January 20, 2023, Plaintiff filed and served his Notice of Labor Code Violations Pursuant to Labor Code section 2699.3. Thus, Plaintiff asserts that he has satisfied his notice obligations under PAGA.
- C. Class Certification.** The Parties agree to stipulate to class certification of the class claims, for purposes of settlement only, for the Class defined herein and related to the Released Claims defined herein. As such, the Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. This Stipulation is contingent upon Preliminary and Final Approval and certification of the Class for purposes of this Settlement only. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. Defendant expressly reserves the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be materially modified, reversed on appeal, or otherwise not become final.
- E. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- F. Appointment of Class Counsel.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed to represent the Class.
- G. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

a. Individual Settlement Share Calculation. The Settlement Administrator will pay each Participating Class Member according to his or her proportional share of the Net Settlement Amount, which will be equal to: (i) the number of workweeks the Participating Class Member worked during the Class Period, based on the Class Data provided by Defendant, (ii) divided by the total number of workweeks worked by any and all Participating Class Members collectively during the Class Period, based on the same Class Data, (iii) which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as one workweek for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of workweeks the Participating Class Member worked during the Class Period.

2. Tax Withholdings. Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) wages and eighty percent (80%) interest, and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 Forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 Forms. Defendant shall pay the employer's share of any payroll taxes as required by law, including, but not limited to, Medicare taxes, Social Security taxes, federal unemployment taxes, state unemployment insurance taxes, and employment training taxes. Class Members shall be responsible for the proper payment of the employees' taxes on all Individual Settlement Shares except that all deductions (including taxes on any payments attributable to wages) shall be deducted from any Individual Settlement Shares hereunder as required by law and paid from the Net Settlement Amount. Each Eligible Aggrieved Employee's portion of the PAGA Payment will be allocated as one hundred percent (100%) penalties, and the Eligible Aggrieved Employee will be issued an IRS Form 1099 if the Eligible Aggrieved Employee's payment exceeds \$600.00.

H. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

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1. **To the Plaintiff, Jesus Aldana.** In addition to his respective Individual Settlement Share and portion of the PAGA Payment, and subject to the Court's approval, Plaintiff will receive up to Ten Thousand Dollars (\$10,000.00) as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment. Any reduction by the Court of the amount requested by Plaintiff for the Class Representative Enhancement Payment shall not be sufficient grounds to void the Settlement. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amounts the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members.
2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed one-third (1/3), or \$108,333.33, of the Gross Settlement Amount and a Cost Award not to exceed \$20,000.00. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize U.S. treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. Any reduction by the Court of the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award shall not be sufficient grounds to void the Settlement. The attorneys' fees paid pursuant to this Settlement Agreement shall be inclusive of all fees in this matter. Defendant shall bear its own attorneys' fees and costs.

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3. **To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portions of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and will forward that amount along with each Participating Class Member's Individual Settlement Share withholdings to the appropriate taxing authorities.
4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court in an amount currently estimated at \$8,250.00 and not to exceed \$10,000.00. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. In the event the Court does not approve the entirety of the application for the Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendant nor the Plaintiff shall be responsible for paying the difference between the amount requested and the amount awarded.
5. **To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
6. **To Eligible Aggrieved Employees.** The Settlement Administrator will pay each Eligible Aggrieved Employee according to his or her proportional share of the PAGA Payment, which will be equal to: (i) the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe, based on the Class Data provided by Defendant, (ii) divided by the total number of pay periods worked by any and all Eligible Aggrieved Employees collectively during the PAGA Timeframe, based on the same Class Data, (iii) which is then multiplied by the \$5,000.00 of the PAGA Payment allocated to the Eligible Aggrieved Employees. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Eligible Aggrieved Employee's portion of the PAGA Payment ties directly to the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe.
7. **To the LWDA.** Seventy-five percent (75%) of the PAGA Payment (\$15,000.00) shall be paid to the LWDA.

I. Appointment of Settlement Administrator. The Settlement Administrator shall be responsible for: (a) preparing, printing, and mailing the Notice Packet to the Class Members; (b) creating a static settlement website that will go live on the same date the Notice Packet is first mailed to the Class Members and that will include, among other things, the Complaint, standalone generic copies of the Notice, Exclusion Form, all papers filed in connection with the preliminary approval motion (including all orders filed by the Court), all papers filed in connection with the Final Approval Hearing (including the fee motion and the final approval motion), and, if the Settlement is approved, the Final Judgment; (c) keeping track of any objections or requests for exclusion from Class Members; (d) performing skip traces and re-mailing Notice Packets, Individual Settlement Shares, and portions of the PAGA Payment to Class Members; (e) calculating any and all payroll tax deductions as required by law; (f) calculating and mailing each Participating Class Member's Individual Settlement Share and each Eligible Aggrieved Employee's portion of the PAGA Payment; (g) providing weekly status reports to Counsel for Defendant and Class Counsel, which are to include updates on any objections or requests for exclusion that have been received; (h) mailing the LWDA's portion of the PAGA Payment to the LWDA; (i) distributing the Attorney Fee Award and the Cost Award to Class Counsel; (j) printing and providing Class Members and Plaintiff with W-2 and 1099 Forms as required under this Agreement and applicable law; (k) providing a due diligence declaration for submission to the Court upon completion of the Settlement and prior to the Final Approval Hearing; (l) turning over any funds remaining in the Qualified Settlement Fund at the close of the 180-day period as a result of uncashed checks to the *cy pres* recipient Legal Aid At Work; and (m) performing other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

J. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Notice and Exclusion Form.
- b. At the Preliminary Approval Hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval Hearing.

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- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The amounts of the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payment shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payment.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

- a. Within fifteen (15) calendar days of preliminary approval by the Court of a stipulated settlement, Defendant shall provide to the Settlement Administrator a database containing the following information: (1) the full name, last known address, and full Social Security number of all Class Members; (2) the start and end dates for each period during the Class Period that any Class Member was employed by Defendant; (3) the total workweeks that the Class Member worked during the Class Period; and (4) the total pay periods that the PAGA Employee worked during the PAGA Period (collectively "Class Data"). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel, and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the addresses of all former employee Class Members of Defendant. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential. This provision will not impede Class Counsel's ability to discharge their fiduciary duties, including effectuating the terms of this settlement.

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- b. The Settlement Administrator shall run all addresses contained in the Class Data through the United States Postal Service National Change of Address (“NCOA”) Database (which provides updated addresses for individuals who have moved in the previous four years and who have provided the U.S. Postal Service with a forwarding address) to obtain current address information. The Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available within fourteen (14) calendar days after the receipt of the Class Data from Defendant. The envelopes for the Notice Packets shall clearly state that the contents of the envelope concern a class action settlement and that the recipient may be entitled to money.
- c. If a Notice Packet is returned because of an undeliverable address, the Settlement Administrator will use the NCOA Database to conduct one (1) skip trace search to attempt to locate the Class Member’s correct address and will re-mail the Notice Packet to the Class Member. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If a Notice Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of the re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip trace or forwarded mail, will have their Response Deadline to postmark a request for exclusion from or objection to the Settlement extended by ten (10) calendar days from the original Response Deadline. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed packet. The Settlement Administrator will re-mail the Notice Packet (or other such notice as ordered by the Court) to each Class Member whose Notice Packet is returned the Settlement Administrator only once, within five (5) calendar days of receiving the undeliverable notice. Compliance with the notice procedures specified in this Settlement Agreement shall constitute due and sufficient notice to Class Members and Eligible Aggrieved Employees of this Settlement and shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel to provide notice of the proposed Settlement. In the event the procedures in this Settlement Agreement are followed and the intended recipient of a Notice of Settlement still does not receive the Notice of Settlement, the intended recipient shall remain a Participating Class Member and/or Eligible Aggrieved Employees and will be bound by all terms of the Settlement and any Final Approval Order entered by the Court.

- d. Class Members may dispute the information provided in their Notice Packets. All such disputes must be in writing, postmarked by the Response Deadline, and sent via first-class regular U.S. mail to the Settlement Administrator. To the extent a Class Member disputes the number of workweeks or pay periods with which he or she has been credited or the amount of his or her Individual Settlement Share or portion of the PAGA Payment, the Class Member must produce and submit evidence to the Settlement Administrator showing that such information is inaccurate. Class Members shall be permitted to submit copies of any evidence supporting workweek or pay period disputes – original versions will not be required. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence rebutting Defendant's records, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or portion of the PAGA Payment to which the Class Member may be entitled. If the Parties cannot agree on a final decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or portion of the PAGA Payment to which the Class Member may be entitled, the dispute may be brought before the Court before final approval of the Settlement.
- e. If the Settlement Administrator receives an incomplete or deficient request for exclusion, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and shall provide the Class Member fourteen (14) calendar days with which to cure the deficiency. However, the provision of a cure period will not extend the Response Deadline. If the Settlement Administrator does not receive a cured request for exclusion, postmarked on or before the Response Deadline, the Class Member will be determined not to have excluded himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendant of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of requests for exclusion received.

- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. If any material changes occur after the date of the filing of the Settlement Administrator's declaration of due diligence but before the Final Approval Hearing, the Settlement Administrator will supplement its declaration.

3. Objections to Settlement. The Notice Packet will provide that Class Members who wish to object to the Settlement must mail a written objection to the Settlement Administrator, postmarked no later than the Response Deadline. Class Members who object to this Settlement or any of its terms may not also submit requests for exclusion from this Settlement (i.e., may not opt out of this Settlement). In the event a Class Member submits both a request for exclusion and a written objection, the request for exclusion will be deemed invalid, and the objection will remain valid. The date the objection is postmarked shall be the exclusive means for determining whether an objection was timely served. Eligible Aggrieved Employees may not object to the release of the PAGA Released Claims.

- a. **Format.** Objections should: (a) state the objecting Class Member's full name, address, and telephone number, as well as the name and address of counsel, if any; (b) describe, in clear and concise terms, the Class Member's reasons for objecting and the legal and factual arguments supporting the objection; (c) identify any evidence supporting the factual basis for the objection; (d) be signed by the objecting Class Member, his or her lawful representative, or his or her attorney, if any; and (e) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing. An objection will be deemed valid if it is postmarked no later than the Response Deadline and provides sufficient information to allow the Settlement Administrator to identify the Class Member and understand that the Class Member objects to the Settlement or some term(s) of the Settlement. If any Class Member objects to the settlement of the Released Claims, absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. Objecting Class Members who choose to submit evidence supporting their objections may submit copies of such evidence – original versions will not be required.

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- b. Appearance at Final Approval and Oral Objection.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through their own counsel, at the Class Member's own expense and orally object to the Settlement. Any attorney who will represent a Class Member objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Counsel for Defendant no later than fifteen (15) calendar days before the Final Approval Hearing. Plaintiff, rather than objecting Class Members and/or their counsel, if any, will be responsible for filing timely objections with the Court.
 - c.** A Class Member who objects to the Settlement will remain a member of the Settlement, i.e., a Participating Class Member, and if the Court finally approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as those Participating Class Members who do not object.
 - d.** Plaintiff and Defendant will be permitted to respond in writing to such objections no later than seven (7) calendar days before the Final Approval Hearing. Plaintiff waives any right to object to the Settlement and hereby endorses the Settlement as fair, reasonable, adequate and in the best interests of the Class Members.
 - e.** Any Class Member who fails to timely submit an objection shall be foreclosed from making any objection to this Settlement or from filing an appeal of the Court's Final Order and Judgment unless otherwise ordered by the Court.
- 4. Request for Exclusion from the Settlement ("Opt Out").** The Notice Packet will provide that Class Members who wish to exclude themselves from the Settlement must mail a request for exclusion to the Settlement Administrator. The request for exclusion should: (a) include the Class Member's name and address, and the last four digits of the Class Member's Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline. A request for exclusion will be deemed valid if it is postmarked no later than the Response Deadline and provides sufficient information to allow the Settlement Administrator to identify the Class Member and understand the Class Member's request.
 - a. Confirmation of Authenticity.** The date of the initial mailing of the Notice Packet and the date the signed request for exclusion is postmarked shall be conclusively determined according to the records of the Settlement Administrator. If there is a question

about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely and valid executed request for exclusion will not participate in or be bound by the Settlement and Judgment, will not receive an Individual Settlement Share, and will not have any right to object, appeal, or comment thereon. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will be mailed an Individual Settlement Share, and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

- b. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed to Class Members, the number of re-mailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- c. Defendant's Option to Terminate.** If more than ten percent (10%) of the Class Members timely opt out of the Settlement, Defendant shall have the sole and absolute discretion to rescind/void the Settlement Agreement within twenty (20) calendar days after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. In the event that Defendant elects to rescind/void the Settlement Agreement, it shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of the Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become null and void and have no further force or effect, and the Class certified pursuant to the Settlement Agreement will be decertified for all purposes, except where the approving Court has approved the PAGA settlement set forth in the Settlement Agreement and Defendant has issued the payment of the PAGA Payment, the release of the PAGA claims shall be binding. If Defendant chooses to terminate the Settlement Agreement under this provision, Defendant shall be responsible to

pay the Settlement Administrator's fees and costs incurred to that point.

- d. Eligible Aggrieved Employees May Not Opt Out of PAGA Settlement.** Notwithstanding the foregoing, the Parties agree that there is no statutory or other right for any Eligible Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. An Eligible Aggrieved Employee who submits a timely and valid request for exclusion shall be deemed to have excluded himself or herself from the class portion of the Settlement only and will still be mailed a check for his or her portion of the PAGA Payment.

- 5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage, directly or indirectly, any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Final Approval Order or Judgment.

6. Motion for Final Approval.

- a.** Upon expiration of the Response Deadline, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) the Administration Costs; (4) the Class Representative Enhancement Payment; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment).
- b.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law. Notice of entry of Final Judgment will be served upon Class Members by the Settlement Administrator posting the Final Judgment on the settlement website.

- 7. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited

to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appellable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

8. Option to Terminate. Subject to the obligations of mutual full cooperation set out in this Settlement Agreement, either Party may terminate this Settlement if, after submitting to settle as set forth in this Settlement Agreement, any Court declines to approve any material term of this Settlement in the form agreed to by the Parties, if the Court fails to enter the Final Judgment in this action, or if the judgment is reversed, modified, or declared or rendered void. For purposes of this provision, the following are considered material terms of this Agreement: the definition of Class; the definition of Class Period; the definition of Eligible Aggrieved Employees; the definition and the amount of the Gross Settlement Amount; the definition of PAGA Released Claims; the definition of Released Claims; the definition of Released Parties. The terminating Party shall give to the other Party (through its counsel) written notice of its decision to terminate no later than ten (10) calendar days after receiving notice that one of the enumerated events has occurred. Termination shall have the following effects:

- a. The Memorandum of Understanding (“MOU”) and the Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms.
- b. In the event the Settlement Agreement is terminated, Defendant shall have no obligation to make any payments to any party, Class Member, or attorney.
- c. The Preliminary Approval Order, Final Approval Order, and Final Judgment, including any order of class certification, shall be vacated.
- d. The Settlement Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement.
- e. Except as otherwise discoverable, neither the MOU, nor this Settlement Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Counsel for Defendant and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendant and Class Counsel.

a. **Funding the Settlement:** No later than April 28, 2023, Defendant will fund Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than May 26, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than June 30, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than July 28, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than August 25, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than September 29, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than October 27, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall have deposited the remainder of the Gross Settlement into the QSF. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.

b. **Disbursement:** Within fourteen (14) calendar days after the Effective Final Settlement Date, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment (\$15,000.00) to the LWDA for settlement of the PAGA claim. The Settlement Administrator shall keep ten percent (10%)

of any Court approved Attorney Fee Award in the Settlement Administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

- c. **Final Accounting:** Following the completion of the settlement disbursement process, described in Section III (J)(9)(b) above, upon the expiration of the one hundred eighty (180) day period with which Participating Class Members and Eligible Aggrieved Employees shall be provided to cash or deposit their settlement checks, and after the Settlement Administrator has paid any unclaimed funds from uncashed settlement checks to State Bar Impact Fund, pursuant to the procedure described in Section III (J)(10) below, the Settlement Administrator will conduct a final accounting. The Settlement Administrator will provide this final accounting to Class Counsel, who will file it with the Court for approval. Upon Court approval of the Settlement Administrator's final accounting, the Settlement Administrator will pay to Class Counsel the final ten percent (10%) of the Court approved Attorney Fee Award.
- d. **Qualified Settlement Fund:** The Parties and Settlement Administrator shall treat the Qualified Settlement Fund as coming into existence on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

10. Uncashed Checks. Participating Class Members and Eligible Aggrieved Employees must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and pay the amount of the *cy pres* recipient Legal Aid At Work.

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

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12. Defendant's Legal Fees. Defendant is responsible for paying for all Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

K. Release of Claims. Upon final approval by the Court and fully funding of the Gross Settlement Amount, Plaintiff and the Participating Class Members will fully and finally release and discharge the Released Parties from the Released Claims.

L. Effect of PAGA Settlement. Upon final approval by the Court and fully funding of the Gross Settlement Amount, Plaintiff, as an agent and proxy of the LWDA, and any other representative, proxy, or agent thereof, will be barred from seeking PAGA Released Claims from the Released Parties. As explained in Section III (J)(4)(d) of this Agreement, Eligible Aggrieved Employees may not opt out of the PAGA portion of the Settlement and will still be mailed checks for their portions of the PAGA Payment.

M. Plaintiff's Release of Claims and General Release. Upon final approval by the Court and fully funding of the Gross Settlement Amount, in addition to the Released Claims and PAGA Released Claims, the claims released by Plaintiff, in exchange for the Class Representative Enhancement Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00), and in recognition of his work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs in the event this matter had not successfully resolved, further include, without limitation, any and all claims whatsoever regarding Plaintiff's employment and/or the termination of his employment including, but not limited to, individual PAGA claims, any claims for wages, bonuses, severance pay, employment benefits, stock options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful retaliation, violation of public policy, or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on Defendant's right to terminate the employment relationship, or any federal, state, or other governmental statute, executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law. Plaintiff shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiff, for himself, has read section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands that section 1542 gives the right not to release existing claims of which he is not now aware unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff nevertheless voluntarily waives the rights described in section 1542 and elects to assume all risks for claims that now exist in his favor, known or unknown. The release of Plaintiff's claims as set forth in this paragraph is a condition precedent to enforcement of this Settlement Agreement.

N. Miscellaneous Terms.

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing of any kind associated with the claims alleged in the Action by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that, for any purpose other than settling these matters, this action is appropriate for class treatment. Defendant maintains that it has complied with Federal and California law in all aspects. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended as or will be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. This Settlement and Plaintiff's and Defendant's willingness to settle the Case will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant's policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plans, policies or bonus programs. Defendant retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.

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- 3. Publicity.** Plaintiff, Defendant, and their respective counsel will not make any public disclosure of the Settlement or this Agreement until after the filing of the motion for preliminary approval of the Settlement. Plaintiff, Defendant, and their respective counsel represent that they have not made any such disclosure. Notwithstanding the foregoing, the Parties agree that Defendant may make such disclosures that in Defendant's judgment are required in the ordinary course of business, except that Defendant and its counsel shall not encourage Class Members to opt out. Nor shall Plaintiff and Class Counsel encourage Class Members to opt out. Class Counsel will take all steps necessary to ensure that Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosure of the Settlement or this Agreement until after the Settlement is preliminarily approved by the Court. Thereafter, Class Counsel and Plaintiff agree not to publicize the terms of this Settlement with the media, including but not limited to, any newspaper, journal, magazine, website and/or on-line reporter of settlements, nor will they publicize the terms of the Settlement or the fact of the Settlement on any law firm website.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Counsel for Defendant warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.
- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
- 9. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 11. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, current and potential.

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14. No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes. The Parties acknowledge and agree that: (1) no provision of this Joint Stipulation, and no written communication or disclosure between or among the Parties, Class Counsel, or Defendant's Counsel 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 Joint Stipulation, (b) has not entered into this Joint Stipulation 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 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser'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 Joint Stipulation.

15. Jurisdiction of the Court. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

16. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

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

18. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

19. Escalation Clause. The Settlement was reached based on a total number of approximately 16,905 workweeks. If the number of workweeks as of the end date of the Class Period, December 31, 2022, exceeds this number by more than ten percent (10%), or exceeds 18,596 workweeks, Defendant shall increase the Gross Settlement Fund on a pro rata basis according to the number of additional compensable workweeks over the ten percent (10%) increase, or over 18,596 workweeks. For example, if the number of workweeks increases by eleven percent (11%), the Gross Settlement Amount will increase by one percent (1%). Likewise, if the number of workweeks increases by twelve percent (12%), the Gross Settlement Amount will increase by two percent (2%).

[SIGNATURES ON NEXT PAGE]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 03/16/2023

PLAINTIFF JESUS ALDANA



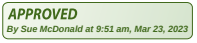
Jesus Aldana

Dated: 03/23/2023

**DEFENDANT LYRICAL FOODS, INC. D/B/A
KITE HILL CO.**



on behalf of Lyrical Foods, Inc. d/b/a Kite Hill Co.



Dated: March 17, 2023

JUSTICE LAW CORPORATION



Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Phillip Song, Esq.
Attorneys for Plaintiff Jesus Aldana, on behalf of
himself and all others similarly situated

Dated: March 23, 2023

ROSS, WOLCOTT, TEINERT & PROUT LLP



Paul M. Teinert, Esq.
Traci G. Choi, Esq.
Attorney for Defendant Lyrical Foods, Inc. d/b/a Kite
Hill Co.

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY WHETHER YOU DO OR DON'T ACT.**

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

- The proposed settlement (“Settlement”) of the above-captioned action (the “Action”) resolves a lawsuit over whether Lyrical Foods, Inc. d/b/a Kite Hill Co. properly paid its employees all wages owed, provided its employees with proper meal and rest breaks, and reimbursed its employees for business-related expenses, among other things.
- The two sides disagree on the merit and value of the claims alleged in the Action but have agreed to settle.
- The Settlement will provide approximately \$156,666.67 to the Class Members and \$5,000 to the Eligible Aggrieved Employees. Class Members and Eligible Aggrieved Employees are defined in Section No. 2 below. Payments will be made if the Court approves the Settlement.
- As a Class Member and/or Eligible Aggrieved Employee, you have options with respect to your involvement in the Settlement. The table below summarizes your rights with respect to each option and the steps you must take to select each option. These options are also explained in more detail later in this Notice.

There will be no retaliation against you for exercising any of the rights set forth in this Notice.

OPTIONS	CLASS MEMBERS	ELIGIBLE AGGRIEVED EMPLOYEES
DO NOTHING	You will become part of the Action. The Settlement Administrator will mail you your Individual Settlement Share check, and you will give up your right to pursue the Released Claims as defined in Section No. 9 below.	You will become part of the Action. The Settlement Administrator will mail you a check for your portion of the PAGA Payment.
DISPUTE WORKWEEKS AND/OR PAY PERIODS	You may dispute the number of workweeks with which you have been credited and/or the amount of your Individual Settlement Share. The procedure for disputing this information is described in Section No. 6 below.	You may dispute the number of pay periods with which you have been credited and/or the amount of your portion of the PAGA Payment. The procedure for disputing this information is described in Section No. 6 below.
OBJECT	You may object to the class portion of the Settlement. If you object and the Court approves the Settlement, you will become part of the Action. The procedure for objecting is described in Section No. 7 below.	You do not have the right to object to the PAGA portion of the Settlement.

REQUEST EXCLUSION	You may request exclusion from the class portion of the Settlement. You will not receive an Individual Settlement Share , and you will not give up your right to pursue the Released Claims as defined in Section No. 9 below. The procedure for requesting exclusion is described in Section No. 7 below.	You do not have the right to request exclusion from the PAGA portion of the Settlement.
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The purpose of this Notice is to provide a summary of the claims alleged in the Action and the key terms of the Settlement, and to explain your rights and options with respect to the Settlement. Detailed explanations of the terms of the Settlement can be found at [URL of Settlement Website].

1. What Is This Case About?

On January 7, 2022, Plaintiff Jesus Aldana (“Plaintiff”), a former employee of Lyrical Foods, Inc. d/b/a Kite Hill Co. (“Defendant”) initiated a class action lawsuit against Defendant in the Superior Court of California, County of Alameda (the “Action”). He believed Defendant was violating the California Labor Code with respect to all of Defendant’s hourly employees in California. Specifically, Plaintiff stated his belief that Defendant was violating Labor Code provisions related to properly paying employees all wages owed, including minimum and overtime wages; properly compensating employees for missed, interrupted, short, and late meal and rest breaks; paying employees all wages owed in a timely manner both during employment and upon discharge or termination; providing employees with complete and accurate wage statements; keeping complete and accurate payroll records; and reimbursing employees for all necessary business-related expenses. A copy of Plaintiff’s complaint can be found at: [URL of Settlement Website].

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Plaintiff and Defendant (collectively, the “Parties”) attended a mediation on November 17, 2022, to attempt to resolve the claims Plaintiff made against Defendant in the Action without going to trial. With the help of the mediator, the Parties were able to reach the proposed Settlement of the Action.

On January 20, 2023, Plaintiff gave notice to the California Labor and Workforce Development Agency (“LWDA”) that he believed Defendant was violating the California Labor Code with respect to all of Defendant’s hourly employees in California. Specifically, Plaintiff stated his belief that Defendant was violating Labor Code provisions related to properly paying employees all wages owed, including minimum and overtime wages; properly compensating employees for missed, interrupted, short, and late meal and rest breaks; paying employees all wages owed in a timely manner both during employment and upon discharge or termination; providing employees with complete and accurate wage statements; keeping complete and accurate payroll records; and reimbursing employees for all necessary business-related expenses. A copy of Plaintiff’s letter to the LWDA can be found at: [\[URL of Settlement Website\]](#). Plaintiff also filed a First Amended Complaint adding a cause of action for violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)).

The Court has not made any determination as to whether Plaintiff’s claims have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties avoid the risks and cost of a trial.

Defendant denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class Members, defined in Section No. 3 below. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant.

3. *Why Have I Received This Notice?*

Defendant’s personnel records indicate that you may be a Class Member. You are a Class Member if you are currently or were formerly employed by Defendant as an hourly-paid or non-exempt employee in California at any time during the period from July 12, 2017, to December 31, 2022 (“Class Period”). In addition, you are an Eligible Aggrieved Employee if you are currently or were formerly employed by Defendant as an hourly-paid or non-exempt employee (whether hired directly or through staffing agencies) in California at any time during the period from January 20, 2022, to December 31, 2022 (“PAGA Timeframe”).

A Preliminary Approval Hearing regarding the Settlement was held on [\[date of preliminary approval\]](#), in the Superior Court of California, County of Alameda. At the Preliminary Approval Hearing, the Court directed that you receive this Notice.

The Court has determined only that there is enough evidence to suggest that the Settlement might be fair, adequate, and reasonable. A final determination of these issues will be made at the Final Approval Hearing.

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4. Who Are the Attorneys Representing Plaintiff and the Class?

Attorneys for Plaintiff and the Class

JUSTICE LAW CORPORATION

Douglas Han

Shunt Tatavos-Gharajeh

751 N. Fair Oaks Avenue, Suite 101

Pasadena, California 91103

Telephone: (818) 230-7502

Facsimile: (818) 230-7259

The Court has decided that Justice Law Corporation is qualified to represent Plaintiff, on an individual basis, and you and all other Class Members, on a class-wide basis, simultaneously. Class Counsel is working on behalf of Plaintiff and the Class at large. If you want your own attorney, you may hire one at your own cost.

5. How Does This Settlement Work?

In this Action, Plaintiff sued on behalf of himself and on behalf of the Class Members and Eligible Aggrieved Employees.

The Settlement is a class and representative action settlement, meaning the Settlement resolves the Released Claims of all Class Members, except for those Class Members who exclude themselves from the class portion of the Settlement, and the PAGA Released Claims of Plaintiff as an agent and proxy of the LWDA and the LWDA.

Under the terms of the Settlement, the total maximum amount that Defendant will be required to pay is three hundred twenty-five thousand dollars (\$325,000) ("Gross Settlement Amount"). The Gross Settlement Amount will be used to pay the following amounts, subject to Court approval: (1) \$10,000 Class Representative Enhancement Payment to Plaintiff; (2) up to \$10,000 in Administration Costs to the Settlement Administrator; (3) \$20,000 PAGA Payment, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA, and twenty-five percent (25%) of which (\$5,000) will be distributed to Eligible Aggrieved Employees, on a pro-rata basis; (4) \$108,333.33 Attorney Fee Award to Class Counsel (1/3 of the Gross Settlement Amount); and (5) \$20,000 Cost Award to Class Counsel. The amount that remains after all payments are made is the Net Settlement Amount, which is currently estimated to be \$156,666.67.

6. How Do I Dispute the Information Included in This Notice?

Section No. 10 below states the number of workweeks you worked during the Class Period, and, if you are also an Eligible Aggrieved Employee, the number of pay periods you worked during the PAGA Timeframe, based on Defendant's records. Section No. 10 also states the estimated amount of your Individual Settlement Share, based on this number of workweeks, and your estimated PAGA Payment, based on this number of pay periods (if applicable). If you believe the number of workweeks and/or pay periods with which you have been credited, and therefore your estimated Individual Settlement Share and/or portion of the PAGA Payment, is inaccurate, you may dispute this information.

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Disputes must be in writing and must be submitted to the Settlement Administrator along with evidence showing that the disputed information is inaccurate. If the Settlement Administrator does not receive evidence from you rebutting the disputed information, the number of workweeks and/or pay periods contained in Defendant's records will be presumed correct, and your challenge will be rejected. However, if you do submit evidence rebutting the disputed information, the Parties will evaluate this evidence and make the final decision as to the number of workweeks and/or pay periods with which you will be credited. If the Parties cannot agree on the number of workweeks and/or pay periods with which you should be credited, the Court will make the final decision.

Your dispute should be signed and dated and must be mailed, along with your supporting evidence, by first-class U.S. mail, **postmarked no later than [Response Deadline]** to: **THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR C/O [ADMINISTRATOR], [INSERT ADDRESS]**. You are encouraged to keep copies of any evidence you submit to the Settlement Administrator.

7. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney. The written objection should be signed and dated and must be mailed by first-class U.S. mail, **postmarked no later than [Response Deadline]** to: **THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR C/O [ADMINISTRATOR], [INSERT ADDRESS]**.

The written objection should: (a) state the objecting Class Member's full name, address, and telephone number, and the name and address of counsel, if any; (b) describe, in clear and concise terms, the reasons for objecting and the legal and factual arguments supporting the objection; (c) identify any evidence supporting the factual basis for the objection; (d) be signed by the objecting Class Member, his or her lawful representative, or his or her attorney, if any; and (e) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing. You are encouraged to include all the foregoing information in your objection. However, your objection will be valid as long as it is postmarked on or before **[Response Deadline]** and provides enough information to allow the Settlement Administrator to identify you and understand that you object.

Class Members may also appear at the Final Approval Hearing, either in person or through their own counsel, and orally object to the Settlement. Class Members' valid written objections to the Settlement will still be considered even if the objecting Class Member does not appear at the Final Approval Hearing. If you object, and the Court approves the Settlement, you will be mailed your Individual Settlement Share and will be bound by the terms of the Settlement, meaning you will be unable to sue Defendant for the Released Claims.

You may not object to the PAGA portion of the Settlement. If the Court approves the Settlement, all Eligible Aggrieved Employees will be mailed checks for their portions of the PAGA Payment.

8. *How Do I Opt Out Or Exclude Myself From This Settlement?*

You may exclude yourself from the class portion of the Settlement (*i.e.*, "opt out"). A form ("ELECTION NOT TO PARTICIPATE IN ('OPT OUT' FORM) CLASS ACTION SETTLEMENT") ("Exclusion Form") has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes the same information. If you opt out of the Settlement, you will not receive an Individual Settlement Share, and you will not be releasing the Released Claims. The Exclusion Form should

be signed and dated and must be mailed by first-class U.S. Mail, **postmarked no later than [Response Deadline]** to: **THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR C/O [ADMINISTRATOR], [INSERT ADDRESS]**. You cannot exclude yourself by phone.

The Exclusion Form should: (a) include the Class Member's name, address, and the last four digits of his or her Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than **[Response Deadline]**. You are encouraged to include all the foregoing information in your request for exclusion. However, your request for exclusion will be deemed valid as long as it is postmarked no later than the Response Deadline and provides sufficient information to allow the Settlement Administrator to identify you and understand your request.

You do not have the right to opt out of the PAGA portion of the Settlement. If you are an Eligible Aggrieved Employee and you submit a valid Exclusion Form, if the Court approves the Settlement, you will be still be mailed a check for your portion of the PAGA Payment.

If you do not submit a valid Exclusion Form, you will become part of the Action. The Settlement Administrator will mail you your Individual Settlement Share and you will be unable to sue Defendant for the Released Claims.

You are responsible for ensuring that the Settlement Administrator receives any request for exclusion you submit.

9. *How Does This Settlement Affect My Rights? What Are the Released Claims and PAGA Released Claims?*

A. Released Claims

If you do not opt out of the class portion of the Settlement, and if the Court approves the proposed Settlement and after Defendant fully funds the Gross Settlement Amount, in exchange for your Individual Settlement Share, you will be releasing Defendant and its affiliated companies and their respective parent companies, subsidiaries, affiliates, shareholders (including SEMCAP and Arborview), members, owners, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties") from the Released Claims. The Released Claims are the claims contained in Plaintiff's complaint, or that could have been included in Plaintiff's complaint based on the same facts, that arose between July 12, 2017, and December 31, 2022, and that are related to unpaid wages, including minimum, overtime, and premium wages; paying employees all wages due to them in a timely manner, both during and upon termination of employment; missed, interrupted, short, and late meal and rest breaks; providing employees with complete and accurate wage statements; reimbursing employees for all necessary business-related costs and expenses; keeping complete and accurate payroll records; and properly calculating and paying sick leave pay. The Released Claims do not include the PAGA Released Claims. You will not release the PAGA Released Claims.

B. PAGA Released Claims

If the Court approves the proposed Settlement and after Defendant fully funds the Gross Settlement Amount, in exchange for your portion of the PAGA Payment, Plaintiff (alongside the LWDA) will be barred from seeking the PAGA Released Claims as agent and proxy of the LWDA against Defendant and the other Released Parties. The PAGA Released Claims are the claims contained in Plaintiff's letter to the LWDA, or that could have been

included in Plaintiff's letter or in Plaintiff's complaint based on the same facts, that arose between January 20, 2022, and December 31, 2022, related to unpaid wages, including minimum, overtime, and premium wages; paying employees all wages due to them in a timely manner, both during and upon termination of employment; missed, interrupted, short, and late meal and rest breaks; providing employees with complete and accurate wage statements; reimbursing employees for all necessary business-related costs and expenses; keeping complete and accurate payroll records; and properly calculating and paying sick leave pay. Different from the Released Claims, the PAGA Released Claims all arise under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The full list of the Released Parties and the exact definitions of Released Claims and PAGA Released Claims can be reviewed at: [URL of Settlement Website].

10. How Much Can I Expect to Receive From This Settlement?

A. How Will My Individual Settlement Share Be Calculated?

The Net Settlement Amount will be paid to the Class Members who do not opt out of the Settlement ("Participating Class Members") in the form of Individual Settlement Shares. If the Court approves any of the above-referenced payments in smaller amounts, the Net Settlement Amount will be larger. The Settlement Administrator will mail each Participating Class Member an Individual Settlement Share that is equal to: (1) the number of workweeks the Participating Class Member worked during the Class Period, (2) divided by the total number of workweeks worked by all Participating Class Members collectively during the Class Period, (3) which is then multiplied by the Net Settlement Amount. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of workweeks the Participating Class Member worked during the Class Period.

Your approximate Individual Settlement Share is \$ [redacted], less taxes. This is based on Defendant's records, which show you worked [redacted] workweeks during the Class Period. The amount of your Individual Settlement Share will change if Class Members opt out of the Settlement, if workweek estimates change, and/or if the Court does not approve all the above-referenced payments from the Gross Settlement Amount in full.

Twenty percent (20%) of your Individual Settlement Share will be treated as unpaid wages. The wages portion of your Individual Settlement Share will be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and will be reported on an IRS Form W-2. Eighty percent (80%) of your Individual Settlement Share will be treated as penalties, and interest. The penalties and interest portions of your Individual Settlement Share will be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will mail your Individual Settlement Share check to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

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B. How Will My Portion of the PAGA Payment Be Calculated?

The Settlement Administrator will mail each Eligible Aggrieved Employee a check for the Eligible Aggrieved Employee's portion of the PAGA Payment, which will be equal to: (1) the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe, (2) divided by the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Timeframe, (3) which is then multiplied by the \$5,000 of the PAGA Payment allocated to the Eligible Aggrieved Employees. Therefore, the value of each Eligible Aggrieved Employee's portion of the PAGA Payment ties directly to the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe.

Your approximate portion of the PAGA Payment is \$ [REDACTED]. This is based on Defendant's records, which show you worked [REDACTED] pay periods during the PAGA Timeframe. One hundred percent (100%) of this payment will be considered penalties, and you will be issued an IRS Form 1099 if your payment exceeds \$600. You are responsible for paying any federal, state, or local taxes owed as a result of this payment.

The Settlement Administrator will mail a check for your portion of the PAGA Payment to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

If you are not an Eligible Aggrieved Employee, this subsection B does not apply to you.

C. When Will My Settlement Payment Be Mailed?

No later than April 28, 2023, Defendant will fund Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the Qualified Settlement Fund ("QSF"). No later than May 26, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than June 30, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than July 28, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than August 25, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than September 29, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than October 27, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall have deposited the remainder of the Gross Settlement into the QSF. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.

Within fourteen (14) calendar days after the Effective Final Settlement Date, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs.

It is strongly recommended that upon receipt of your Individual Settlement Share check and, if you are an Eligible Aggrieved Employee, your check for your portion of the PAGA Payment, you cash your check(s) immediately or before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200)

calendar days after the checks are initially mailed, pay the amount of the Individual Settlement Share(s) and/or portion(s) of the PAGA Payment to the *cy pres* recipient Legal Aid At Work.

11. *How Will the Attorneys for Plaintiff and the Class Be Paid?*

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed one-third (1/3) of the Gross Settlement Amount (or \$108,333.33) for attorneys' fees and up to \$20,000 for litigation costs.

Defendant has paid all its own attorneys' fees and costs.

As stated in Section No. 10 above, Plaintiff will also be paid a Class Representative Enhancement Payment, subject to Court approval.

12. *Final Approval Hearing*

The Court will hold a Final Approval Hearing regarding the Settlement on [date of final approval hearing] at [time a.m./p.m.], before the Honorable Evelio Grillo, located at 1225 Fallon Street, Oakland, California 94612, Department 21 (René C. Davidson Courthouse). You are not required to appear at this hearing. Any changes to the hearing date will be available on this website: [URL of Settlement Website]. This website will also include, among other things, the letter Plaintiff submitted to the LWDA, complaint Plaintiff filed, generic copies of this Notice, Exclusion Form, Settlement Agreement, all papers filed in connection with preliminary approval of the Settlement, all papers filed in connection with final approval of the Settlement, and, if the Settlement is approved, the Court's Final Approval Order.

13. *How Do I Get More Information?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the "The Lyrical Foods, Inc. d/b/a Kite Hill Co. class action and PAGA settlement."

This Notice does not contain all the terms of the proposed Settlement or all the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Alameda County Superior Court, at the René C. Davidson Courthouse located at 1225 Fallon Street, Oakland, California 94612, between 8:30 a.m. and 2:30 p.m. Records may be viewed here in person via the public terminals at the Civil Division. You can also access the Court's file online, free-of-charge by visiting the Superior Court of Alameda County Public Portal webpage: <https://eportal.alameda.courts.ca.gov/>. Once on this webpage, select "Searches." Doing so will take you to the "Search" webpage, where you can select "Case Number Search." This will take you to the "User account" webpage, where you can select the "Create new account" tab, under which you can select the bubble for "Public Users," which will then ask you to create an account using your name, email address, and phone number. After creating an account, you can use the case number of the Action (22CV005107) to search for and access the documents the Court has on file for the Action.

You may also contact Class Counsel with any questions you may have regarding the Action, the proposed Settlement of the Action, or this Notice or any other documents or information you have received pertaining to the Action and the Settlement. You may contact Class Counsel directly by visiting Justice Law Corporation at 751 North Fair Oaks Avenue, Suite 101, Pasadena, California 91103 during regular business hours, from 9:00

a.m. to 6:00 p.m., or by calling (818) 230-7502. Class Counsel's contact information is also included above in Section No. 4 of this Notice. Class Counsel will provide you with an electronic copy of the Settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT

Superior Court of California, County of Alameda

Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.

Case No. 22CV005107

DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN [RESPONSE DEADLINE]. IT MUST BE SENT VIA REGULAR U.S. MAIL.

PLEASE MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:
**THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR, C/O
SIMPLURIS, INC. [INSERT ADMINISTRATOR ADDRESS]**

You are a Class Member if you are currently employed or were formerly employed by Lyrical Foods, Inc. d/b/a Kite Hill Co. as an hourly-paid or non-exempt employee in California at any time during the period from July 12, 2017, to December 31, 2022 ("Class Period"). You are an Eligible Aggrieved Employee if you are currently or were formerly employed by Lyrical Foods, Inc. d/b/a Kite Hill Co. as an hourly-paid or non-exempt employee (whether hired directly or through staffing agencies) in California at any time during the period from January 20, 2022, to December 31, 2022 ("PAGA Timeframe"). By signing and mailing this document to the Settlement Administrator at the address above, you are deciding to exclude yourself from the Class and deciding not to participate in the class portion of the proposed settlement of the action entitled *Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.* However, Eligible Aggrieved Employees may not exclude themselves from the PAGA portion of the proposed settlement.

IT IS MY DECISION NOT TO PARTICIPATE IN THE ACTION REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT SHARE AND ANY CLAIMS I HAVE DURING THE CLASS PERIOD WILL NOT BE RELEASED. However, if I am an Eligible Aggrieved Employee and qualify for a payment from the PAGA Payment, I will be mailed a check for that payment regardless of whether I exclude myself from the class portion of the proposed settlement, and I will release any claims I have during the PAGA Timeframe.

Dated: _____

(Signature)

(Last four digits of Social Security number)

(Type or print name and former name(s))

(Telephone Number)

(Address)

(Address continued)

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is shanneyan@justicelawcorp.com

On April 4, 2023, I served the foregoing document described as

JOINT STIPULATION AND SETTLEMENT AGREEMENT

for the following case: **Aldana vs. Lyrical Foods, Inc. dba Kite Hill**
LWDA/Court Case No.: **LWDA Case No.: CM-930677-23**
Court Case No.: 22CV005107
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 4, 2023, at Pasadena, California.



Sophia Hanneyan