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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

JESUS GALVAN, as an individual and on behalf
of all employees similarly situated,

Plaintiff,

v.

WESTERN SKY DAIRY, LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: BCV-23-100992

[Assigned for all purposes to Hon. Thomas S. Clark,
Department 17]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date: April 24, 2024
Time: 8:30 a.m.
Courtroom: Dept. 17
Judge: Hon. Hon. Thomas S. Clark

Action Filed: March 30, 2023
Trial Date: Not Set

I, LILIT TUNYAN, declare as follows:

2. This Declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

3. On March 30, 2023, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and Wage Order); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On June 8, 2023, Plaintiff filed his First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

4. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). On June 8, 2023, Plaintiff filed his First Amended Complaint adding the eighth

1 case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code
2 § 2699, et seq.] (“PAGA”).

3 5. The Parties have conducted informal discovery and investigation of the facts and law.
4 Such discovery and investigation have included, inter alia, the exchange of data and discoverable
5 information in preparation for the mediation session. The Parties have analyzed payroll and other data
6 pertaining to Plaintiff and the Class during the relevant Class Period, including but not limited to the
7 numbers of former and current members of each purported subclass within the Settlement Class, average
8 workweeks, and average rate of hourly pay. In addition, Defendant also provided documents reflecting
9 their wage and hour policies and practices during the Class Period.

10 6. After reviewing documents regarding Defendant’s wage and hour policies and practices
11 and other information obtained during the exchange of discovery, Class Counsel were able to evaluate
12 the probability of class certification, success on the merits, and the reasonably obtainable maximum
13 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
14 prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses
15 asserted in the litigation.

16 7. On February 21, 2024, the Parties mediated before a mediator Tagore Subramanian, Esq.,
17 who is a well-regarded mediator for wage and hour class action litigation. At the mediation, the Parties
18 discussed at length the burdens and risks of continuing with the litigation as well as the merits of the
19 claims and defenses. The Parties have been able to reach a settlement at the mediation. The Parties have
20 reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties’
21 agreement on a long-form class settlement agreement. The Parties then signed a long form settlement
22 agreement (“Agreement”).

23 8. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
24 liability for the claims asserted in the Action, both generally and in response to Defendant’s defenses
25 thereto. Plaintiff and Class Counsel have also taken into account Defendant’s agreement to enter into a
26 Settlement that confers substantial relief upon the Class.

27 9. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
28 set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the

Class. Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. If this Settlement is not approved by the Court for any reason, Defendant reserves its right to contest class certification. This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class.

SUMMARY OF THE SETTLEMENT TERMS

10. Key provisions of the proposed settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 23);
- **Settlement Amount:** Defendant will pay a maximum of **\$295,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$2,783.02** (Settlement, ¶ 28(c));
- **Class Size:** approximately **106** individuals as of the date of mediation. (Tunyan Decl., ¶ 16.)
- **PAGA Group Size:** approximately **71** individuals as of the date of mediation (Tunyan Decl., ¶ 17);
- **Escalator Clause:** On February 21, 2024, Defendant represented that the number of workweeks worked in the Class Period for Class Members was approximately 10,660. If it is later determined that, on the date of Preliminary Approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on February 21, 2024 (i.e. exceeds 11,726 workweeks), Defendant can either have the Gross Settlement Amount increased by 1% for each percent over the 10% threshold that the actual number of workweeks exceeds the estimated number of workweeks (e.g., if the number of workweeks increases by 11%, the Gross Settlement will increase 1%), or have the Class Period end on the date that the estimated number of workweeks exceed 10% threshold or 11,726 workweeks (the “Escalator Clause”). (Settlement, ¶ 28(d).)
- **Kullar/Munoz Analysis:** Plaintiff addresses the claims analysis herein, at Part V.B.3, and

in more detail the Declaration of Tunyan, at Paragraph 18;

- **No Reversion:** The Settlement is a *non-reversionary* settlement (Settlement, ¶ 28(e));
- **Certification:** Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Tunyan, at Paragraphs 34-40;
- **No Claim Form:** No claim form is required (Settlement, ¶ 28(f));
- **Class Release:** The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the First Amended Complaint and LWDA notice (Settlement, ¶ 39);
- **PAGA Release:** The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff's LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 18 and 39(c)(2));
- **Release Effective Date:** The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 39(b));
- **Net Settlement Amount Available to the Class:** After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for a Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **\$141,916.68**, resulting in an average **net** payment per Class Member of at least **\$1,338.84**, before any tax withholdings. (Settlement, ¶ 28(g));
- **Tax Allocation:** The amounts distributed to Class Members will be characterized as 10% alleged unpaid wages, 45% as unpaid penalties and 45% as unpaid interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 28(k));
- **Employer's Portion of Payroll Taxes Paid Separately:** Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 28(h));

- 1 • **Settlement Administrator:** The notice portion of the Settlement and distribution of funds
2 will be administered by a third-party Administrator, Phoenix Class Action Administration
3 Solutions, and the Parties estimated that the costs of administration should not reasonably
4 exceed \$15,000.00. Phoenix Class Action Administration Solutions’ low bid for settlement
5 administration services in the amount of **\$6,000.00** was selected as the lowest bid from a
6 competitive bidding process. (Settlement, ¶ 28(q));
- 7 • **Class Data for Administration:** The Settlement Administrator will receive the Class List
8 within 15 calendar days of Preliminary Approval, use the NCOA database to update the
9 Class List, and then use skip tracing on returned Notices (Settlement, ¶ 34(a));
- 10 • **Notice:** The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶
11 34(b)). The Notice describes how to dispute workweeks, submit and objection in writing,
12 in person, or through an attorney, or request exclusion (Settlement, ¶ 28(t)).
- 13 • **Notice Language:** Notice will issue in English and Spanish (Settlement, ¶ 28(u));
- 14 • **Objections:** Objections can be submitted in person, through an attorney, or in writing to
15 the Settlement Administrator (Settlement, ¶ 28(y));
- 16 • **Exclusion Requests:** The procedure for exclusion requests, mailing a request to the
17 Settlement Administrator, is the same as the procedure for submitting a writing objection
18 (Settlement, ¶¶ 28(w) and 28(x));
- 19 • **PAGA Allocation:** From the GSA, **\$25,000** will be allocated to settle claims brought
20 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
21 (“PAGA”), and seventy-five percent (75%), or **\$18,750**, will be paid to the California Labor
22 & Workforce Development Agency. (Settlement, ¶ 13.)
- 23 • **Notice to LWDA:** Notice was provided prior to the filing of this Motion. Evidence is
24 attached to Tunyan Declaration.
- 25 • **Enhancement/Service Award to Plaintiff:** Defendant will not oppose the application for
26 Class Representative Service Payment of **\$10,000.00** for Plaintiff, to be paid from the GSA
27 (Settlement, ¶ 28(n));
- 28 • **Fees and Costs:** Defendant will not oppose Class Counsel’s application for fees not to

exceed 33 1/3% of the GSA (\$98,333.33), and actual costs, in an amount not to exceed \$20,000, to be paid out of the GSA (Settlement, ¶ 28(m)).

- **Check Void Period:** Settlement checks will be valid for 180 days (Settlement, ¶ 36);
- **Uncashed Checks:** Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to a Court-approved nonprofit organization or foundation, Bakersfield Angels (Settlement, ¶¶ 36- 37);
- **Judgment Notice:** Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 32);
- **Confidentiality Provisions:** The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 66).

11. A true and correct copy of the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT is attached hereto as Exhibit “1.”

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

12. Plaintiff and counsel have diligently investigated the claims of the Class Members. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of certification and possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair and reasonable. Plaintiff’s counsel brought to bear a great deal of experience with class actions in negotiating the settlement of this case.

13. One fundamental purpose of the class action device is to promote efficiency. Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, we have agreed to this settlement because it is objectively reasonable. The potential for resolution benefits the class members, since they do not have to wait additional years for a similar

1 recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A class-wide
2 resolution is the most realistic method for addressing the claims raised in this matter.

3 14. We have engaged in the necessary investigation in this case that made it possible for us to
4 exercise informed judgment in those aspects of the settlement process in which we were involved. The
5 exchange of time and wage data, wage and hour policy documents, and data about the composition of the
6 Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more than
7 enough information upon which to evaluate a fair and reasonable settlement amount.

8 15. We believe that the case was viable through to a trial. However, while Plaintiff asserts a
9 belief that this is a viable case for trial, we realize that there are always significant risks associated with
10 certification and trials, and those risks cannot be eliminated in this case. Continued litigation of this
11 lawsuit presented Plaintiff and Defendant with substantial legal risks and costs that were (and continue to
12 be) difficult to assess. The risks in this matter include:

- 13 • the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time
14 or overtime wages, see *Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014)
15 (“*Duran*”), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014);
- 16 • the risk that Defendant’s meal and rest period policies might not ultimately support class
17 certification or a class-wide liability finding, see *Duran*, 59 Cal. 4th at 14, n. 28 (citing
18 Court of Appeal decisions favorable on class certification issue without expressing opinion
19 as to ultimate viability of proposition);
- 20 • the risk that uncertainties pertaining to the ultimate legality of Defendant’s policies and
21 practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203
22 and 226(e);
- 23 • the risk that individual differences between Class Members could be construed as
24 pertaining to liability and not solely to damages, see *Duran*, 59 Cal. 4th at 19;
- 25 • the risk that individual differences between Class Members could be construed as
26 pertaining to liability and not solely to damages, see *Duran*, 59 Cal. 4th at 19;
- 27 • the risk that any civil penalties award under the PAGA could be reduced by the Court in its
28 discretion, see Labor Code § 2699(e)(1);

- the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes;
- the risk that lengthy appellate litigation could ensue.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

16. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. For the approximately **106** members of the Class, the average **gross** recovery is at least **\$2,783.02** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$1,338.84**. Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period.

17. The Gross Settlement Amount of **\$295,000.00** is about 81% of the **\$365,555.56** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. While Plaintiff would certainly have preferred to recover more (and Defendant would have preferred to pay less), this outcome is in line with a carefully constructed estimate of the current fair value of the case. On that basis, it would be unwise to pass up this settlement opportunity. My maximum calculated reasonable exposure,

after removing implausible or extreme estimated recoveries, is **\$2,143,650.50**, including PAGA penalties.

- A reasonably estimated exposure for unpaid wages for time rounding was calculated, with the assistance of an expert, to be approximately **\$19,550.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$10,948.00**, assuming certification probability of 80% and merits success at 70%.
- A reasonably estimated exposure for unpaid wages for the off-the clock work was calculated, with the assistance of an expert, to be approximately **\$332,393.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$39,887.16**, assuming certification probability of 40% and merits success at 30%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$444,664.00**, but with chances of certification and proof of liability (50% and 40% respectively) for a risk-adjusted exposure of **\$88,932.80**.
- A reasonably estimated exposure for meal break violations over the class period was calculated at **\$312,832.50**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$62,566.50**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with chances of certification and liability risks (50% and 20% respectively) were estimated to be approximately **\$212,450.00** and **\$223,761.00**, respectively, on maximum exposures of **\$21,245.00** and **\$22,376.00**, respectively.
- A reasonably estimated exposure for unreimbursed expenses over the class period was calculated at **\$81,400.00**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$16,280.00**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of

\$262,235.56, excluding PAGA.¹ (*Id.*)

- PAGA penalties were calculated as having a maximum realistic exposure of \$516,600.00, but a risk adjusted value of \$103,320.00, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

As required under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) and *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), the maximum plausible and realistic recoveries versus the current risk-adjusted value of the claims are discussed in additional detail below:

(a) Key Class Data Elements at Time of Mediation:

- 1) Class Members: approximately 106
- 2) Work Weeks: approximately 10, 660
- 3) PAGA Employees: approximately 71
- 4) Gross Settlement Amount: \$295,000

(b) KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Rounding

- 1) Plaintiffs' claims for unpaid wages due to time rounding is based on the argument that Class Members were not paid for the actual time worked for Defendant. The time was rounded and as a result Class Members were harmed by that rounding.
- 2) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$19,550.00
Estimated certification probability	80%
Estimated chance of prevailing on merits	70%
Max recovery × certification risk × chance or	\$10,948.00

¹ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

success on merits = Present Settlement Value	
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(c) **KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Off-the-Clock Work**

- 1) Plaintiff's claims for unpaid wages due to off-the-clock work is based on the argument that Defendant had a policy of requiring Class Members to arrive early but refusing them to allow to clock in earlier than 5 minutes before the scheduled start of the shift and 5 minutes after the scheduled end of the shift not to create overtime.
- 2) Defendant contends denies these allegations and contends that it paid for all time worked by Class Members.
- 3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$332,393.00
Estimated certification probability	40%
Estimated chance of prevailing on merits	30%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$39,887.16

(d) **KULLAR/MUNOZ ANALYSIS: Meal Periods**

- 1) Plaintiff's claim for meal break violation is based on Defendant's policy to combine Class Members 30-minute first meal periods with their first rest periods and have 45- minute combined meal and rest breaks as well as Defendant's requirement to clock out and continue working. Employees are entitled to meal periods of at least 30 minutes before exceeding five hours of work and to second meal periods of not less than 30 minutes before exceeding 10 hours of work. For each meal period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay."

2) Defendant maintains that meal periods were not combined with rest periods and the obligation is simply to “provide” meal periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard). Furthermore, Defendant contends that any failure to take meal periods, or to take late meal periods, was a result of employee choice, not of any policy or practice of Defendant. Finally, Defendant asserts that Plaintiff’s meal period claims would not be amenable to class treatment, since individual inquiries would need to be made with respect to each specific shift that each employee missed a meal or rest period, to determine why that specific employee missed that specific meal or rest period on that specific shift.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$312,832.50
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance of success on merits = Present Settlement Value	\$62,566.50

(e) **KULLAR/MUNOZ ANALYSIS: Rest Breaks**

1) Plaintiff’s claim for rest break violation is based on Defendant’s policy to combine Class Members 30-minute first meal periods with their first rest periods and have 45- minute combined meal and rest breaks and requirement not to leave premises during rest periods. Plaintiff and Class Members were also not authorized or taken second or third rest periods. Employees are entitled to a rest period of at least 10 minutes every four hours worked, or major fraction thereof. For each rest period missed or taken late an employer must pay the employee an additional one hour of

1 compensation. Labor Code § 226.7. This additional hour of compensation
2 is referred to as “premium pay.”

- 3 2) Defendant maintains that the obligation is simply to “authorize and permit”
4 rest periods, not to “ensure” that they are taken. *Brinker v. Superior Court*,
5 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard).
6 Defendant also contends that it does not have a requirement to remain on
7 the premises during rest breaks. Furthermore, Defendant contends that any
8 failure to take rest breaks was a result of employee choice, not of any
9 policy or practice of Defendant and denies that it ever had a policy of
10 combining meal periods and rest breaks. Finally, Defendant asserts that
11 Plaintiff’s rest breaks claims would not be amenable to class treatment,
12 since individual inquires would need to be made with respect to each
13 specific shift that each employee missed a rest period, to determine why
14 that specific employee missed that specific rest break on that specific shift.

15 3) **Risk-adjusted Exposure Analysis:**

16 Calculated maximum recovery:	\$444,664.00
17 Estimated certification probability	50%
18 Estimated chance of prevailing on merits	40%
19 Max recovery × certification risk × chance of success 20 on merits = Present Settlement Value	\$88,932.80

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22 (f) **KULLAR/MUNOZ ANALYSIS: Late Pay Penalties Under Labor Code § 203**

- 23 1) Labor Code § 203 provides that if an employer fails to pay an employee all
24 wages due at termination or within 72 hours of resignation, then that
25 employee’s wages shall continue as a penalty until paid for a period of up
26 to thirty (30) days from the date they were due. Because class members
27 stopped working for Defendant but again were not paid their full
28

1 compensation for the reasons discussed above, class members did not
2 receive all wages due upon termination of employment.

- 3 2) Defendant argues that a good-faith belief in the legality of its employment
4 practices precludes a finding that any withholding of wages was “willful.”
5 See Cal. Code Regs. § 13520 [good-faith dispute exists to a claim for
6 waiting time penalties “when an employer presents a defense, based in law
7 or fact which, if successful, would preclude any recovery on the part of the
8 employee. The fact that a defense is ultimately unsuccessful will not
9 preclude a finding that a good faith dispute did exist.”].) Defendant further
10 maintains that because of viable defenses in both law and fact that waiting-
11 time penalties could not be awarded and, in any case, such penalties were
12 subject to a three-year limitations period under Labor Code § 203(b) and an
13 arbitration agreement that would bar class treatment.

14 3) **Risk-adjusted Exposure Analysis:**

15 Calculated maximum recovery:	\$223,761.00
16 Estimated certification probability	50%
17 Estimated chance of prevailing on merits	20%
18 Max recovery × certification risk × chance or success 19 on merits = Present Settlement Value	\$22,376.00

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21 **(g) KULLAR/MUNOZ ANALYSIS: Wage Statement Violations**

- 22 1) Plaintiff also alleged a cause of action under Labor Code § 226(a). That
23 section states that an employer must provide an accurate itemized wage
24 statement twice a month or each time wages are paid, whichever is the
25 more frequent. Failure to do so entitles employees to recover the greater of
26 all actual damages or fifty dollars (\$50) for the initial pay period in which a
27 violation occurs and one hundred dollars (\$100) for each violation in a
28

subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). See Labor Code § 226(e).

- 2) Defendant contends that Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or she “suffered injury” from the employer’s failure to provide compliant wage statements, see *Elliot v. Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181 (2008) (applying California law) (holding employee was not entitled to penalties because no injury was shown), and (2) Defendant’s noncompliance was “knowing and intentional.” Defendant contends that class members suffered no injury from any failure to issue compliant wage statements and, furthermore, that any noncompliance was not knowing and intentional. Further, because the damages for this cause of action are penalties, the statute of limitations only runs from one year prior to the filing of the original complaint. See Code Civ. Proc. § 340. Moreover, Defendant maintains that Plaintiff’s derivative claim for wage statement penalties would fail for the same reasons that Plaintiff’s underlying claims would fail. The parties discussed these issues, and in light of these and other considerations Class Counsel factored in a reduction of liability and damages for this cause of action.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$212,450.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$21,245.00

(h) **KULLAR/MUNOZ ANALYSIS: Unreimbursed Expenses Under Labor Code § 2802**

- 1) Plaintiffs also alleged a cause of action under Labor Code § 2802 for

failure to reimburse all necessary expenses. Under Labor Code § 2802, “an employer shall indemnify his or her employee for all necessary expenditures... incurred by the employee in direct consequence of the discharge of his or her duties.” Lab. Code § 2802. Plaintiff’s claims for unreimbursed expenses are based upon claims that class members were required to use their personal cellular telephones to communicate with supervisors regarding their schedules and work assignments without reimbursement. Plaintiff and Class Members were also required to purchase face masks as Defendant failed to provide face masks during COVID pandemic.

- 2) Defendant contends that Plaintiff and most employees did not incur any business expenses, and that they were not permitted to use their personal phones at work, let alone required to use them for any work purposes. Defendant contends that those employees who were permitted to use cellular phones at work and expected to use them for work were adequately reimbursed for any cellular phone expenses incurred or else provided a cellular phone by Defendant without charge.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$81,400.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$16,280.00

(i) **QUASI- KULLAR/MUNOZ ANALYSIS: PAGA**

- 1) The Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows plaintiffs to obtain civil penalties on behalf of herself and other class members for Defendant’s violation of any provision of the Labor Code

1 enumerated under Labor Code § 2699.5. Where civil penalties are provided
2 in the statute, those civil penalties are recoverable; where no civil penalties
3 are recoverable, Labor Code § 2699(f) establishes civil penalties of one
4 (\$100) for each aggrieved employee per pay period for the initial violation
5 and two hundred dollars (\$200) for each aggrieved employee per pay
6 period for each subsequent violation. Pursuant to Labor Code § 2699(i),
7 seventy-five (75) percent of the penalties recovered must be allocated to the
8 Labor and Workforce Development Agency (LWDA), with the remaining
9 twenty-five (25) percent allocated to the affected employees. The
10 limitations period is one year prior to the filing of the complaint.

11 2) The provisions of the Labor Code potentially triggering PAGA penalties in
12 this case include but are not limited to Labor Code §§ 203, 226(a), 226.7,
13 and 510. Defendant asserted that if PAGA penalties were mandatory, an
14 employer's PAGA liability would be huge because of the possibility of
15 collecting multiple civil penalties for a single violation, and thus such
16 penalties would almost always dwarf the damages available under the
17 causes of action proper. However, PAGA penalties are not mandatory but
18 permissive. Labor Code § 2699(e)(2) states that "a court may award a
19 lesser amount than the maximum civil penalty amount specified by this
20 part if, based on the facts and circumstances of the particular case, to do
21 otherwise would result in an award that is unjust, arbitrary and oppressive,
22 or confiscatory." *See also Thurman v. Bayshore Transit Management, Inc.*,
23 203 Cal. App. 4th 1112, 1135 (2012) [affirming reduction of PAGA
24 penalties].) Defendant here maintains that they have a strong argument that
25 it would be unjust to award maximum PAGA penalties.

26 3) Furthermore, PAGA penalties are also completely derivative of each and
27 every other claim. Finally, under *Amaral v. Cintas Corp.*, 163 Cal. App.
28 4th 1157(2008), it can be argued that penalties under PAGA could, at best,

be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendant had never been notified of the alleged violations. *Id.*, at 1208, 1209.

4) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$516,600.00
Discount reduction factor for risk of Court reduction and uncertainty of proof for all aggrieved employees	20%
Max recovery × risk reduction = Present Settlement Value	\$103,320.00

With the assistance of Class Counsel’s retained damages expert, Class Counsel estimated Defendant’s maximum total exposure on the PAGA claim at approximately **\$516,600.00** (without stacking). This number presupposes underlying claims are proven at a plausible rate and that the Court awards the full base penalties for each. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, and the Court’s power to award “a lesser amount than the maximum civil liability.” Accordingly, due to the speculative nature of a valuation for this claim, a discount of **80%** was applied to account for the difficulty of prevailing on this claim.

(j) **Kullar Summary:** Indulging the most optimistic estimates and improbably favorable outcomes, the maximum reasonable recovery is estimated to be approximately **\$2,143,650.50**, including PAGA. The settlement amount is about **14%** of that amount. The calculated current settlement value is **\$365,555.56** (calculated by adding the risk-adjusted amounts in the charts above together), and the settlement is **81%** of the current risk-adjusted settlement value. The bottom line is that the settlement is about **14%** of the *maximum* plausible recovery for the 106 Class Members, and it is a reasonable settlement, given that the full amount is

1 very unlikely to be recovered.

2 18. This result here is fully supportable as reasonable. First, it is important to recognize the
3 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. Second, rest
4 break and meal period claims have been challenging to certify for many years, even after Brinker. Many
5 risks are eliminated through settlement. And, with respect to those risks, certification rates in California
6 are **lower** than conventional wisdom holds. See, e.g., H. Scott Leviant, *Second Interim Report on class*
7 *actions in California sheds new light on certification* (February 19, 2010),
8 www.thecomplexlitigator.com, available at [http://www.thecomplexlitigator.com/post-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
9 [data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); see also, *Findings of*
10 *the Study of California Class Action Litigation, 2000-2006*, available at
11 <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in
12 Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement **or** as
13 part of a contested certification motion). Here, the estimated certification probabilities are **above** the
14 average rate at which cases were certified in California over the study years, based upon data available
15 through the California Courts websites. In sum, well *under* 20% of all cases filed as proposed class
16 actions are ultimately certified by way of a *contested* motion. Since the recovery is roughly 11% of the
17 maximum theoretical recovery (estimated to be approximately \$1,956,364.29, *including* PAGA), it meets
18 the expected outcome under that metric. It would also be appropriate to evaluate the result by examining
19 only the premium wages at issue (approximately \$487,619.10, *with no risk reduction*), excluding
20 penalties and interest.² This Settlement achieves the goals of the litigation.

21 19. To the best of my knowledge, there are no other like claims asserted or filed by Class
22 Members. To the best of my knowledge, no Class Member has refrained from bringing an action with
23 claims similar to those raised in the Action, whether in reliance on the Action or otherwise, and who thus

24 ² The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
25 penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
26 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
27 the strength of a proposed settlement without taking potential penalties or interest into consideration. See
28 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); see also *Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

1 might be prejudiced by dismissal of the Action.

2
3 THE EXPERIENCE OF CLASS COUNSEL

4 20. I am a founding partner of Tunyan Law, APC and has been engaged in the practice of
5 employment and labor law for more than four years and focused exclusively on plaintiffs' employment
6 law and wage-and-hour class actions and more than twenty-four years in practice of law in general. I
7 have handled hundreds of wage-related class actions.

8 21. Prior to establishing my own practice, I was an associate attorney at Moon & Yang, APC and
9 Mahoney Law Group, APC. Since I was admitted to the California Bar, my practice has focused mainly
10 on labor and employment class action lawsuits involving California and federal labor laws. Along with
11 those firm's other attorneys I have successfully settled more than 50 class action and PAGA matters
12 during that time span and was routinely appointed lead or co-lead class counsel in courts in California
13 including by way of motion for class certification.

14 22. I received my Juris Doctorate from the State Yerevan University and my LL.M. from
15 University of Minnesota Law School. Prior to moving to California and starting to practice law in
16 California I practiced law in Armenia for about twenty years as a licensed attorney. I have been general
17 counsel and head of legal department for big telecommunication and financial corporations in Armenia
18 for the last 12 years prior to moving to California. I managed corporate legal department and corporate
19 legal and regulatory affairs and handled complex litigation matters as well as complex transactions for
20 many years.

21 23. I am a current member of the California Employment Lawyers Association (CELA) and
22 the California Consumer Attorneys Association of Los Angeles (CAALA). I have been an active
23 member of the State Bar of California in good standing.

24 24. I am experienced in prosecuting employment matters, particularly class actions, and I focused
25 a substantial percentage of my practice on wage, hour, and working conditions violations. In addition to
26 the present case, I represented plaintiffs and the class members and have extensively worked on many
27 wage-and-hour class cases and have been appointed as class or PAGA counsel along with other counsel
28 and co-counsel for wage-and-hour class action lawsuits in various counties throughout California such as:

1 *Oregel v. Diablo Range Framing, Inc.*, Contra Costa County Superior Court, Case N C23-00697,
2 *Gonzalez v. RV Retailer San Diego, LLC, et al.*, Riverside County Superior Court, Case N
3 CVRI2301403, *Evans, et al. v. Downtown Women's Center*, Los Angeles County Superior Court,
4 Case N 22STCV06578 (class certification motion granted in part); *Sanchez v. Anodizing Industries,*
5 *Inc.*, Los Angeles County Superior Court, Case N 21STCV30722; *Godoy v. Intertrade Industries,*
6 *LTD*, Orange County Superior Court, Case No. 30-2020-01151921-CU-OE-CXC; *Fuentes v. Actron*
7 *Manufacturing Inc.*, Los Angeles Superior Court, Case N 20STCV31099; *Gonzalez v. Community*
8 *Health Systems, Inc.*, San Bernardino County Superior Court, Case N CIVDS2015678; *Rodriguez v.*
9 *Progress Lighting, Inc. et al.*, San Bernardino County Superior Court, Case N CIVDS2023894;
10 *Castillo v. Gibson Overseas, Inc.*, San Bernardino Superior Court, Case N CIVDS2022537;
11 *Mumphrey v. People's Care Northern California, Inc. et al.*, San Joaquin County Superior Court,
12 Case N STK-CV-UOE-2019-0016397; *Ochoa v. Orlando Spring Corp*, Los Angeles Superior Court,
13 Case N 20STCV343129; *Findley v. USC, et al.*, Los Angeles Superior Court, Case N
14 20STCV47290; *Maldonado v. Techmer PM, LLC*, Los Angeles Superior Court, Case N
15 20STCV21918; *Huerta v. IRS*, Los Angeles Superior Court, Case N 20STCV09163; *Mata v.*
16 *Marukai Corporation*; Los Angeles Superior Court, Case N 20STCV00959; *Tapia v. Home &Body*;
17 Orange County Superior Court, Case N 30-2020-01155185-CU-OE-CXC; *Ruvalcaba v. Quinn*
18 *Group, Inc.*, Los Angeles Superior Court, Case N 20STCV41323; *Bravo v. FIDM*, Los Angeles
19 Superior Court, Case N 19STCV25338; *Lomeli v. Plaskolite et al.*, Los Angeles Superior Court,
20 Case N 21STCV14611; *Alcantar v. Classic Salads LLC*, Santa Cruz County Superior Court, Case N
21 21CV002309; *Casas v. Freedom Solar Services, et al.*, Los Angeles Superior Court, Case N
22 21STCV20233; *Serrano v. Barstow Community Hospital*, San Bernardino Superior Court, Case N
23 CIVDS2006967; *Lopez v. Fairway Staffing Services, et al.*, Los Angeles Superior Court, Case N
24 21STCV26640; *Linden v. Marugame Udon USA, LLC*, Los Angeles Superior Court, Case No.
25 20STCV00728; *Salter v. U.S. Reports, et al.*, Los Angeles Superior Court, Case N 19STCV30384;
26 *Perez v. Torn & Glasser, Inc.*, Los Angeles Superior Court, Case N 21STCV43614; *Gomez v. Arya*
27 *Ice Cream Distributing Co., Inc*, Los Angeles Superior Court, Case N 21STCV31170; *Herrera v.*
28 *Coastal Construction & Lumber*, Santa Cruz County Superior Court, Case N 22CV394683; *Garcia*

1 v. *San Jose Water Company*, Santa Clara County Superior Court, Case No. 22CV396328; *Ramirez v.*
2 *Partners Personnel Management Services LLC*, Los Angeles Superior Court, Case N
3 21STCV31253; *Ramirez v. Merrill Gardens LLC*, Eastern District Court of California, Case N1:22-
4 cv-00542-DAD-SAB; *Garcia v. Tri-Valley Plastering, Inc.*, Fresno County Superior Court, Case N
5 22CECG00591; *Garcia v. South Valley Companies, Inc.*, Kern County Superior Court, Case N
6 BCV-22-100465; *Morales v. Wiseguys Custom Home Theater, LLC*, San Diego Superior Court, Case
7 N37-2019-00070151-CU-OE-CTL.

8 25. Artur Tunyan is another partner and attorney at Tunyan Law, APC. He received his Juris
9 Doctorate from the State Yerevan University and his LL.M. from the American University of Armenia
10 and University of Illinois Chicago, School of Law. Prior to moving to California and starting to practice
11 law in California he practiced law in Armenia for about twenty-five years. He oversaw international
12 donor-funded projects for the judiciary and managed public-private partnership initiatives in sectors such
13 as energy, banking, finance, and aviation. He managed complex transactions and litigation matters for
14 many years.

15 26. My current contingent billing rate is consistent with my practice area, legal market and
16 accepted hourly rates considering also that I practiced law in another country for additional 20 years
17 which brings a total of almost 25 years of experience practicing law. The 2023-2024 Adjusted Laffey
18 Matrix states that an attorney with 4 to 7 years experience can reasonably charge \$538 per hour. See
19 <http://www.laffeymatrix.com/see.html>.

20 21 REASONABLENESS OF THE REQUESTED FEE AWARD

22 27. When this case was taken on a contingent fee basis, with the firm agreeing to assume
23 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation,
24 Tunyan Law, APC, paid filing fees, Westlaw fees, mailing, telephone and express mail charges, expert
25 and mediation fees. There was never a guarantee that Tunyan Law, APC, would recoup those
26 expenditures. The firm took on this case, which necessarily required the firm to forego other
27 opportunities, given finite resources to devote to cases.

28 28. Because of the uncertainty of the outcome in this and other wage and hour litigation

undertaken by Tunyan Law, APC, we took this case with the expectation that a risk enhancement, either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be available if we prevailed.

29. Class Counsel's experience in employment class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation.

30. In the past four years, I have settled many wage-and-hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been my experience, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek no more than one third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals performing work for Plaintiff before and after the filing of this matter. That work includes:

- (a) Numerous interviews with our client, Plaintiff, and review of documents provided by Plaintiff;
- (a) Investigation of the matter and exploring the corporate structure of Defendant;
- (b) Legal research regarding the claims in this action;
- (c) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;
- (d) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;
- (e) Review of an amended complaint that added Plaintiff's PAGA claim, and finalization of that complaint;
- (f) Drafting joint statements and joint stipulations;

- (g) Review of payroll and time data;
- (h) Extensive “meet and confer” efforts with Defendant’s counsel regarding the sample size and to obtain relevant documents and information through informal discovery;
- (i) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (j) Research and preparation of the mediation brief;
- (k) Attendance at mediation;
- (l) Communicating with Plaintiff who requested updates or other information regarding this matter;
- (m) Drafting, negotiating, and reviewing multiple drafts of the Settlement and attachments; and
- (n) Preparation of the initial motion for preliminary approval and multiple revisions thereafter.

31. I anticipate that Class Counsel will spend an additional 45 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel has also incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has agreed to a cap on recoverable costs of \$20,000, and if total incurred costs exceed the cap, Class Counsel will request no more than the agreed-upon cap.

THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED
INCENTIVE AWARD

32. Here, Plaintiff seeks an Enhancement Payment of up to **\$10,000.00**. This amount is very reasonable given the risks undertaken by Plaintiff for involvement in the Action. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by

1 Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this
2 Action, expending considerable effort in advancing the interests of the Class. Plaintiff provided
3 information to counsel before the filing of this matter; assisted with informal discovery, the settlement
4 process (which included conferring with counsel during the preparation of Plaintiff's mediation brief);
5 and, regularly conferred with counsel regarding the case whenever questions arose. I estimate that
6 Plaintiff contributed dozens of hours of time to the prosecution of this matter. Plaintiff's declaration also
7 confirms that Plaintiff was an active participant in the filing and settlement of this case. The enhancement
8 also recognizes the considerable risks Plaintiff undertook on behalf of the Class as well as the personal
9 risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former
10 employer, making future employment prospects uncertain and that Plaintiff releases claims beyond
11 wage-and-hour claims released by Class Members.

12 13 THE THIRD-PARTY ADMINISTRATOR

14 33. The parties have agreed that administration will be handled by a third-party
15 administrator. In counsel's experience as class counsel in similar wage-and-hour actions with a similar
16 number of employees, Phoenix Class Action Administration Solutions is fully capable of administering
17 the settlement at a competitive and reasonable cost and should be approved by the Court to administer
18 the settlement notice process. Phoenix Class Action Administration Solutions was selected because it
19 submitted a low bid in the amount of **\$6,000.00** for administration services. Phoenix Class Action
20 Administration Solutions has also provided a declaration confirming its experience and its
21 implementation of measures designed to protect Class Member data and Class Settlement funds.

22 CLASS CERTIFICATION

23 34. The class is ascertainable by objective criteria. The Class Members are: All individuals
24 employed by Defendant in California and classified as "non-exempt" at any time during the Class
25 Period (the "Class Period" is March 30, 2019 through the date upon which the Court grants preliminary
26 approval of this Settlement). "Settlement Class Members" are those Class Members who do not submit
27 timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

28 35. The class is sufficiently numerous. Based upon Defendant's records, Defendant

1 represented that there are approximately 106 Class Members as of the date of mediation. Plaintiff's
2 counsel believes that the data is reliable.

3 36. Plaintiff is typical of the Class. Plaintiff was an employee of Defendant. Plaintiff
4 worked during the class period. Plaintiff's claims are typical of the claims of the Class proposed in this
5 settlement. Like other class members, Plaintiff experienced work under policies and procedures
6 impacting wage and hour compliance. No unique defenses applicable to Plaintiff have been identified
7 that do not also exist as to other Class Members.

8 37. Common *issues* exist. Here, Class Members have shared a common interest in
9 determining whether Defendant violated wage and hour requirements under state and related federal
10 law, including the following issues: i. Whether or not Defendant paid proper wages to the Class; ii.
11 Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided
12 rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of
13 employment to former Class Members; v. Whether or not Defendant paid compensation timely
14 throughout Class Members' employment; vi. Whether or not Defendant provided accurate itemized
15 wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for
16 violation of California Labor Code § 203; viii. Whether or not Defendant reimbursed for necessary
17 business expenses pursuant to California Labor Code § 2802; ix. Whether or not Defendant engaged in
18 unlawful or unfair business practices affecting the Class in violation of California Business and
19 Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are entitled to
20 penalties pursuant to PAGA.

21 38. From our review of the documentation provided, we determined that for purposes of
22 these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the
23 same questions of liability, and applied to all Class Members. Because Class Members would have to
24 prove the same issues of law and fact to prevail, and because their potential legal remedies are identical,
25 it would be preferable to resolve all Class Members' claims by means of the Settlement than to require
26 each Class Member to litigate his or her individual claims. Therefore, common questions predominate
27 over any questions that may be unique to individual Class Members, and class-wide settlement is
28 superior to any other method of resolution.

39. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes its adequacy to represent the Class. Plaintiff's counsel has no known conflicts of interest with absent Class Members. Plaintiff has demonstrated, through participation in this action, a willingness to serve as a representative for the Class. Plaintiff has no known conflicts of interest with absent Class Members and has agreed to place the class's interests above Plaintiff's own. Plaintiff's actions also demonstrate adequacy.

40. By consolidating all of these potential individual actions into one proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but potentially meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, superiority concerns are almost non-existent, since case management is controlled and a methodology for trial need not be identified.

EXHIBITS

41. As noted above, a true and correct copy of the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT is attached hereto as **Exhibit “1.”** The Settlement includes Exhibit A (the “Notice”).

42. Attached hereto as **Exhibit “2”** is a true and correct copy of the submission of the settlement to the Department of Industrial Relations, through its online submission portal.

PAGA SETTLEMENT NOTIFICATION TO DIR

43. Counsel for Plaintiff provided notice of the requested approval of the PAGA settlement through the online submission portal.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 25th day of March 2024, at Glendale, California.

Thom

LILIT TUNYAN, “Declarant”

Exhibit “1”

Lilit Tunyan (SBN 329351)
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Artur Tunyan (SBN 349174)
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Attorneys for Defendant WESTERN SKY DAIRY, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

JESUS GALVAN, as an individual and on behalf
of all employees similarly situated,

Plaintiff,

v.

WESTERN SKY DAIRY, LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: BCV-23-100992

[Assigned for all purposes to Hon. Thomas S.
Clark, Department 17]

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: March 30, 2023
Trial: Not Set

1 **JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION**
2 **SETTLEMENT**

3 This Joint Stipulation of Class and PAGA Representative Action Settlement ("Joint Stipulation of
4 Settlement" or "Settlement" or "Agreement") is made and entered into by and between Plaintiff JESUS
5 GALVAN, individually, and on behalf of all others similarly situated, ("Plaintiff" or "Class
6 Representatives"), and Defendant WESTERN SKY DAIRY, LLC ("Defendant"). Plaintiff and Defendant
7 are collectively referred to herein as "the Parties."

8 This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of
9 Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement
10 of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the
11 event the Court does not enter an order granting final approval of the Class Settlement, as defined below,
12 or the conditions precedent are not met as set in paragraphs 45-47, this Agreement is void and of no force
13 or effect whatsoever, and all Parties to this Settlement shall stand in the same position, without prejudice,
14 as if the Settlement had been neither entered into nor filed with the Court.

15 THE PARTIES STIPULATE AND AGREE as follows:

16 **DEFINITIONS**

17 As used in this Agreement, the following terms shall have the meanings specified below. To the
18 extent terms or phrases used in this Agreement are not specifically defined below, but are defined
19 elsewhere in this Agreement, they are incorporated by reference into this definition section.

- 20 1. "Complaint" refers to the operative complaint, which is the First Amended Complaint, in
21 the Action.
- 22 2. "Action" refers to the matter, entitled *Galvan v. Western Sky Dairy, LLC*, Kern County
23 Superior Court Case No. BCV-23-100992.
- 24 3. "Class Period" means the period from March 30, 2019 through the date the Court grants
25 preliminary approval of this settlement.
- 26 4. "Class" or "Class Members" consist of: All non-exempt employees of Defendant who
27 worked in California during the Class Period. "Settlement Class Members" are those Class Members who
28 do not submit timely exclusion requests to the Settlement Administrator. Defendant's best estimate is that

1 the Class included approximately 106 individuals on February 21, 2024.

2 5. "Class Counsel" means Lilit Tunyan and Artur Tunyan of TUNYAN LAW, APC.

3 6. "Covered Workweeks" means the number of weeks a Class Member worked at
4 Defendant's locations in California during the Class Period.

5 7. "Final Approval" means entry of the Court's order granting final approval of the
6 Settlement.

7 8. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of
8 the Settlement.

9 9. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval
10 of the Settlement.

11 10. "Preliminary Approval" means entry of the Court's Order Granting Preliminary Approval
12 of the Settlement.

13 11. "Response Deadline" means forty-five (45) days after the Settlement Administrator
14 initially mails the Notice to Settlement Class Members and the last date on which Settlement Class
15 Members may submit a Request for Exclusion or written objection to the Settlement. In the case of a re-
16 mailed Notice, the Response Deadline will be the later of 45 calendar days after initial mailing or 14
17 calendar days from re-mailing. The Response Deadline may be extended only as expressly described
18 herein, which date shall be referred to as the "Extended Response Deadline".

19 12. "Defendant's Counsel" means Vanessa Franco Chavez and Anna Burnbaum of Klein,
20 DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP.

21 13. "PAGA Allocation" means the amount that the Parties have agreed to allocate to resolution
22 of the claim for violation of the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§
23 2698, *et seq.*, "PAGA"). The Parties have agreed that the PAGA Allocation will be \$25,000.00 from the
24 Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent (75%), or \$18,750.00, of the PAGA
25 Allocation will be paid to the LWDA ("PAGA Penalty Payment"), and Twenty Five Percent (25%), or
26 \$6,250.00, of the PAGA Allocation will be included in the Net Settlement Amount for PAGA Employees
27 ("PAGA Settlement Payment"). If the Court approves a PAGA Allocation less than the amount agreed to
28 in this Settlement, the Settlement Administrator will allocate the remainder to the Net Settlement Amount.

14. "PAGA Period" means the period between March 30, 2022 through the date of Preliminary Approval of this settlement.

15. "PAGA Employee" means all Class Members that worked at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA Employees are "aggrieved employees" as defined pursuant to PAGA. PAGA Employees cannot opt out of the settlement of the PAGA claim.

16. "PAGA Pay Periods" means the number of pay periods each PAGA Employee worked during the PAGA Period.

17. “PAGA Representative” means Plaintiff.

18. “Released PAGA Claims” means all claims asserted through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representatives in the Notice to the LWDA and are alleged in the Complaint. Plaintiff’s Notice to the LWDA is attached hereto as **Exhibit “A”**.

19. “Released PAGA Claims Period” means the period between March 30, 2022 through the date of Preliminary Approval of this settlement.

20. “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

21. On March 30, 2023, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On June 8, 2023, Plaintiff filed his First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). (The “Action.”).

22. The parties agree that Plaintiff satisfied the administrative exhaustion requirement that is a

prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA") by submission of the notice to the LWDA and Defendant on March 30, 2023.

23. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. Should, for whatever reason, the Settlement not become effective, class certification as part of the Settlement shall have no bearing on and shall not be admissible in connection with whether the Class Members and/or the class claims should be certified in a non-settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to oppose class certification in this or any other action should this Settlement not become effective.

24. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code.

25. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Action.

26. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

27. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

28. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

(a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant

1 that this case and any claims, damages, or causes of action arising out of the
2 disputes which are the subject of this case, be settled and compromised as between
3 the Settlement Class, PAGA Employees, and Defendant, subject to the terms and
4 conditions set forth in this Settlement and the approval of the Court.

5 (b) Effective Date: The "Effective Date" of the Settlement means the date by
6 when both of the following have occurred: (a) the Court enters a Judgment on
7 its Order Granting Final Approval of the Settlement; and (b) the Judgment is
8 final. The Judgment is final as of the latest of the following occurrences (i) the
9 expiration of the period for filing any appeal, writ, or other appellate
10 proceeding opposing the Settlement has elapsed without any appeal,
11 writ, or other appellate proceeding having been filed; (ii) the dismissal of
12 any appeal, writ, or other appellate proceeding opposing the Settlement
13 with no right to pursue further remedies or relief; or (iii) upon the
14 expiration of any time to file a petition for rehearing and the expiration
15 of any time to file any petition in the California Supreme Court or the
16 Supreme Court of the United States following a final appellate opinion
17 or order upholding the Court's final order with no right to pursue further
18 remedies or relief. In the event there is a motion to set aside the
19 judgment filed within 15 days after notice to Class Members pursuant to
20 California Rules of Court, rule 3.771(b), or a motion to intervene filed
21 within 60 days after notice to Class Members pursuant to California
22 Rules of Court, rule 3.771(b), "the expiration of the period for filing any
23 appeal, writ, or other appellate proceeding opposing the Settlement" (as
24 that phrase is used in (b)(i)-(iii), above) will be based on the later of the
25 court's ruling or order on any such motion or entry of final order and
26 judgment certifying the class and approving this Settlement. In this
27 regard, it is the intention of the Parties that the Settlement shall not
28 become effective until the Court's order approving the Settlement is
completely final and there is no further recourse by an appellant or

1 objector who seeks to contest the Settlement.

2 (c) Gross Settlement Amount: Defendant's maximum total payment under the
3 Settlement, including all attorney's fees and costs, the Service Payment to the
4 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
5 any other payments provided by this Settlement, is Two Hundred Ninety-Five
6 Thousand Dollars and Zero Cents (\$295,000) ("Gross Settlement Amount"),
7 subject to the Escalator Clause and except that, to the extent that any portions of the
8 Class Members' Settlement Payments constitute wages, Defendant will be
9 separately responsible for any employer payroll taxes required by law, including
10 the employer FICA, FUTA, and SDI contributions.

11 (d) Escalator Clause: On February 21, 2024, Defendant represented that the number of
12 workweeks worked in the Class Period for Class Members was approximately
13 10,660. If it is later determined that, on the date of Preliminary Approval, the
14 number of workweeks in the Class Period is more than 10% greater than the
15 estimated number of workweeks on February 21, 2024 (i.e. exceeds 11,726
16 workweeks), Defendant can either have the Gross Settlement Amount increased by
17 1% for each percent over the 10% threshold that the actual number of workweeks
18 exceeds the estimated number of workweeks (e.g., if the number of workweeks
19 increases by 11%, the Gross Settlement will increase 1%), or have the Class Period
20 end on the date that the estimated number of workweeks exceed 10% threshold or
21 11,726 workweeks (the "Escalator Clause").

22 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
23 revert to Defendant.

24 (f) No Claims Required: Class Members will not be required to submit a claim to
25 receive their Settlement payment.

26 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
27 deducting from the Gross Settlement Amount (\$295,000.00) the following sums,
28 subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of

1 the Gross Settlement Amount, or \$98,333.33); (2) reasonable litigation costs (not to
2 exceed \$20,000.00); (3) the Service Payment to Plaintiff in the amount of
3 \$10,000.00; (4) the PAGA Penalty Payment in the amount of \$18,750.00 (which is
4 75% of the PAGA Allocation); and (5) costs of settlement administration
5 (estimated not to exceed \$15,000). Settlement Payments to the Class Members and
6 PAGA Employees will be calculated by the Settlement Administrator and paid out
7 of the Net Settlement Amount as set forth below.

8 (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the
9 Settlement Class Members' Settlement Payments constitute wages, Defendant will
10 be separately responsible for any **employer** payroll taxes required by law,
11 including the employer FICA, FUTA, and SDI contributions. Except for any
12 employer payroll taxes, it is understood and agreed that Defendant's maximum
13 total liability under this Settlement shall not exceed the Gross Settlement Amount.
14 The Settlement Administrator will calculate and submit the Defendant's employer
15 share of payroll taxes after advising Defendant of the total amount owed, in
16 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
17 Defendant in that amount when the Gross Settlement Amount is delivered to the
18 Settlement Administrator.

19 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
20 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
21 Member (i.e., those Class Members who do not opt out of the Class Settlement, as
22 defined above) will be paid a pro-rata share of the Net Settlement Amount, less the
23 PAGA Settlement Payments totalling \$6,250, as calculated by the Settlement
24 Administrator. The pro-rata share will be determined by comparing the individual
25 Settlement Class Member's Covered Workweeks employed during the Class
26 Period in California to the total Covered Workweeks of all the Settlement Class
27 Members during the Class Period as follows: [Workweeks worked by a Settlement
28 Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class

Members] $\times$ [Net Settlement Amount – all PAGA Settlement Payments] = individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members.

- (j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $\text{[PAGA Pay Periods worked by a PAGA Employee]} \div \text{[Sum of all PAGA Pay Periods worked by all PAGA Employees]} \times \text{[PAGA Settlement Payment to Employees, i.e. \$6,250.00]} = \text{individual PAGA Employee's portion of the PAGA Settlement Payment}$. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.
- (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 10% to wages, 45% to penalties and 45% to interest. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid as set forth above, including but

1 not limited to the Defendant's FICA and FUTA contributions, based on the
2 payment of claims to the Class Members. IRS Forms 1099 will be issued to each
3 Class Member reflecting the payments for penalties and interest. Class Members
4 are responsible to pay appropriate taxes due on the Settlement Payments they
5 receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to
6 each Class Member with respect to such payments. All PAGA Settlement
7 Payments will be allocated as 100% penalties.

8 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
9 Payments to individual Class Members shall be deemed to be paid to such Class
10 Member solely in the year in which such payments actually are received by the
11 Class Member. It is expressly understood and agreed that the receipt of such
12 Settlement Payments will not entitle any Class Member to additional compensation
13 or benefits under any company bonus, contest or other compensation or benefit
14 plan or agreement in place during the period covered by the Settlement, nor will it
15 entitle any Class Member to any increased retirement, 401(k) benefits or matching
16 benefits or deferred compensation benefits. It is the intent that the Settlement
17 Payments provided for in this Settlement are the sole payments to be made by
18 Defendant to the Class Members, and that the Class Members are not entitled to
19 any new or additional compensation or benefits as a result of having received the
20 Settlement Payments (notwithstanding any contrary language or agreement in any
21 benefit or compensation plan document that might have been in effect during the
22 period covered by this Settlement).

23 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
24 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
25 of the Gross Settlement Amount (\$98,333.33) and reimbursement of litigation
26 costs and expenses not to exceed \$20,000.00. Approved attorney's fees and
27 litigation costs shall be paid at the same time Settlement Payments issue to the
28 Settlement Class. Defendant will not oppose requests for these payments provided

1 that the requests do not exceed these amounts. If the Court approves less than the
2 amounts requested for Class Counsel's fees and costs, the Administrator will
3 allocate the remainder to the Net Settlement Amount. Releasees shall have no
4 liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to
5 any portion of Class Counsel's fees and costs. The Administrator will pay Class
6 Counsel's fees and costs as approved by the Court and using an IRS 1099 Form.
7 Class Counsel assumes full responsibility and liability for taxes owed on the award
8 of Class Counsel's fees and costs and holds Defendant harmless, and indemnifies
9 Defendant, from any dispute or controversy regarding any division or sharing of
10 any of these payments.

11 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
12 Defendant will not object to Class Counsel's application for a payment of
13 \$10,000.00 to Plaintiff for service as a Class Representative ("Service Payment").
14 Defendant will not oppose Plaintiff's request for a Service Payment that does not
15 exceed this amount. If the Court approves a Service Payment less than the amount
16 requested, the Administrator will retain the remainder in the Net Settlement
17 Amount. It is understood that the Service Payment is in addition to the individual
18 Settlement Payment to which a Class Representative is entitled to along with the
19 other Class Members. Defendant or the Settlement Administrator will issue an IRS
20 Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be
21 individually responsible for correctly characterizing this compensation on personal
22 income tax returns for tax purposes and for paying any taxes on the amounts
23 received and assumes full responsibility and liability for employee taxes owed on
24 the Service Payment. Plaintiff agrees not to opt out or object to the Service
25 Payment as the Class Representative.

26 (o) Plaintiff's Release of Individual Claims: In exchange for the Service Payment,
27 Plaintiff and his respective former and present spouses, representatives, agents,
28 attorneys, heirs, dependents, administrators, devisees, legatees, executors, trustees,

1 conservators, guardians, personal representatives, successors, and assigns, whether
2 individual, class, representative, legal, equitable, direct or indirect, or any other
3 type of any capacity, shall and does hereby forever generally release, discharge,
4 and agree to hold harmless the Releasees from any and all charges, complaints,
5 claims, liabilities, obligations, promises, agreements, controversies, damages,
6 causes of action, suit, rights, demands, costs, losses, transactions, occurrences, or
7 debts or expenses (including attorney fees and costs), known or unknown, at law or
8 in equity which she may now have or may become aware of after the signing of
9 this Agreement, including, but not limited to: (a) arising out of or in any way
10 connected with their employment with Defendant, including the Released Claims,
11 (b) all claims that were, or reasonably could have been, alleged, based on the facts
12 contained, in the Action; (c) all PAGA claims that were, or reasonably could have
13 been, alleged based on facts contained in the Action, Plaintiff's PAGA Notice, or
14 ascertained during the Action and released under Paragraph 39 , below, and (d) and
15 any and all transactions, occurrences, or matters between the Parties occurring prior
16 to the date this Agreement is fully executed. Without limiting the generality of the
17 foregoing, this release shall include, but not limited to, any and all claims under: (a)
18 the Americans with Disabilities Act; (b) Title VII of the Civil Rights Act of 1964;
19 (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981; (e) the Age Discrimination
20 in Employment Act; (f) the Fair Labor Standards Act; (g) the Equal Pay Act; (h)
21 the Employee Retirement Income Securities Act, as amended; (i) the Consolidated
22 Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the
23 Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California
24 Fair Employment and Housing Act; (n) the California Constitution; (o) the
25 California Labor Code; (p) the California Government Code; (q) the California
26 Civil Code; and (r) any and all other federal, state, and local statutes, ordinances,
27 regulations, rules, and other laws, and any and all claims based on constitutional,
28 statutory, common law, or regulatory grounds as well as any other claims based on

1 theories of wrongful or constructive discharge, breach of contract or implied
2 contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
3 emotional distress, negligent infliction of emotional distress, or damages under any
4 other federal, state, or local statutes, ordinances, regulations, rules, or laws. This
5 release is for any and all relief, no matter how denominated, including, but not
6 limited to, back pay, front pay, vacation pay, bonuses, compensatory damages,
7 tortious damages, liquidated damages, punitive damages, damages for pain and
8 suffering, and attorney fees and costs. ("Plaintiff's Release.") Plaintiff's Release
9 does not extend to any claims or actions to enforce this Agreement, or to any
10 claims for vested benefits, unemployment benefits, disability benefits, social
11 security benefits, workers' compensation benefits that arose at any time, or based
12 on occurrences after signing this Agreement. Plaintiff acknowledges that Plaintiff
13 may discover facts or law different from, or in addition to, the facts or law that
14 Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's
15 Release shall be and remain effective in all respects, notwithstanding such different
16 or additional facts or Plaintiff's discovery of them.

17 (p) Plaintiff's Waiver of Rights under California Civil Code section 1542: Plaintiff
18 has agreed to release all claims, demands, rights, liabilities and causes of action
19 of every nature and description whatsoever, known or unknown, asserted or that
20 might have been asserted, whether in tort, contract, or for violation of any state
21 or federal statute, rule or regulation arising out of, relating to, or in connection
22 with any act or omission by or on the part of any of the Released Parties
23 committed or omitted prior to the execution hereof ("Plaintiff's Released
24 Claims"). Plaintiff and Defendant both stipulate and agree that each of them
25 have expressly waived and relinquished, to the fullest extent permitted by law,
26 the provisions, rights and benefits of Section 1542 of the California Civil Code,
27 or any other provision under federal or state law, which provides:

28 **"A general release does not extend to claims which the creditor or releasing**

1 party does not know or suspect to exist in his or her favor at the time of
2 executing the release and that, if known by him or her, would have
3 materially affected his or her settlement with the debtor or released party.”

4 The Parties understand that the General Release does not release any claims that
5 they cannot lawfully release. It is also understood and agreed by Defendant that
6 by this release Plaintiff is not waiving unemployment and/or any state disability
7 insurance benefits pursuant to the terms of applicable state law, workers’
8 compensation claims, any rights which are not subject to waiver as a matter of
9 law.

10 (q) Settlement Administrator: The Settlement Administrator will be Phoenix Class
11 Action Administration Solutions which was selected for its lowest bid of \$6,000.

12 (r) Funding of Settlement Account: Defendant will fund the settlement
13 account and distribute Gross Settlement Amount to the Settlement
14 Administrator by January 10, 2025, or the Effective Date, whichever is
15 later. Defendant may fund the Gross Settlement Amount based on these
16 deadlines in multiple payments without penalty.

17 (s) Distribution and Mailing of Settlement Payments: The Settlement
18 Administrator shall mail the Settlement Payments to the Class Members within
19 fourteen (14) calendar days of receipt of the Gross Settlement Amount from
20 Defendant, provided that the Settlement Administrator has delivered to the
21 Parties an accounting of the amounts to be paid by Defendant pursuant to the
22 terms of this Settlement.

23 (t) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
24 material terms of the proposed Settlement, along with instructions about how to
25 object or request exclusion from the proposed class action Settlement (“Notice”).
26 For each Class Member, there will be pre-printed information on the mailed
27 Notice, based on Defendant’s records, stating the Class Member’s Covered
28 Workweeks during the Class Period and the estimated total Settlement Payment

1 under the Settlement, including the Settlement Class Payment and the PAGA
2 Settlement Payment that will be distributed irrespective of any exclusion request.
3 The pre-printed information based on Defendant's records shall be presumed to be
4 correct. A Class Member may dispute the pre-printed information on the Notice as
5 to his or her Covered Workweeks during the Class Period. Class Members must
6 submit any dispute regarding the information on the Notice as to his or her
7 Covered Workweeks within the Response Deadline.

8 (u) Settlement Notice Language: The Notice will issue in English and Spanish.

9 (v) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

10 Class Members submitting a Request for Exclusion will nevertheless receive their
11 pro-rata share of the PAGA Settlement Payment. If the Court approves the
12 compromise of the PAGA Claim, all Class Members are bound by the Court's
13 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
14 California Labor and Workforce Development Agency at or before the time
15 Plaintiff files the motion for preliminary approval.

16 (w) Resolution of Workweek and PAGA Pay Period Disputes: If a Class Member
17 disputes the accuracy of Defendant's records used to calculate Covered
18 Workweeks or PAGA Pay Periods, the Parties' counsel and the Settlement
19 Administrator will review Defendant's records and any information or documents
20 submitted by the Class Member in an attempt to resolve the dispute informally.
21 The Settlement Administrator will provide copies of such records and information
22 to Class Counsel only after redacting Class Member identifying information,
23 including but not limited to name, address, social security number, email address,
24 and phone number. If the dispute cannot be resolved informally by the Parties'
25 counsel and the Settlement Administrator, the dispute, and all documents
26 pertaining to the dispute, will be submitted to the Court for final resolution. The
27 Class Member must submit information or documents supporting his or her
28 position to the Settlement Administrator prior to the expiration of the Response

1 Deadline. Information or documents submitted after the expiration of the
2 Response Deadline will not be considered by the Settlement Administrator, unless
3 otherwise agreed to by the Parties.

- 4 (x) Right of Class Member to Request Exclusion from the Settlement: Any Class
5 Member may request to be excluded from the Class by returning a request for
6 exclusion to the Settlement Administrator within the Response Deadline ("Request
7 for Exclusion"). A Request for Exclusion must clearly and unequivocally state a
8 desire to be excluded from the Class, with a statement comparable to the following:

9 "I WANT TO BE EXCLUDED FROM THE CLASS IN THE
10 GALVAN V. WESTERN SKY DAIRY, LLC CLASS
11 ACTION LAWSUIT, PENDING IN KERN COUNTY
12 SUPERIOR COURT CASE NO. BCV-23-100992."

13 No specific wording is required to state a Request for Exclusion, so long as it is
14 clear and unequivocal. Any Request for Exclusion must include the name, address,
15 telephone number, the last four digits of the Class Member's Social Security
16 Number (to confirm the Class Member's identity and make certain that only
17 persons requesting exclusion are removed from the settlement) and Class
18 Member's signature. Any such request must be made in accordance with the terms
19 of the Notice, and the Notice will advise Class Members of these requirements.
20 Any Class Member who timely submits a Request for Exclusion in compliance
21 with these requirements (i) shall not have any rights under this Settlement other
22 than a right to receive a pro-rata share of the portion of the PAGA payment
23 allocated to the Class Members if the Class Member is also PAGA Employee; (ii)
24 shall not be entitled to receive any Settlement Payments under this Settlement other
25 than as stated in (i) in this paragraph; and (iii) shall not be bound by this Settlement
26 or the Court's Order and Final Judgment other than as it applies to the PAGA
27 Claim.

- 28 (y) Right of Settlement Class Member to Object to The Settlement: Any Class
Member may object to the Settlement. To object, the Class Member may (1)

1 appear in person (including through an audio or video call appearance as allowed
2 by the Court) at the Final Approval Hearing to explain any objection, (2) have an
3 attorney object for the Class Member, or (3) submit a simple written brief or
4 statement of objection to the Settlement Administrator. If any Class Member
5 chooses to submit a written objection, the written objection should contain
6 sufficient information to confirm the identity of the objector and the basis of the
7 objection, including (1) the full name of the Class Member; (2) the signature of the
8 Class Member; (3) the grounds for the objection; and (4) the case and number, and
9 (5) be postmarked within the Response Deadline to permit adequate time for
10 processing and review by the Parties of the written statement or objection. Class
11 Counsel shall ensure that any written objections are transmitted to the Court for the
12 Court's review (either by Class Counsel or as an attachment to declaration from the
13 Settlement Administrator). Regardless of the form, an objection alone will not
14 satisfy the requirement that a Settlement Class Member must either make a timely
15 complaint in intervention before final judgment or by file a motion to set aside and
16 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
17 appeal entry of judgment approving this Settlement, as is required under the
18 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.
19 5th 260 (2018). If the objecting Class Member does not formally intervene in the
20 action or move to set aside any judgment and/or the Court rejects the Class
21 Member's objection, the Class Member will still be bound by the terms of this
22 Agreement. Class Counsel and Defendant's Counsel may, at least five (5) calendar
23 days (or some other number of days as the Court shall specify) before the Final
24 Approval Hearing, file responses to any written objections submitted to the Court.

25 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

26 29. Subject to the Court's approval, and subject to reconsideration by the Parties after a
27 competitive bidding process, the Parties have agreed to the appointment of Phoenix Class Action
28 Administration Solutions to perform the customary duties of Settlement Administrator. The Settlement

1 Administrator will mail the Notice, both in English and Spanish, to the Class Members.

2 30. The Settlement Administrator will independently review the Covered Workweeks and
3 PAGA Pay Periods attributed to each Class Member and will calculate the estimated amounts due to each
4 Class Member and the actual amounts due to each Settlement Class Member in accordance with this
5 Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its
6 findings. The Settlement Administrator shall be granted reasonable access to Defendant's records in order
7 to perform its duties.

8 31. In accordance with the terms of this Settlement, and within fourteen (14) calendar days of
9 receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send
10 out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will
11 be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the
12 Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will
13 have continuing jurisdiction over the terms and conditions of this Settlement until all payments and
14 obligations contemplated by this Settlement have been fully carried out. Within fourteen (14) calendar
15 days of receipt of the Gross Settlement Amount from Defendant the Settlement Administrator will also
16 distribute the Service Payment to Plaintiff, attorney's fees and costs to Class counsel, PAGA penalty
17 payment to LWDA and the Settlement Administrator's fees.

18 32. The Settlement Administrator will post the court orders granting preliminary and final
19 approval of the Settlement and the Final Judgment approving the Settlement on the Settlement
20 Administrator's website for a period of not less than 90 calendar days after the final judgment is entered.
21 The address of that website will be included in the Notice.

22 **ATTORNEY'S FEES AND COSTS**

23 33. In consideration for resolving this matter and in exchange for the release of all claims by
24 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
25 Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount
26 (\$98,333.33 of \$295,000.00) and litigation costs not to exceed \$20,000.00. The amounts set forth above
27 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
28 fees and costs to be incurred in connection with the approval by the Court of this Settlement and

1 administration of the Settlement.

2 **THE NOTICE PROCESS**

3 34. A Notice in approximately the form attached hereto as **Exhibit "B"**, and as approved by
4 the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail and
5 posted on the Settlement Administrator's website at least until the date of the Final Approval Hearing.
6 The Notice packet shall be translated into Spanish so that Spanish and English language versions of the
7 Notice packet are included in the mailing. Any returned envelopes from this mailing with forwarding
8 addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

9 (a) Within 15 calendar days from the date of Preliminary Approval of this Settlement
10 by the Court, Defendant shall provide to the Settlement Administrator a class
11 database containing the following information for each Class Member: (1) name;
12 (2) last known address; (3) social security number; (4) dates paid, and (5) dates of
13 employment at Defendant's location in California. This database shall be based on
14 Defendant's payroll and other business records and shall be provided in a format
15 acceptable to the Settlement Administrator. Defendant agrees to consult with the
16 Settlement Administrator prior to the production date to ensure that the format will
17 be acceptable to the Settlement Administrator. The Settlement Administrator will
18 run a check of the Class Members' addresses against those on file with the U.S.
19 Postal Service's National Change of Address List; this check will be performed
20 only once per Class Member by the Settlement Administrator. Absent mutual
21 written agreement of counsel for the Parties or Court order, the Settlement
22 Administrator will keep this database confidential and secure and use it only for the
23 purposes described herein, and will return this database to Defendant upon Final
24 Approval of the settlement or destroy electronic records containing the database
25 after the Settlement is final and all payments are distributed as required under this
26 Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized
27 data showing the workweeks and pay periods worked by each Class Member, with
28 Class Member identity concealed through use of an employee number or number

1 assigned by the Settlement Administrator.

- 2 (b) Within 14 calendar days after the Class database is provided to the Settlement
3 Administrator, the Settlement Administrator will mail the Notices to the Class
4 Members by First Class United States mail and post a copy of the Notice on the
5 Settlement Administrator's website at least until the date of the Final Approval
6 Hearing.
- 7 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
8 the initial Response Deadline shall be resent to the forwarding address, if any, on
9 the returned envelope. A returned Notice will be forwarded by the Settlement
10 Administrator any time that a forwarding address is provided with the returned
11 mail. If there is no forwarding address, the Settlement Administrator will do a
12 computer search for a new address using the Class Member's social security
13 number or other information. In any instance where a Notice is re-mailed, that
14 Class Member will have until the extended Response Deadline as described above.
15 A letter prepared by the Settlement Administrator will be included in the re-mailed
16 Notice in that instance, stating the extended Response Deadline if different than the
17 original Response Deadline. Upon completion of these steps by the Settlement
18 Administrator, Defendant and the Settlement Administrator shall be deemed to
19 have satisfied their obligations to provide the Notice to the affected Class Member.
20 The affected Class Member shall remain a member of the Settlement Class and
21 shall be bound by all the terms of the Settlement and the Court's Order and Final
22 Judgment.
- 23 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
24 Final Approval Hearing, or such other date as set by the Court, a declaration by the
25 Settlement Administrator of due diligence and confirming mailing of the Notices.

26 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

27 35. As set forth above, each Class Member will have until the expiration of the applicable
28 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class

1 Member's Covered Workweek or PAGA Pay Periods information on the Notice. No disputes will be
2 honored if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the
3 untimely dispute. Each Class Member is responsible to maintain a copy of any documents sent to the
4 Settlement Administrator and a record of proof of mailing.

5 36. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
6 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
7 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
8 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
9 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
10 within that time, and the Class Member's relevant claims will remain released by the Settlement.
11 Settlement Payment checks which have expired will not be reissued to Class Members.

12 37. Funds from unclaimed, uncashed or abandoned Settlement Payment checks, based on a
13 180-day void date, shall be transmitted to a Court-approved nonprofit organization or foundation,
14 Bakersfield Angels subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy
15 Pres Recipient"). Consistent with the purpose of Section 384, Bakersfield Angels was selected because its
16 mission is to support children, youth, and families in the foster care community by offering consistent
17 support through intentional giving, relationship building, and mentorship. The Parties, Class Counsel and
18 Defense Counsel represent, by their signatures hereon, that they have no interest or relationship, financial
19 or otherwise, with the intended Cy Pres Recipient.

20 38. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
21 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
22 be made to Class Members (to be identified anonymously by employee number or other identifier). A
23 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
24 Defendant's Counsel and filed with the Court by Class Counsel.

25 **RELEASE BY THE CLASS**

26 39. Upon the Final Approval by the Court of this Settlement and Defendant's payment of all
27 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
28 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid

1 and timely Request for Exclusion as to claims other than the PAGA claim, will release claims as follows:

- 2 (a) **Identity of Released Parties.** The released parties are Defendant and any of its
3 former, future, and present parent, subsidiary, affiliate, partners, joint ventures,
4 assigns, predecessor or successor, and all agents, employees (current and former),
5 officers, directors, insurers and attorneys (collectively "Releasees").
- 6 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
7 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's
8 obligation to provide to the Settlement Administrator a sum in the amount required
9 to satisfy all required payments and distributions pursuant to this Settlement and
10 the Order and Judgment of Final Approval. Class Members will not release the
11 Released Claims or Released PAGA Claims until both the Effective Date of the
12 Settlement has occurred, and Defendant has paid all amounts owing under the
13 Settlement.
- 14 (c) **Claims Released by Settlement Class Members.** Unless he or she has submitted
15 a timely and valid Request for Exclusion (which will not effectuate an opt-out from
16 the release of Released PAGA Claims), each and every Class Member, on behalf
17 of themselves and their respective former and present representatives, agents,
18 attorneys, heirs, dependents, administrators, devisees, legatees, executors, trustees,
19 conservators, guardians, personal representatives, successors, and assigns, whether
20 individual, class, representative, legal, equitable, direct or indirect, or any other
21 type of any capacity, shall and do hereby forever release, discharge, and agree to
22 hold harmless the hereby releases Releasees from the following claims for the
23 entire Class Period:
- 24 1) any and all claims stated in the Plaintiff's First Amended Complaint, in
25 Plaintiff's PAGA notice to the LWDA dated March 30, 2023, or that
26 could have been stated based on the facts alleged in the First Amended
27 Complaint or Plaintiff's PAGA notice to the LWDA, including but not
28 limited to state wage and hour claims (including all claims under the

California Labor Code and Industrial Welfare Commission Wage Orders) for: failure to provide required meal periods or pay meal period premiums in lieu thereof (including, but not limited to, first and second meal periods and alleged failures due to rounding, off-the-clock work, remaining on premises or on-duty during meal periods, untimely, short, interrupted, or otherwise non-compliant meal periods); failure to provide required rest periods or pay rest period premiums in lieu thereof (including, but not limited to, alleged failures due to rounding, off-the-clock work, remaining on premises or on-duty during rest periods, untimely, short, interrupted, or otherwise non-compliant rest periods); failure to pay overtime wages (including, but not limited to, alleged failures due to inaccurate calculation of wages, rounding, off-the-clock work, remaining on premises or on-duty during rest periods, untimely, short, interrupted, or otherwise non-compliant meal and rest periods); failure to pay minimum wages (including, but not limited to, alleged failures due to inaccurate calculation of wages, rounding, or off-the-clock work); failure to pay all wages due to discharged and quitting employees and related waiting time penalties; failure to maintain required records (including, but not limited to, failure to maintain and furnish accurate itemized wage statements); failure to indemnify employees for necessary expenditures incurred in discharge of duties (including, but not limited to, alleged failures to reimburse employees for personal cell phones, tools and supplies, uniforms, and other travel expenses); unlawfully withholding wages; interest, penalties, and attorneys' fees; and the related provisions of the Labor Code and penalties under the Private Attorneys General Act sections 2698, et seq., and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) ("Released Claims"),

2) in addition, as to *all* Class Members employed during the Released PAGA

1 Claims Period, whether requesting exclusion from the Settlement or not,
2 claims arising under the Private Attorneys General Act of 2004, Labor
3 Code § 2698 et seq., to the extent asserted in Plaintiff's administrative
4 exhaustion letter submitted to the LWDA (**Exhibit A**) and the First
5 Amended Complaint in this matter, including, but not limited to, any and
6 all claims for PAGA penalties pursuant to the applicable Wage Orders and
7 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558,
8 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 2802. (i.e., the Released
9 PAGA Claims).

10 (d) **Labor Code 206.5 Deemed Not to Apply.** Unless they submit a timely and
11 complete Request for Exclusion, Class Members will be deemed to have
12 acknowledged and agreed that their claims for wages and/or penalties in the Action
13 are disputed, and that the Settlement Payments constitute payment of all sums
14 allegedly due to them. Participating Class Members will be deemed to have
15 acknowledged and agreed that California Labor Code Section 206.5 is not
16 applicable to the Individual Class Payment. That section provides in pertinent part
17 as follows:

18 “An employer shall not require the execution of a release of a claim or
19 right on account of wages due, or to become due, or made as an
20 advance on wages to be earned, unless payment of those wages has been
21 made.”

22 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

23 40. Plaintiff shall submit this Joint Stipulation of Class Action Settlement to the Court in
24 support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its
25 fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class and PAGA
26 Representative Action Settlement, Plaintiff shall apply to the Court for the entry of an order:

27 (a) Scheduling a final approval and fairness hearing on the question of whether the
28 proposed Settlement, including payment of attorney's fees and costs, and the Class

Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;

(b) Certifying a Class for settlement purposes only;

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

(d) Directing the mailing and on-line posting of the Notice;

(e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;

(f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,

(g) Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

41. Defendant and its their counsel agree to cooperate to obtain approval of the Settlement, pursuant to the terms set forth herein.

42. Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court Plaintiff's motion for preliminary approval, motion for final approval, and supporting papers at least five (5) days prior to filing each such document.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

43. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

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

(b) Approving Class Counsel's application for an award of attorney's fees and costs;

(c) Approving the Service Payment to the Class Representative;

(d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting

1 duties under the Settlement.

2 (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final
3 Settlement Class for the purpose of entering into and implementing the Agreement;

4 (f) Entering a final judgment in the action as to all PAGA and Class Claims and
5 related issues;

6 (g) Adjudging that notwithstanding the submission of a timely Request for Exclusion,
7 Class Members are still bound by the settlement and release of the Released PAGA
8 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46
9 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to
10 the Released PAGA Claims, and further affirms that the State's claims for civil
11 penalties pursuant to PAGA are also extinguished;

12 (h) Directing the posting of the settlement documents provided in Paragraph 32 and
13 final judgment on a website maintained by the Settlement Administrator for a
14 period of not less than 90 calendar days after entry of final judgment.

15 Any revised final judgments will also be provided to Defendant's Counsel for review and approval before
16 they are submitted to the Court.

17 **POSTING OF FINAL JUDGMENT**

18 44. Within ten (10) days after the Court has held a Final Approval Hearing and entered the
19 Judgment certifying the Class for settlement purposes only and approving the Settlement, the Settlement
20 Administrator will give notice of judgment to Class Members pursuant to California Rules of Court, rule
21 3.771(b) by posting a copy of said Judgment on its website at a web address to be included in the Notice.

22 **NULLIFICATION AND TERMINATION**

23 45. This Settlement will be null and void if any of the following occur: (a) the Court should for
24 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
25 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
26 adjustments made to the attorney's fees and costs or granting of Service Payment or settlement money
27 distribution terms; (c) the Court should for any reason fail to enter the final judgment; (d) the final
28 judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final

1 for any other reason.

2 46. If 5% or more of the Class Members opt out of this Settlement, then Defendant in its sole
3 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
4 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
5 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
6 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than fifteen
7 (15) days prior to the date of the Final Approval Hearing or fifteen (15) days after the Extended Response
8 Deadline, whichever is later. If this option is exercised by Defendant, Defendant shall be solely
9 responsible for the costs incurred by the Settlement Administrator for the settlement administration.

10 47. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
11 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
12 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all
13 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
14 neither entered into nor filed with the Court.

15 **PARTIES' AUTHORITY**

16 48. The signatories hereto hereby represent that they are fully authorized to enter into this
17 Settlement and bind the Parties hereto to the terms and conditions thereof.

18 **MUTUAL FULL COOPERATION**

19 49. The Parties agree to fully cooperate with each other to accomplish the terms of this
20 Settlement including, but not limited to, execution of such documents and taking such other action as
21 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
22 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
23 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
24 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
25 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
26 Court's preliminary and final approval of this Settlement.

27 **NO PRIOR ASSIGNMENTS**

28 50. The Parties and their respective counsel represent, covenant, and warrant that they have not

1 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
2 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
3 released and discharged except as set forth herein.

4 **NO ADMISSION OF LIABILITY**

5 51. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
6 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
7 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
8 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
9 attendant inconvenience and expenses.

10 **ENFORCEMENT ACTIONS**

11 52. The Parties agree that following entry of the Final Approval Order and Judgment, this
12 Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing
13 jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms,
14 conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section
15 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other
16 proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
17 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
18 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
19 incurred in connection with any enforcement actions.

20 53. Except as otherwise specifically provided for herein, each party shall bear his or its own
21 attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them or arising out of the Action and
22 shall not seek reimbursement thereof from any other party in this Agreement.

23 **NOTICES**

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

28 Class Counsel:

Counsel for Defendant:

Lilit Tunyan
ltunyan@tunyanlaw.com
Artur Tunyan
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Vanessa Franco Chavez
vchavez@kleinlaw.com
Anna Burnbaum
aburnbaum@kleinlaw.com
KLEIN, DENATALE, GOLDNER
10000 Stockdale Highway, Suite 200
Bakersfield, CA 93311
Telephone: (661) 395-1000
Facsimile: (661) 326-0418

CONSTRUCTION

55. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

USE AND RETURN OF CLASS DATA

56. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of Class Member data or records provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Member data or records received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of said data and records.

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

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

INTEGRATION CLAUSE

59. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

APPEALS

60. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

61. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

BINDING ON ASSIGNS

62. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and

1 their respective heirs, trustees, executors, administrators, successors and assigns.

2 **CLASS COUNSEL SIGNATORIES**

3 63. It is agreed that because the members of the Class are so numerous, it is impossible or
4 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
5 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
6 have the same force and effect as if this Settlement were executed by each member of the Class.

7 **COUNTERPARTS**

8 64. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
9 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
10 deemed an original, and, when taken together with other signed counterparts, shall constitute one
11 Settlement, which shall be binding upon and effective as to all Parties.

12 **CALENDAR DAYS**

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

16 **CONFIDENTIALITY & PUBLIC COMMENT**

17 66. The Class Representative and Class Counsel shall only disclose matters of public record
18 other than to Class Members, who may receive information about the Settlement that is not in the public
19 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
20 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
21 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no
22 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings.

23 **FINAL JUDGMENT**

24 67. The Parties agree that, upon Final Approval of the Settlement, final judgment of this
25 Action will be made and entered in its entirety. The Final Judgment may be included in the Order granting
26 Final Approval of the Settlement.

27 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
28 Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

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IT IS SO STIPULATED.

Plaintiff & Class Representatives:

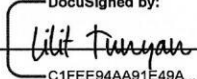
Dated: 3/15/2024 | 4:51 PM PDT

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By: _____
JESUS GALVAN

Plaintiff's Counsel:

Dated: 3/15/2024 | 4:51 PM PDT

TUNYAN LAW, APC
DocuSigned by:

C1FEE94AA91E49A...
By: _____
Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff JESUS GALVAN

Defendant:

Dated: **WESTERN SKY DAIRY, LLC**

By: _____
Wilma De Jager

Signature

On behalf of Western Sky Dairy, LLC, as Partner

Defendant's Counsel:

Dated: **KLEIN, DENATALE, GOLDNER**

By: _____
Vanessa Franco Chavez
Anna Burnbaum

Attorneys for Defendant
WESTERN SKY DAIRY, LLC

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IT IS SO STIPULATED.

Plaintiff & Class Representatives:

Dated: _____ By: _____
JESUS GALVAN

Plaintiff's Counsel:

Dated: _____ TUNYAN LAW, APC
By: _____
Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiff JESUS GALVAN

Defendant:

Dated: _____ WESTERN SKY DAIRY, LLC
By: Wilma De Jager
Wilma De Jager
Wilma De Jager
Signature

On behalf of Western Sky Dairy, LLC, as Partner

Defendant's Counsel:

Dated: _____ KLEIN, DENATALE, GOLDNER
By: Vanessa Franco Chavez
Vanessa Franco Chavez
Anna Burnbaum
Attorneys for Defendant
WESTERN SKY DAIRY, LLC

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 30, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Western Sky Dairy, LLC
18501 Old River Road
Bakersfield, CA 93311

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Western Sky Dairy, LLC
Barry L Goldner
10000 Stockdale Highway Suite 200
Bakersfield, CA 93311

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Jesus Galvan v. Western Sky Dairy, LLC*

To Whom It May Concern:

Please be advised that my office has been retained by Jesus Galvan ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§

2699, *et seq.*) against his former employer Western Sky Dairy, LLC (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Kern County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a milker from approximately May 2019 to March 24, 2023, primarily in Kern County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 6 days per week, and between 9 to 12 hours each workday.

Throughout Plaintiff’s employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including straight time wages and overtime wages. Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate.

Throughout the statutory period, Defendant also failed to maintain accurate time records and falsified Plaintiff's and the Aggrieved Employees' time records. Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock", but Plaintiff and the Aggrieved employees were only required to input their scheduled start time despite the fact that they would arrive earlier than their scheduled start time to perform some preparatory work like turning on the machines and other preparatory work. Additionally, Plaintiff and the Aggrieved Employees were required to arrive earlier than their scheduled shift start to make sure they have enough time to clock in to work on time without waiting in line with other employees using a single tablet in their jobsite to clock in to work. Often times, Plaintiff and the Aggrieved Employees were also required to clock out for their first meal period and continue working. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that

were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than ten hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiffs and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. Plaintiff and the Aggrieved Employees would often times take their first meal periods late, sometimes even after the seventh hour of work or clock out for meal period but continue working since their supervisors would instruct them to take meal periods one by one to make sure the work of the machines is never stopped or interrupted. In those occasions when Plaintiffs and the Aggrieved Employees had an opportunity to take their first meal periods, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and have one 45- minute combined meal and rest break instead of taking separate meal periods and separate rest periods. When Plaintiff and the Aggrieved Employees worked more than ten hours they have never been authorized or taken their second meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant

did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every four hours or a major fraction. Plaintiff and the Aggrieved Employees were instructed to make sure the work of the machines is not stopped or interrupted. Instead, Defendant wrongfully required Plaintiffs and the Aggrieved employees to take only one rest period during their shift, to combine their 30-minute first meal periods with their first rest periods and to take combined one 45-minute first meal and rest break instead of taking separate meal periods and separate rest periods. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods when they worked shifts of eight hours or longer. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Throughout the statutory period, Defendant failed to maintain accurate time records. Plaintiff and the Aggrieved employees were only required to input their scheduled start time versus actual time, Plaintiff's and the Aggrieved Employees' time was wrongfully rounded. Plaintiff and the Aggrieved Employees were also required to record their first meal period time regardless of whether it was actually taken or not.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred as a direct consequence of the discharge of their duties or of their obedience to the directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Defendant required Plaintiff and the Aggrieved Employees to use their personal cell phones for work to communicate with supervisors regarding the work assignments. Defendant failed to reimburse Plaintiff and the Aggrieved Employees for personal cell phone usage. Additionally, Defendant failed to reimburse Plaintiff and the Aggrieved Employees for the masks they were required to purchase when COVID pandemic started. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Moreover, during some pay periods Defendant failed to state the hourly rate, the total hours worked, the pay period beginning and end date in the wage statements at all.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Tunyan", with a stylized flourish at the end.

Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

Exhibit “B”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Galvan v. Western Sky Dairy, LLC
Kern County Superior Court Case No. BCV-23-100992

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF WESTERN SKY DAIRY, LLC (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN MARCH 30, 2019 AND ----- (THE “CLASS PERIOD”), THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class and PAGA action lawsuit entitled *Galvan v. Western Sky Dairy, LLC*, Kern County Superior Court Case No. BCV-23-100992 (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Thomas S. Clark on <<FA DATE>>, at <<FA TIME>>, in Department 17 of Kern County Superior Court, 1415 Truxtun Avenue, Bakersfield, California 93301, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the request to be excluded. As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator by submitting the objection in writing, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a request for exclusion if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The "Class Period" is March 30, 2019 through -----.

According to Defendant's records, you are a member of the settlement class ("Class Member"). PAGA Employees will automatically receive their *pro rata* share of the \$6,250 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant's records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of March 30, 2022 through -----.

What is this case about?

In the Action, Plaintiff Jesus Galvan ("Plaintiff") alleges on behalf of himself and the Class that Defendant: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) violated California's Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (7) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff's claims do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Lilit Tunyan

ltunyan@tunyanlaw.com

Artur Tunyan

atunyan@tunyanlaw.com

TUNYAN LAW, APC

535 N. Brand Blvd., Suite 285

Glendale, California 91203

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Defendant's Counsel

Vanessa Franco Chavez

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Anna Burnbaum

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KLEIN, DENATALE, GOLDNER

10000 Stockdale Highway, Suite 200

Bakersfield, CA 93311

Telephone: (661) 395-1000

Facsimile: (661) 326-0418

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$295,000 (the "Gross Settlement Amount") for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff in the amount of \$10,000; (c) the Court-approved attorney's fees and costs to Class Counsel ("Class Counsel's Fees and Expenses") (\$98,333.33 in fees and up to \$20,000.00 in costs to be requested); (d) payment to the Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties (the "PAGA Penalty Payment") (\$18,750 of a total of \$25,000.00 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services ("Administrative Expenses") (estimated to be no more than \$6,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the "Settlement Class Members") will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$6,250 from the PAGA Settlement allocated to PAGA Employees (the "PAGA Settlement Payment"), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their "Individual Settlement Payment").

The "Net Settlement Amount" will be calculated by deducting from the Gross Settlement Amount the Class Counsel's Fees and Expenses, the Class Representative's Service Payment, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the "Settlement Class Payments") and each PAGA Employee (the "PAGA Settlement Payments").

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$6,250 set aside for all PAGA Settlement Payment) $\times$ the work weeks worked by a Settlement Class Member $\div$ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$6,250 $\times$ the pay periods worked by a PAGA Employee (during the PAGA Period) $\div$ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<Estimated Settlement Payment>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<Work Weeks>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<RESPONSE DEADLINE>> (the "Response Deadline") at:

You must produce documentary evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<RESPONSE DEADLINE>>.

For tax reporting purposes, the payments to Class Members will be allocated 10% as wages, 45% as penalties and 45% as interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the to Bakersfield Angels subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy Pres Recipient"). In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

The "Effective Date" of the Settlement means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences (i) the expiration of the period for filing any appeal, writ, or

other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (ii) the dismissal of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue further remedies or relief; or (iii) upon the expiration of any time to file a petition for rehearing and the expiration of any time to file any petition in the California Supreme Court or the Supreme Court of the United States following a final appellate opinion or order upholding the Court's final order with no right to pursue further remedies or relief. In the event there is a motion to set aside the judgment filed within 15 days after notice to Class Members pursuant to California Rules of Court, rule 3.771(b), or a motion to intervene filed within 60 days after notice to Class Members pursuant to California Rules of Court, rule 3.771(b), "the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement" (as that phrase is used in (b)(i)-(iii), above) will be based on the later of the court's ruling or order on any such motion or entry of final order and judgment certifying the class and approving this Settlement. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel's Fees and Expenses, the Class Representative Service Payment, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorney's fees up to \$98,333.33 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$20,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Payment made to Plaintiff in the amount of \$10,000, for his efforts in bringing the Action on behalf of the Class and general release of his all claims. The Parties estimate the cost of administering the Settlement will not exceed \$6,000. The PAGA Penalty Payment in the amount of \$18,750 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$25,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- (a) Identity of Released Parties. The released parties are Defendant and any of its former, future, and present parent, subsidiary, affiliate, partners, joint ventures, assigns, predecessor or successor, and all agents, employees (current and former), officers, directors, insurers and attorneys (collectively "Releasees").
- (b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.
- (c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself and each of their heirs, assigns and successors, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims stated in the Plaintiff's First Amended Complaint, in Plaintiff's PAGA notice to the LWDA dated March 30, 2023, or that could have been stated based on the facts alleged in the First Amended

Complaint or Plaintiff's PAGA notice to the LWDA, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for failure to provide required meal periods or pay meal period premiums in lieu thereof (including, but not limited to, first and second meal periods and alleged failures due to rounding, off-the-clock work, remaining on premises or on-duty during meal periods, untimely, short, interrupted, or otherwise non-compliant meal periods); failure to provide required rest periods or pay rest period premiums in lieu thereof (including, but not limited to, alleged failures due to rounding, off-the-clock work, remaining on premises or on-duty during rest periods, untimely, short, interrupted, or otherwise non-compliant rest periods); failure to pay overtime wages (including, but not limited to, alleged failures due to inaccurate calculation of wages, rounding, off-the-clock work, remaining on premises or on-duty during rest periods, untimely, short, interrupted, or otherwise non-compliant meal and rest periods); failure to pay minimum wages (including, but not limited to, alleged failures due to inaccurate calculation of wages, rounding, or off-the-clock work); failure to pay all wages due to discharged and quitting employees and related waiting time penalties; failure to maintain required records (including, but not limited to, failure to maintain and furnish accurate itemized wage statements); failure to indemnify employees for necessary expenditures incurred in discharge of duties (including, but not limited to, alleged failures to reimburse employees for personal cell phones, tools and supplies, uniforms, and other travel expenses); unlawfully withholding wages; interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code and penalties under the Private Attorneys General Act sections 2698, et seq., and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.);

2) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (Settlement Exhibit A) and the First Amended Complaint in this matter, including, but not limited to, any and all claims for PAGA penalties pursuant to the applicable Wage Orders and Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 2802 (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly submit a Request for Exclusion form. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at -----, -----. The written objection in any form should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Galvan v. Western Sky Dairy, LLC*, Kern County Superior Court Case No. BCV-23-100992); and (5) be postmarked on or before <<**RESPONSE DEADLINE**>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the request for exclusion form to the Settlement Administrator at ----- . In order to be valid, your request for exclusion form must be signed and include your name, address, telephone number, the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Service Payment, the Administrative Expenses, and the PAGA Allocation on <<**FINAL APPROVAL HEARING DATE & TIME**>>, in Department 17 of the Kern County Superior Court, Kern County Superior Court, 1415 Truxtun Avenue, Bakersfield, California 93301. If you wish to attend the Final Approval Hearing remotely, you may do so via Zoom provided in the court's website <https://kern-courts-ca.gov.zoomgov.com/j/16019043837?pwd=WndoWHclcjI0SDJlc2RYaEdtWWRMdz09#success>. If you wish to attend the Final Approval Hearing in person, you can attend it at Kern County Superior Court, Department 17, 1415 Truxtun Avenue, Bakersfield, California 93301. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment, will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<website>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Kern County Superior Court. Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel by using the contact information in this notice at no charge.

You may also view documents filed in this case, including the complete Settlement and case documents, on the Court's website at: <https://odyprodportal.kern.courts.ca.gov/PORTALPROD/Home/Dashboard/29>. You may need the case number to access and view case documents (BCV-23-100992) NOTE: If you choose to access documents online, the Court will charge you a fee for access.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “2”

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

***Attorneys for Defendant WESTERN SKY
DAIRY, LLC***

Executed on March 25, 2024, at Glendale, California.

Signature