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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RICARDO NOVELLA, an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

RJM VALLEJO MINI MARKET, INC., a
California corporation; MJM VALLEJO
MINI-MARKET INC., a California
corporation; VALLEJO MINI-MARKET &
GAS STATION INC., a California
corporation; and MARTIN VALLEJO, an
individual; and DOES 1 through 100,
inclusive

Defendants.

CASE NO.: 30-2023-01312351-CU-OE-
CXC

[Assigned for all purposes to the Hon.
Melissa R. McCormick in Dept. CX104]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: June 27, 2023
Trial Date: None Set

Subject to final approval by the Court, it is stipulated by and between Plaintiff Ricardo Novella (“Plaintiff”), on behalf of himself, other similarly situated putative class members and other aggrieved employees, on the one hand, and Defendants MJM Vallejo Mini-Market, Inc., RJM Vallejo Mini-Market, Inc., and Martin Vallejo (collectively, “Defendants”), on the other hand, that the Action as defined herein is hereby compromised and settled pursuant to the terms and conditions set forth herein (“Settlement,” “Agreement” or “Settlement Agreement”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” herein includes: (1) the Class Action lawsuit filed by Plaintiff on March 14, 2023, entitled *Ricardo Novella v. RJM Vallejo Mini Market, Inc., et al.*, currently pending in Orange County Superior Court, Case No. 30-2023-01312351-CU-OE-CXC (the “Class Action Complaint”); (2) Plaintiff’s First Amended Complaint filed on June 27, 2023, which includes a cause of action for Violation of the California Labor Code Private Attorneys General Act (PAGA) of 2004, and subject to the Court’s November 28, 2023, Order dismissing (without prejudice) Plaintiff’s Fifth Cause of Action for Waiting Time Penalties, Ninth Cause of Action for Failure to Pay Interest on Depositions, and Tenth Cause of Action for Violation of Labor Code § 227.3, and the Court’s December 12, 2023, Order dismissing (without prejudice) defendant Vallejo Mini-Market & Gas Station Inc (the “FAC”); and (3) the written notice to the Labor and Workforce Development Agency (“LWDA”) submitted by Plaintiff against Defendants on March 14, 2023, pursuant to Labor Code section 2699.3 of the specific provisions of the California Labor Code alleged to have been violated by Defendants, LWDA-CM-941993-23 (the “PAGA Notice”).

1.2. “Administrator” means ILYM Group, Inc., the neutral entity Plaintiff has agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court for approval in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employees” means all persons currently or formerly employed by Defendants as non-exempt, hourly-paid employees in the State of California during the PAGA Period.

1.5. “Class” or “Settlement Class” means all persons currently or formerly employed by Defendants, as non-exempt, hourly-paid employees in the State of California during the Class Period.

1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C.

1.7. “Class Counsel Fees Payment” means the amount that the Court awards Class Counsel in reasonable attorneys’ fees in connection with the Action, not to exceed 35% of the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

1.8. “Class Counsel Litigation Expenses Payment” means the amount that the Court awards Class Counsel in expenses incurred in connection with the Action, not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00). If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

1.9. “Class Data” means Class Member identifying information in Defendants’ custody, possession, or control, including the Class Member’s (1) the full name; (2) last known address(es); (3) last four digits of the last known Social Security Number(s); and (4) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee) during the Class Period.

1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1 1.12. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
2 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
3 Class Members in English and Spanish in the form, without material variation, attached as Exhibit
4 A and incorporated by reference into this Agreement.

5 1.13. "Class Period" means the period from March 14, 2019, through November 22, 2024.

6 1.14. "Class Representative" means the named Plaintiff in the operative complaint in the
7 Action seeking Court approval to serve as a Class Representative – Ricardo Novella.

8 1.15. "Class Representative Enhancement Payment" means the amount that the Court awards
9 as payment to the Class Representative for initiating the Action and providing services in support
10 of the Action, not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00).
11 If the Court awards less than the amount requested, any amount not awarded will become part of
12 the Net Settlement Amount for distribution to Participating Class Members.

13 1.16. "Court" means the Superior Court of California, County of Orange.

14 1.17. "Defendants" means, collectively, named Defendants MJM Vallejo Mini-Market, Inc.,
15 RJM Vallejo Mini-Market, Inc. and Martin Vallejo.

16 1.18. "Defense Counsel" means Christine D. Baran and Joshua Klein of Fisher & Phillips LLP.

17 1.19. "Effective Date" means the date when all of the following events have occurred: (1) the
18 Settlement Agreement has been executed by all Parties, Class Counsel, and Defense Counsel; (2)
19 the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed
20 to the Class Members, providing them with an opportunity to object to the terms of the Class
21 Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval Hearing
22 and entered a Final Approval Order and Judgment; (5) sixty-five (65) calendar days have passed
23 since the Court entered a Final Approval Order and Judgment; and (6) in the event there are
24 written objections to the Class Settlement filed prior to the Final Approval Hearing which are not
25 later withdrawn or denied, the later of the following events: (a) five (5) business days after the
26 period for filing any appeal, writ, or other appellate proceeding opposing the Court's Final
27 Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding
28 having been filed; or (b) if any appeal, writ, or other appellate proceeding opposing the Court's

Final Approval Order and Judgment has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Court's Final Approval Order and Judgment has finally and conclusively been dismissed with no right to pursue further remedies or relief.

1.20. "Final Approval" means the Court's order granting final approval of the Settlement.

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

1.22. "Final Judgment" means the Judgment entered by the Court based upon the Final Approval.

1.23. "Gross Settlement Amount" means the non-reversionary maximum amount of Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00), to be paid by Defendants, exclusive of Defendants' share of any employer payroll taxes due in connection with the Wage Portion of each Participating Class Member's Individual Class Payment. This is the gross amount Defendants shall be required to pay under this Settlement, which includes, without limitation (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Class Counsel Fees Payment, (3) Class Counsel Litigation Expenses Payment, (4) Class Representative Enhancement Payment, (5) Administration Expenses Payment; and (6) PAGA penalties to be paid to the LWDA and to PAGA Employees, as approved by the Court.

1.24. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.25. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.

1.26. "Judgment" means the final judgment entered by the Court based upon Final Approval following the exhaustion of any appeal rights.

1.27. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

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1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.29. “Net Settlement Amount” means the Gross Settlement Amount distributable to the Participating Settlement Class Members after the deduction of the amounts approved by the Court for PAGA Penalties, Class Representative Enhancement Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.31. “Operative Complaint” means the Second Amended Complaint to be filed in the Action to reinstate the Fifth, Ninth and Tenth Causes of Action and any other release claims.

1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was employed by Defendants for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.33. “PAGA Period” means the period from January 8, 2022 through the end of the Class Period.

1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.35. “PAGA Notice” means Plaintiff’s March 14, 2023, letter to Defendants and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a), LWDA-CM-941993-23.

1.36. “PAGA Penalties” consists of Twenty Thousand Dollars (\$20,000.00) of the Gross Settlement Amount allocated for the settlement and release of claims for civil penalties under the PAGA. Twenty-five percent (25%) of the PAGA Penalties shall be allocated to the Aggrieved Employees (\$5,000.00) and seventy-five percent (75%) of the PAGA Penalties shall be allocated to the LWDA (\$15,000.00).

1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Participating Class Members will release the Released Parties from Released Class Claims and Released PAGA Claims, as applicable, and will be bound by all terms of this Settlement and any final judgment entered in the Action.

1.38. “Plaintiff,” “Named Plaintiff,” or “Class Representative” means RICARDO NOVELLA, the named Plaintiff in the Action.

1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.40. “Preliminary Approval Order” means the Court’s order preliminarily approving the proposed Settlement following the Preliminary Approval Hearing.

1.41. “Qualified Settlement Account,” “QSA,” “Qualified Settlement Fund,” or “QSF” means a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Administrator for the benefit of Participating Class Members.

1.42. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4 below.

1.44. “Released Parties” means: Defendants, and their past, present, and future predecessors, successors, officers, directors, employees and agents.

1.45. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.46. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.47. “Settlement” or “Agreement” means this Class Action and PAGA Settlement Agreement.

1.48. “Workweek” means any week during which a Class Member was employed by Defendants for at least one day in a non-exempt, hourly-paid position during the Class Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1 **2. RECITALS**

2 2.1. On March 14, 2023, Mr. Novella filed a letter (“PAGA Notice”) with the Labor and
3 Workforce Development Agency (“LDWA”), notifying the LDWA and Defendants of his
4 intention to file a complaint pursuant to the Private Attorneys’ General Act of 2004 (“PAGA”)
5 on behalf of himself and all others aggrieved.

6 2.2. On that same day, Mr. Novella filed his wage and hour class action against Defendants
7 on behalf of himself and those similarly situated in the Orange County Superior Court, Case No.
8 30-2023-01312351-CU-OE-CXC, alleging: failure to pay overtime and minimum wages; failure
9 to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage
10 statement violations; failure to timely pay wages; failure to pay interest on deposits; violation
11 of Labor Code Section 227.3, and unfair competition.

12 2.3. On June 27, 2023, Plaintiff amended the Action adding causes of action pursuant to
13 PAGA. After initial meet and confer efforts with Defendant Vallejo Mini-Market & Gas Station,
14 their owners provided declarations representing that they did not hire Plaintiff or any of the
15 putative class and did not control the wages or working conditions of the putative class.
16 Accordingly, the parties entered into a stipulation on December 12, 2023, to dismiss Defendant
17 Vallejo Mini-Market & Gas Station.

18 2.4. On November 28, 2023, the Court sustained Defendants demurrer and entered an Order
19 dismissing, without prejudice, Plaintiff’s Fifth Cause of Action for Waiting Time Penalties, Ninth
20 Cause of Action for Failure to Pay Interest on Deposits, and Tenth Cause of Action for
21 Violation of Labor Code § 227.3.

22 2.5. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

23 2.6. Prior to mediation Plaintiff obtained, through informal discovery: (a) all electronic time
24 and pay data for the period from 2022 up to 2024; and (b) a sampling of data for the remaining
25 pay quarters.

26 2.7. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in
27 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
28 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

1 2.8. On August 22, 2024, the Parties participated in an all-day mediation presided over by
2 Marc Feder, Esquire, which led to the Parties reaching an agreement to settle the Action.

3 2.9. Defendants have concluded that it is desirable that the Action be settled in a manner and
4 upon such terms and conditions set forth herein in order to avoid further risk and expense of
5 litigation and the inconvenience and distraction of further legal proceedings. Defendants deny
6 each of the allegations and claims asserted against it in the Action which includes the PAGA
7 Notice. However, Defendants nevertheless desires to settle the Action for the purpose of avoiding
8 the burden, expense and uncertainty of continuing litigation, and for the purpose of putting to
9 rest the controversies engendered by the Action.

10 2.10. Class Counsel have conducted significant investigation of the law and facts relating to
11 the claims asserted in the Action and the PAGA Notice, and have concluded that the Settlement
12 set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class,
13 taking into account the sharply contested issues involved, the expense and time necessary to
14 litigate the Action through trial and any appeals, the risks and costs of further litigation of the
15 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
16 learned through discovery regarding Plaintiff's allegations, and the substantial benefits to be
17 received by Settlement Class Members.

18 2.11. The Court has not granted class certification.

19 2.12. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any
20 other pending matter or action asserting claims that will be extinguished or affected by the
21 Settlement.

22 2.13. As part of this Agreement, the Parties agree to stipulate to Plaintiff filing a Second
23 Amended Complaint to reinstate his causes of action for: (1) Waiting Time Penalties; (2) Failure
24 to Pay Interest on Deposits; and (3) Violation of Labor Code § 227.3 previously dismissed
25 without prejudice on November 28, 2023 and any other claims released by this Settlement.

26 **3. MONETARY TERMS**

27 3.1. Gross Settlement Amount. Defendants promise to pay \$650,000.00 as the Gross
28 Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement at Defendants'

1 sole option, and to separately pay any and all employer payroll taxes owed on the Wage Portions
2 of the Individual Class Payments. Defendants obligation to pay the Gross Settlement Amount (or
3 any payroll taxes) shall be no later than seven (7) days after the Effective Date. The Administrator
4 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
5 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
6 Gross Settlement Amount will revert to Defendants.

7 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct
8 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
9 in the Final Approval:

10 3.2.1. To Plaintiff: Class Representative Enhancement Payment to Plaintiff in the
11 amount of \$7,500.00, in addition to any Individual Class Payment and any Individual
12 PAGA Payment Plaintiff is entitled to receive as a Participating Class Member.
13 Defendants will not oppose Plaintiff's request for a Class Representative Enhancement
14 Payment that does not exceed this amount. As part of the motion for Class Counsel
15 Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court
16 approval for any Class Representative Enhancement Payment prior to the Final
17 Approval Hearing. If the Court approves a Class Representative Enhancement
18 Payment less than the amount requested, the Administrator will retain the remainder in
19 the Net Settlement Amount and shall be distributed to Participating Class Members as
20 part of their Individual Settlement Payment. The Administrator will pay the Class
21 Representative Enhancement Payment using IRS Form 1099. Plaintiff assumes full
22 responsibility and liability for any applicable employee taxes owed on the Class
23 Representative Enhancement Payment.

24 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty five
25 percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to
26 Paragraph 8.1 of this Agreement, is currently estimated to be \$227,500.00 and a Class
27 Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendants will
28 not oppose requests for these payments provided that they do not exceed these amounts.

1 Plaintiff and/or Class Counsel will endeavor to file a motion for Class Counsel Fees
2 Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing.
3 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
4 Expenses Payment less than the amounts requested, the Administrator will allocate the
5 remainder to the Net Settlement Amount. Released Parties shall have no liability to
6 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion
7 any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.
8 The Administrator will pay the Class Counsel Fees Payment and Class Counsel
9 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full
10 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the
11 Class Counsel Litigation Expenses Payment and holds Defendants harmless, and
12 indemnifies Defendants, from any dispute or controversy regarding any division or
13 sharing of any of these Payments. There will be no additional charge of any kind to
14 either the Settlement Class Members or request for additional consideration from
15 Defendants for such work unless Defendants materially breach this agreement by
16 failing to fund the Settlement pursuant to the terms herein and further efforts are
17 necessary from Class Counsel to remedy said breach, including, without limitation,
18 moving the Court to enforce the Agreement. In the event Defendants fail to breach this
19 agreement by failing to timely fund the Settlement as set forth in this Agreement,
20 Defendants shall be entitled to cure that breach by submitting such funding to the
21 Administrator within 10 days of receipt of written notice by Class Counsel to Defense
22 Counsel in electronic form. Should Defendants cure the funding breach within the 10-
23 day cure period of receipt of written notice, no additional consideration shall be due by
24 Defendants under the terms of this Agreement. Should the Court approve attorneys'
25 fees and/or litigation costs and expenses in amounts that are less than the amounts
26 provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement
27 Amount.

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1 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
2 \$6,950.00 except for a showing of good cause and as approved by the Court. To the
3 extent the Administration Expenses are less or the Court approves payment less than
4 \$6,950.00, the Administrator will retain the remainder in the Net Settlement Amount.

5 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
6 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
7 by all Participating Class Members during the Class Period and (b) multiplying the
8 result by each Participating Class Member's Workweeks.

9 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
10 Class Member's Individual Class Payment will be allocated to settlement of
11 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
12 withholding and will be reported on an IRS W-2 Form. The 80% of each
13 Participating Class Member's Individual Class Payment will be allocated to
14 settlement of claims for interest and penalties (the "Non-Wage Portion"). The
15 Non-Wage Portions are not subject to wage withholdings and will be reported
16 on IRS 1099 Forms. Participating Class Members assume full responsibility and
17 liability for any employee taxes owed on their Individual Class Payment.

18 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
19 Class Payments. Non-Participating Class Members will not receive any
20 Individual Class Payments. The Administrator will retain amounts equal to their
21 Individual Class Payments in the Net Settlement Amount for distribution to
22 Participating Class Members on a pro rata basis.

23 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
24 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00)
25 allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual
26 PAGA Payments.

27 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
28 dividing the amount of the Aggrieved Employees' 25% share of PAGA

Penalties \$5,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. PAGA Employees have no statutory or other right to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement, which releases the PAGA claims. In addition, a PAGA Employee who submits a valid and timely request for exclusion as a Class Member shall still receive his or her Individual PAGA Payment and shall release the PAGA claims.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of Defendants' records at the time of mediation, Defendants estimated that the number of Class Members and Workweeks through the date of mediation was approximately 319 and 22,469, respectively, and that the number of Aggrieved Employees and PAGA Pay Periods through the date of mediation was approximately 188 and 10,249, respectively. Based on a current review of Defendants' records the number of Class Members and Workweeks through the Class Period is approximately 332 and 23,174, respectively, and the number of Aggrieved Employees and PAGA Pay Periods through the Class Period is approximately 203 and 11,146, respectively.

4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a

1 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted
2 class member identifying information and to provide corrected or updated Class Data as soon as
3 reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good
4 faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

5 4.3. Funding of Gross Settlement Amount. Defendants shall make payment of the Gross
6 Settlement Amount (as the same may be increased pursuant to Paragraph 8.1 of this Agreement
7 at Defendants' sole discretion) and Employer Taxes to the Settlement Administrator pursuant to
8 Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement
9 account ("QSA") with an FDIC insured banking institution, for distribution in accordance with
10 this Agreement and the Court's Orders, and subject to the conditions described herein.
11 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary
12 to fully pay Defendants' share of payroll taxes as calculated by the Administrator by transmitting
13 the funds to the Administrator no later than seven (7) days after the Effective Date.

14 4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendants fund the
15 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
16 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
17 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
18 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,
19 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment
20 shall not precede disbursement of Individual Class Payments, and the Individual PAGA
21 Payments.

22 4.4.1. Administrator will issue checks for the Individual Class Payments and/or
23 Individual PAGA Payments and send them to the Class Members via First Class U.S.
24 Mail, postage prepaid. The face of each check shall prominently state the date (not less
25 than 180 days after the date of mailing) when the check will be voided. The
26 Administrator will cancel all checks not cashed by the void date. The Administrator
27 will send checks for Individual Settlement Payments to all Participating Class Members
28 (including those for whom Class Notice was returned undelivered). The Administrator

1 will send checks for Individual PAGA Payments to all Aggrieved Employees including
2 Non-Participating Class Members who qualify as Aggrieved Employees (including
3 those for whom Class Notice was returned undelivered). The Administrator may send
4 Participating Class Members a single check combining the Individual Class Payment
5 and the Individual PAGA Payment. Before mailing any checks, the Settlement
6 Administrator must update the recipients' mailing addresses using the National Change
7 of Address Database.

8 4.4.2. The Administrator must conduct a Class Member Address Search for all other
9 Class Members whose checks are returned undelivered without USPS forwarding
10 address. Within 7 days of receiving a returned check the Administrator must re-mail
11 checks to the USPS forwarding address provided or to an address ascertained through
12 the Class Member Address Search. The Administrator need not take further steps to
13 deliver checks to Class Members whose re-mailed checks are returned as undelivered.
14 The Administrator shall promptly send a replacement check to any Class Member whose
15 original check was lost or misplaced, requested by the Class Member prior to the void
16 date.

17 4.4.3. For any Class Member whose Individual Class Payment check or Individual
18 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
19 shall transmit the funds represented by such checks to the California Controller's
20 Unclaimed Property Fund, in the name of the Class Member, thereby leaving no "unpaid
21 residue" subject to the requirements of California Code of Civil Procedure section 384,
22 subd. (b).

23 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
24 not obligate Defendants to confer any additional benefits or make any additional
25 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
26 specified in this Agreement.

1 **5. RELEASE OF CLAIMS**

2 5.1. Plaintiff's Comprehensive Release of Claims. Upon the Effective Date of the Settlement
3 and Defendants' fulfillment of its payment obligations set forth herein, Plaintiff and his former
4 and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and
5 assigns generally release and discharge the Released Parties from any and all charges,
6 complaints, claims, debts, liabilities, promises, agreements, controversies, actions, suits, rights,
7 demands, obligations, guarantees, costs, losses, penalties, expenses, attorneys' fees, damages, or
8 causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected,
9 asserted or unasserted, or that might have been asserted, whether in tort, contract, equity, or
10 otherwise which Plaintiff, at any time prior to the execution of this Settlement Agreement, had
11 or claimed to have or may have, including but not limited to any and all claims arising out of,
12 relating to, or resulting from her employment, payment of wages during that employment and/or
13 separation of employment with the Released Parties, including any claims arising under any
14 federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to
15 employment, including, but in no way limited to, any claim under Title VII of the Civil Rights
16 Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the Americans with Disabilities Act
17 ("ADA"); the Family and Medical Leave Act ("FMLA"); the Age Discrimination in Employment
18 Act (ADEA), the Employee Retirement Income Security Act ("ERISA"); the California Family
19 Rights Act ("CFRA"); the California Fair Employment and Housing Act ("FEHA"); all claims
20 for wages or penalties under the Fair Labor Standards Act ("FLSA"); all claims for wages or
21 penalties under the California Labor Code; Business and Professions Code sections 17200 *et*
22 *seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights;
23 any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or
24 constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is
25 agreed that this is a general release and is to be broadly construed as a release of all claims,
26 provided that, notwithstanding the foregoing, this Paragraph expressly does not include a release
27 of any claims that cannot be released hereunder by law. Plaintiff understands and expressly
28 agrees that this Settlement Agreement extends to claims that he has against Defendant, of

1 whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent,
2 past, present, or future, arising from or attributable to an incident or event, occurring in whole or
3 in part, on or before the execution of this Settlement Agreement. Any and all rights granted
4 under any state or federal law or regulation limiting the effect of this Settlement Agreement,
5 including the provisions of Section 1542 of the California Civil Code, ARE HEREBY
6 EXPRESSLY WAIVED.

7 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
8 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the
9 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
10 which reads:

11 A general release does not extend to claims that the creditor or releasing party does not
12 know or suspect to exist in his or her favor at the time of executing the release, and that
13 if known by him or her would have materially affected his or her settlement with the
14 debtor or Released Party.

15 5.2. Released Class Claims by Participating Class Members: Upon the Effective Date and
16 Defendants' fulfillment of its payment obligations set forth herein, Plaintiff and Participating
17 Class Members release and forever discharge, for the duration of the Class Period, all claims
18 based on the factual allegations and statutes asserted or that could have been asserted in the
19 Action. This includes claims for: (1) failure to pay overtime wages; (2) failure to pay minimum
20 wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time
21 penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify;
22 (9) failure to pay interest on deposits; (10) violation of labor code § 227.3; (11) unfair competition;
23 and (12) all claims asserted through California Business & Professions Code section 17200, *et*
24 *seq.* arising out of the Labor Code violations referenced in the Operative Complaint.

25 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not
26 release any other claims, including claims for vested benefits, wrongful termination, violation of
27 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
28 workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. Released PAGA Claims: Upon the Effective Date and Defendants’ fulfillment of its payment obligations as set forth herein, to the extent permitted by law, the LWDA, the State of California, and PAGA Employees, by and through Plaintiff as an agent and proxy of the LWDA, release and forever discharge, for the duration of the PAGA Period, all claims for civil penalties under PAGA based on the factual allegations and statutes asserted or that could have been asserted in Plaintiff’s PAGA Notice and in the Operative Complaint in the Action. These are all claims for civil penalties based upon or arising out of Defendant’s alleged violation of Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246 *et seq.*, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2699.3, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 6432, and 8397.4, Cal. Code Regs., title 8, section 110404(5)(A), and applicable Wage Orders. The Released PAGA Claims include a release from the State of California (to the extent Plaintiff is permitted to provide such a release for the State of California for the PAGA Period).

6. MOTION FOR PRELIMINARY APPROVAL

The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and endeavor to deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of

1 interest with Class Members; and the nature and extent of any financial relationship with
2 Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming
3 willingness and competency to serve and disclosing all facts relevant to any actual or potential
4 conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm
5 attesting to its competency to represent the Class Members; its timely transmission to the LWDA
6 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
7 (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
8 section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest
9 with Class Members and the Administrator.

10 6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and
11 filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining
12 a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to
13 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for
14 delivering the Court's Preliminary Approval to the Administrator.

15 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
16 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
17 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
18 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
19 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
20 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
21 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
22 Court's concerns, if possible. The Parties retain the right, in the exercise of their sole respective
23 discretion, to unilaterally withdraw from and terminate the Settlement if the Court makes or
24 orders material changes to the Basic Settlement Terms. Basic Settlement Terms include: (a) the
25 amount of the Gross Settlement Amount; (b) the time period of the Released Class Claims; (c)
26 the covered Class or PAGA Period; (d) the Escalator Clause; and/or (e) the Parties respective
27 Option to Revoke Settlement as set forth herein.

1 **7. SETTLEMENT ADMINISTRATION**

2 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
3 (“ILYM”), to serve as the Administrator and verified that, as a condition of appointment, ILYM
4 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
5 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
6 represent that they have no interest or relationship, financial or otherwise, with the Administrator
7 other than a professional relationship arising out of prior experiences administering settlements.

8 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
9 Identification Number for purposes of calculating payroll tax withholdings and providing reports
10 state and federal tax authorities.

11 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
12 the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section
13 468B-1.

14 7.4. Notice to Class Members

15 7.4.1. No later than three (3) business days after receipt of the Class Data, the
16 Administrator shall notify Class Counsel that the list has been received and state the
17 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
18 Class Data.

19 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
20 days after receiving the Class Data, the Administrator will send to all Class Members
21 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
22 the Class Notice with Spanish translation, substantially in the form attached to this
23 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the
24 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
25 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)
26 used to calculate these amounts. Before mailing Class Notices, the Administrator shall
27 update Class Member addresses using the National Change of Address database.
28

1 7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice
2 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
3 using any forwarding address provided by the USPS. If the USPS does not provide a
4 forwarding address, the Administrator shall conduct a Class Member Address Search,
5 and re-mail the Class Notice to the most current address obtained. The Administrator
6 has no obligation to make further attempts to locate or send Class Notice to Class
7 Members whose Class Notice is returned by the USPS a second time.

8 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
9 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
10 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
11 notice is re-mailed. The Administrator will inform the Class Member of the extended
12 deadline with the re-mailed Class Notice.

13 7.4.5. If the Administrator, Defendants or Class Counsel is contacted by or otherwise
14 discovers any persons who believe they should have been included in the Class Data
15 and should have received Class Notice, the Parties will expeditiously meet and confer,
16 in good faith, in an effort to agree on whether to include them as Class Members. If the
17 Parties agree, such persons will be Class Members entitled to the same rights as other
18 Class Members, and the Administrator will send, via email or overnight delivery, a Class
19 Notice requiring them to exercise options under this Agreement not later than 15 days
20 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
21 later.

22 7.5. Requests for Exclusion (Opt-Outs).

23 7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class
24 Settlement must send the Administrator, by mail, a signed written Request for Exclusion
25 not later than 45 days after the Administrator mails the Class Notice (plus an additional
26 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
27 is a letter from a Class Member or his/her representative, signed by the Class Member,
28 that reasonably communicates the Class Member's election to be excluded from the

1 Settlement and includes the Class Member's name, signature, the last four digits of their
2 Social Security Number, address, and email address or telephone number. To be valid,
3 a Request for Exclusion must be timely postmarked by the Response Deadline. PAGA
4 Employees have no statutory or other right to opt out or otherwise exclude himself or
5 herself from the PAGA portion of the Settlement, which releases the PAGA claims. In
6 addition, a PAGA Employee who submits a valid and timely request for exclusion as a
7 Class Member shall still receive his or her Individual PAGA Payment and shall release
8 the PAGA claims.

9 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
10 fails to contain all the information specified in the Class Notice. The Administrator
11 shall accept any Request for Exclusion as valid if the Administrator can reasonably
12 ascertain the identity of the person as a Class Member and the Class Member's desire
13 to be excluded. The Administrator's determination shall be final and not appealable or
14 otherwise susceptible to challenge. If the Administrator has reason to question the
15 authenticity of a Request for Exclusion, the Administrator may demand additional proof
16 of the Class Member's identity. The Administrator's determination of authenticity shall
17 be final and not appealable or otherwise susceptible to challenge.

18 7.5.3. Every Class Member who does not submit a timely and valid Request for
19 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
20 to all benefits and bound by all terms and conditions of the Settlement, including the
21 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
22 regardless of whether the Participating Class Member actually receives the Class Notice
23 or objects to the Settlement.

24 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
25 Non-Participating Class Member and shall not receive an Individual Class Payment or
26 have the right to object to the class action components of the Settlement. Nothing in this
27 Settlement will constitute or be construed as a waiver of any defense that Defendant or
28 the Released Parties have or could assert against anyone who timely submits a Request

1 for Exclusion, including but not limited to arbitration rights. Because future PAGA
2 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating
3 Class Members who are Aggrieved Employees are deemed to release the claims
4 identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA
5 Payment.

6 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
7 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
8 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
9 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
10 the allocation by communicating with the Administrator via mail by the Response Deadline,
11 explaining the basis for the dispute and including any supporting documentation showing that
12 the workweeks and/or pay periods credited to him or her is inaccurate. Defendant's records will
13 be presumed determinative absent credible evidence to rebut the accuracy of the workweeks
14 and/or pay periods credited to the Class Member and PAGA Employee. The Administrator must
15 encourage the challenging Class Member to submit supporting documentation. The
16 Administrator will evaluate the evidence submitted by the Class Member or PAGA Employee
17 and make a recommendation to the Parties as to which figures should be applied.

18 7.7. Objections to Settlement

19 7.7.1. Only Participating Class Members may object to the class action components of
20 the Settlement and/or this Agreement, including contesting the fairness of the
21 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
22 Counsel Litigation Expenses Payment and/or Class Representative Enhancement
23 Payment.

24 7.7.2. Participating Class Members may send written objections to the Administrator, by
25 mail by the Response Deadline. The Participating Class Member's written objection
26 should include the objector's name, the last four digits of their Social Security Number,
27 address, email address or telephone number, and a statement of whether the objector
28 plans to appear at the Final Approval Hearing, along with whatever legal authority, if

any, the objector asserts in support of their objections. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

7.7.3. If a Class Member objects to the Settlement, the Class Member will remain a member of the Class. Moreover, if the Court grants final approval of the Settlement, the Class Member will be bound by the terms of the Settlement and any Final Approval Order and Final Judgment. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Enhancement Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and

1 other identifying information of Class Members who have submitted invalid Requests
2 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
3 (whether valid or invalid).

4 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
5 reports to Class Counsel and Defense Counsel that, among other things, tally the number
6 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
7 Exclusion (whether valid or invalid) received, objections received, challenges to
8 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
9 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
10 Weekly Reports must include the Administrator’s assessment of the validity of Requests
11 for Exclusion and attach copies of all Requests for Exclusion and objections received.

12 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
13 address and make final decisions consistent with the terms of this Agreement on all
14 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The
15 Administrator’s decision shall be final and not appealable or otherwise susceptible to
16 challenge.

17 7.8.5. Administrator’s Declaration. Before the date by which Plaintiff is required to file
18 the Motion for Final Approval of the Settlement, the Administrator will provide to Class
19 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its
20 due diligence and compliance with all of its obligations under this Agreement, including,
21 but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered,
22 the re-mailing of Class Notices, attempts to locate Class Members, the total number of
23 Requests for Exclusion from Settlement it received (both valid or invalid), the number
24 of written objections and attach the Exclusion List. The Administrator will supplement
25 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is
26 responsible for filing the Administrator’s declaration(s) in Court.

27 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
28 disburses all funds in the Gross Settlement Amount, the Administrator will provide

1 Class Counsel and Defense Counsel with a final report detailing its disbursements by
2 employee identification number only of all payments made under this Agreement. At
3 least 7 days before any deadline set by the Court, the Administrator will prepare, and
4 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
5 Court attesting to its disbursement of all payments required under this Agreement. Class
6 Counsel is responsible for filing the Administrator's declaration in Court.

7 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

8 8.1 Increase in Workweeks. Defendants' estimate for the number of Workweeks for the
9 Settlement Class at the time of mediation was approximately 22,469. Based on a current review
10 of Defendants' records the number of Workweeks through the Class Period is approximately
11 23,174. In the event the number of Workweeks worked increases by more than 10% through the
12 Class Period (March 14, 2019 to November 22, 2024) or more than 24,716 total Workweeks
13 worked, then Defendants shall have the option to either: (a) increase the Gross Settlement
14 Amount proportionally by the Workweeks worked in excess of 24,716 multiplied by the
15 Workweek Value; or (b) cap the Release Period/Class Period as of the date the number of
16 Workweeks reaches but does not exceed 10%. The Workweek Value shall be calculated by
17 dividing the Gross Settlement Amount by 22,469. The Parties agree that the Workweek Value
18 amounts to \$28.93 per Workweek (\$650,000 / 22,469 Workweeks). Thus, for example, should
19 Defendants exercise option (a), and should there be 25,000 Workweeks in the Class Period, then
20 the Gross Settlement Amount would be increased by \$8,273.98 ([25,000 Workweeks – 24,716
21 Workweeks] x \$28.93/Workweek). Defendant's option (b) above expires upon the Court's entry
22 of the Preliminary Approval Order.

23 8.2 Nullification: If Settlement Class Members representing more than an aggregate total of
24 10% of the verified workweeks timely opt out of the class settlement, Defendants shall have the
25 sole and absolute discretion to rescind/void the Settlement no later than five (5) court days prior
26 to the date of the Final Approval Hearing. Defendants agree to meet and confer in good faith with
27 Class Counsel before rescinding or voiding the Settlement. In the event that Defendants elect to
28 rescind/void the Settlement Agreement, Defendants shall provide written notice of such

1 rescission to Class Counsel. Such rescission shall have the same effect as a termination of the
2 Settlement for failure to satisfy a condition of settlement, and the Settlement shall become null
3 and void and have no further force or effect. In the event that Defendants exercise their option to
4 revoke the Settlement, Defendants agree to pay the Administration Costs incurred by the
5 Administrator up to the date of Defendants' notice to revoke. In the event of Defendants'
6 withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason.

7 **9. MOTION FOR FINAL APPROVAL**

8 Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for
9 final approval of the Settlement that includes a request for approval of the PAGA settlement
10 under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed
11 Judgment (collectively "Motion for Final Approval"). Plaintiff shall endeavor to provide drafts
12 of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
13 Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve
14 any disagreements concerning the Motion for Final Approval.

15 9.1. Response to Objections. Each Party retains the right to respond to any objection raised
16 by a Participating Class Member, including the right to file responsive documents in Court no
17 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
18 accepted by the Court.

19 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
20 Approval on any material change to the Settlement (including, but not limited to, changes to the
21 Basic Settlement Terms), the Parties will expeditiously work together in good faith to address
22 the Court's concerns by revising the Agreement as necessary to obtain Final Approval, if
23 possible. Nothing in this provision waives any party's rights to terminate the settlement as set
24 forth in section 6.3 or 8.2, above. The Court's decision to award less than the amounts requested
25 for the Class Representative Enhancement Payment, Class Counsel Fees Payment, Class Counsel
26 Litigation Expenses Payment, and Administrator Expenses Payment shall not constitute a
27 material modification to the Agreement within the meaning of this paragraph.

28 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the

1 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
2 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
3 and (iii) addressing such post-Judgment matters as are permitted by law.

4 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
5 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
6 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
7 respective counsel, and all Participating Class Members who did not object to the Settlement as
8 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
9 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
10 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
11 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
12 Parties' obligations to perform under this Agreement will be suspended until such time as the
13 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
14 the amount of the Net Settlement Amount.

15 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
16 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
17 modification of this Agreement (including the Basic Settlement Terms), this Agreement shall be
18 null and void. The Parties shall nevertheless expeditiously work together in good faith to address
19 the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a
20 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An
21 appellate decision to vacate, reverse, or modify the Court's award of the Class Representative
22 Enhancement Payment or any payments to Class Counsel shall not constitute a material
23 modification of the Judgment within the meaning of this paragraph, as long as the Gross
24 Settlement Amount remains unchanged.

25 **10. AMENDED JUDGMENT**

26 10.1 If any amended judgment is required under the Code of Civil Procedure section 384, the
27 Parties will work together in good faith to jointly submit a proposed amended judgment.
28

1 **11. ADDITIONAL PROVISIONS**

2 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other
3 Purposes. The Parties enter into this Agreement to resolve the dispute that has arisen between
4 them and to avoid the burden, expense, and risk of continued litigation. Defendants generally and
5 specifically deny any and all liability or wrongdoing with any of the claims alleged in the Action
6 or that it has violated any federal, state, or local law; violated any regulations or guidelines
7 promulgated pursuant to any statute or any other applicable laws, regulations, or legal
8 requirements; breached any contract; violated or breached any duty; engaged in any
9 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
10 employees. Defendants further make no concessions or admissions of liability of any sort, makes
11 no concessions or admissions that any Class Member is or was employed by Defendants, and
12 contend that for any purpose other than settlement, the Action is not appropriate for class or
13 representative treatment. Defendants assert several defenses to the claims and have denied any
14 wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. The
15 monies being paid as part of the settlement are genuinely disputed, and the Parties agree the
16 provisions of Labor Code section 206.5 are not applicable to this Settlement. Neither this
17 Agreement, nor any document referred to or contemplated herein, nor any action taken to carry
18 out this Agreement, is or may be construed as, or may be used as an admission, concession, or
19 indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or
20 liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can
21 serve as adequate Class Representatives. There has been no final determination by any court as
22 to the merits of the claims asserted or as to whether a class or classes should be certified, other
23 than for settlement purposes only. Except as necessary in a proceeding to enforce the terms of
24 this Settlement, this Agreement and its terms and provisions shall not be offered or received as
25 evidence in any action or proceeding to establish any liability or admission on the part of
26 Defendants or to establish the existence of any condition constituting a violation of, or a non-
27 compliance with, federal, state, local or other applicable law. Nor shall anything in this
28 Agreement be construed or deemed an admission that the Action was properly brought as a class

1 action pursuant to California Code of Civil Procedure section 382 and under California Business
2 and Professions Code section 17200 and/or that the Action was properly brought as Private
3 Attorney General Actions under PAGA. Finally, nothing in this Agreement or in the Preliminary
4 Approval or Order Granting Final Approval shall be deemed a waiver of Defendants' right to
5 enforce the arbitration agreements of Class Members or Aggrieved Employees in the future. The
6 Parties agree that class certification and representative treatment is for purposes of this Settlement
7 only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter
8 Judgment, Defendants reserve the right to contest certification of any class for any reasons, and
9 Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the
10 right to move for class certification on any grounds available and to contest Defendants' defenses.
11 The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing
12 on, and will not be admissible in connection with, any litigation (except for proceedings to
13 enforce or effectuate the Settlement and this Agreement).

14 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
15 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
16 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
17 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
18 or indirectly, specifically or generally, to any person, corporation, association, government
19 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
20 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
21 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
22 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
23 government agency. Each Party agrees to immediately notify each other Party of any judicial or
24 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
25 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any
26 conversation or other communication, before the filing of the Motion for Preliminary Approval,
27 any with third party regarding this Agreement or the matters giving rise to this Agreement except
28 to respond only that "the matter was resolved," or words to that effect. This paragraph does not

1 restrict Class Counsel's communications with Class Members in accordance with Class
2 Counsel's ethical obligations owed to Class Members.

3 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and
4 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
5 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
6 ability to communicate with Class Members in accordance with Class Counsel's ethical
7 obligations owed to Class Members.

8 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
9 together with its attached exhibits shall constitute the entire agreement between the Parties
10 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
11 inducements made to or by any Party. Nothing in this Agreement or provision or in the
12 Preliminary Approval or Order Granting Final Approval shall be deemed a waiver of Defendants'
13 right to enforce the arbitration agreements of Class Members or Aggrieved Employees in the
14 future.

15 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
16 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
17 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
18 its terms, and to execute any other documents reasonably required to effectuate the terms of this
19 Agreement including any amendments to this Agreement.

20 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
21 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
22 Settlement Agreement, submitting supplemental evidence and supplementing points and
23 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
24 or content of any document necessary to implement the Settlement, or on any modification of the
25 Agreement that may become necessary to implement the Settlement, the Parties will seek the
26 assistance of a mediator and/or the Court for resolution.

27 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
28 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or

1 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
2 action, or right released and discharged by the Party in this Settlement.

3 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are
4 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
5 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
6 Part 10, as amended) or otherwise.

7 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
8 modified, changed, or waived only by an express written instrument signed or agreed to by all
9 Parties or their representatives and approved by the Court. Plaintiff and Defendants expressly
10 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
11 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
12 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
13 behalf of the Parties once fully executed.

14 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
15 the benefit of, the successors of each of the Parties.

16 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
17 governed by and interpreted according to the internal laws of the State of California, without
18 regard to conflict of law principles.

19 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
20 this Agreement. This Agreement will not be construed against any Party on the basis that the
21 Party was the drafter or participated in the drafting.

22 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
23 during Action and in this Agreement relating to the confidentiality of information shall survive
24 the execution of this Agreement.

25 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
26 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants
27 in connection with the mediation, other settlement negotiations, or in connection with the
28 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not

1 be used in any way that violates any existing contractual agreement, statute, or rule of court.

2 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
3 inserted for convenience of reference only and does not constitute a part of this Agreement.

4 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
5 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
6 weekend or federal legal holiday, such date or deadline shall be on the first business day
7 thereafter.

8 11.17. Notice. All notices, demands or other communications between the Parties in connection
9 with this Agreement will be in writing and deemed to have been duly given as of the third
10 business day after mailing by United States mail, or the day sent by email or messenger,
11 addressed as follows:

12 To Plaintiff: BIBIYAN LAW GROUP, P.C.
13 David D. Bibiyan
14 david@tomorrowlaw.com
15 Vedang J. Patel
16 vedang@tomorrowlaw.com
17 Brandon M. Chang
18 brandon@tomorrowlaw.com
19 1460 Westwood Boulevard
20 Los Angeles, CA 90024

21 To Defendants: FISHER & PHILLIPS LLP
22 Christine D. Baran
23 cbaran@fisherphillips.com
24 Joshua D. Klein
25 jdklein@fisherphillips.com
26 2050 Main Street, Suite 1000
27 Irvine, CA 92614
28 Telephone: (949) 851-2424
Facsimile: (949) 851-0152

11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
of this Agreement shall be accepted as an original. All executed counterparts and each of them
will be deemed to be one and the same instrument if counsel for the Parties will exchange between
themselves signed counterparts. Any executed counterpart will be admissible in evidence to

1 prove the existence and contents of this Agreement.

2 11.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
3 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
4 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
5 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
6 process.

7 11.20. Severability. In the event that one or more of the provisions contained in this Agreement
8 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
9 illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel
10 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
11 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
12 Agreement.

13 ///

14 **IT IS SO AGREED:**

15
16 
Ricardo Novella (Mar 28, 2025 08:47 PDT)

17 Plaintiff, RICARDO NOVELLA

 4/14/25

For Defendant, MJM VALLEJO
MINI-MARKET, INC.

4/14/25

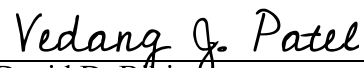


For Defendant, RJM VALLEJO
MINI-MARKET, INC.

 4/14/25

For Defendant, MARTIN VALLEJO

24 **AGREED AS TO FORM ONLY:**

25
26 

27 David D. Bbiyan
Vedang J. Patel
Counsel for Plaintiff


Christine D. Baran
Joshua D. Klein
Counsel for Defendants