

RAFAEL LOPEZ V. BAY STATE MILLING COMPANY
MEMORANDUM OF AGREEMENT

1. Defendants Bay State Milling Company (“Bay State”) and Peter Levangie (collectively, referred to as Defendants) and Plaintiff Rafael Lopez (“Plaintiff”; together with Defendants, the “Parties”) hereby set forth the terms of a Memorandum of Agreement (“MOA” or “Agreement”) designed to bind the parties to terms of a settlement to be thereafter memorialized further in a long form Stipulation of Settlement, the provisions of which will be consistent with this MOA.
2. For purposes of this Agreement, the “Action” is defined as *Lopez v. Bay State Milling Company*, Yolo County Superior Court, Case No. CV2023-0742.
3. This MOA memorializes the settlement reached in the mediation on October 9, 2023 between Plaintiff, the Settlement Class, and Defendants (the “Parties”). This MOA confirms the essential terms of the settlement reached between the Parties with the assistance of mediator Brandon McKelvey.
4. The Parties intend to enter into a more formal long form agreement (the “Stipulation of Settlement”) not inconsistent with the terms of this MOA, but if they fail to execute a more formal agreement, this MOA will be final, binding and enforceable pursuant to California Code of Civil Procedure Section 664.6 and admissible pursuant to California Evidence Code Section 1123. The Parties shall have 30 days from the date of this MOA to agree to the Stipulation of Settlement, including a proposed Notice form, Share form, and preliminary/final approval orders. Plaintiff shall prepare the initial draft.
5. The parties agree to cooperate fully with each other to accomplish the terms of the Agreement by entering into the long-form Stipulation of Settlement, to use their best efforts to finalize the Agreement, and to use any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the Agreement. In the event that the Parties do not execute the Stipulation of Settlement within 30 days of both parties’ approval of the finalized Stipulation of Settlement, either party may move for preliminary approval of this class action settlement on the basis of the terms set forth in this MOA. In that event, Plaintiff will propose customary terms and procedures for the notice process and settlement administration as part of any motion for approval. The Parties may extend this deadline by mutual agreement in writing.
6. The Parties will stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, the Parties stipulate that class certification will be revoked without prejudice.
7. The Parties agree that the proper scope and definition of the Class as alleged in the operative complaint and the definition of the Settlement Class Members for purposes of this agreement are “*All persons who worked for Defendants at least one shift as a non-exempt direct-hire or agency employee in the State of California from the period four years prior to the filing of the Action and the date of trial (“Class”).*” For the purpose of this paragraph “Defendant” shall mean and refer to Bay State and Peter Levangie.
8. The Release Period starts on April 10, 2019 and runs through 90 days after October 9, 2023 or the

date of preliminary approval, whichever date occurs first. The PAGA Release Period starts on April 3, 2022 and runs through 90 days after October 9, 2023 or the date of preliminary approval, whichever date occurs first.

9. The Parties and their counsel agree that the consideration described in the subparagraphs below constitute their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendants consist of the following:
- a. Bay State shall pay the Settlement Fund Amount (“Settlement Fund Amount” or “MSA”) of **\$837,500.00** in full and complete settlement of this matter. Bay State shall also pay the employer’s portion of all payroll taxes separate and in addition to the Settlement Fund Amount.
 - b. Bay State shall fund the MSA within 15 calendar days of being provided the final accounting of funds by the administrator, which shall be within 7 calendar days of the “Effective Date.”
 - c. The Effective Date means the date on which the settlement embodied in this Settlement Agreement shall become effective and is the date after all of the following events have occurred: (i) this Settlement Agreement has been executed by Plaintiff and Defendants; (ii) the Court has given Preliminary Approval to the Settlement, including approving a provisional Settlement Class; (iii) notice has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of the Settlement or to opt-out of the Settlement; and (iv) either (1) the Court has held a formal fairness hearing and, having heard no objections by any Class Members to the Settlement, has given Final Approval to the Settlement, including entering a final order and judgment certifying the Class and approving this Settlement Agreement; or (2) in the event there are oral or written objections filed by Class Members prior to or at the formal fairness hearing which are not later withdrawn or denied, the later of the following events: (a) five (5) business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval of the Settlement have elapsed without any appeal, writ, or other appellate proceeding having been filed; or (b) five (5) business days have elapsed following the final and conclusive dismissal or resolution of any appeal, writ, or other appellate proceeding opposing the Settlement, with no right to pursue further appellate remedies or relief.
 - d. This is a non-reversionary settlement. All funds represented by uncashed checks remaining in the Qualified Settlement Fund shall be tendered to a *cy pres* recipient to be agree upon by the parties and approved by the Court.
 - e. Defendants agree to provide Plaintiff with reasonable confirmatory discovery to allow Plaintiff to verify the information relied upon in agreeing to settle. Defendants will provide Plaintiff with the transcribed data from the sample of paper timecards provided to Plaintiff prior to the mediation. Defendants will also request a reasonable sampling of electronic timekeeping data from the staffing agencies. Defendants shall take reasonable steps to obtain exemplar or actual policy documents and/or and employment agreements covering Class Members solely employed by a third party staffing agency and provide them to Plaintiff’s Counsel.

- f. For purposes of administration of the settlement, Defendants will provide the Settlement Administrator only with a Class List that includes the names, social security numbers, contact information, and total class and PAGA workweeks based on Defendants' records for the Settlement Class Members. .

10. The Parties agree that the consideration described in Paragraph 9, above, constitutes adequate consideration for the settlement and release described below:

- a. *Release by Plaintiff*: The Plaintiff shall be bound by a complete Section 1542 release and waiver of all claims known and unknown, without exception, against the "Released Parties" (below), except as may be prohibited by law.
- b. *Release by Settlement Class Members*: All Settlement Class Members who do not opt out of the Settlement will be bound by a limited release that releases all claims against the Released Parties, whether known or unknown, within the definition of "Released Claims" (below).
- c. *Definition of "Released Claims"*: Those claims asserted in the Complaint or could have reasonably been asserted based on the facts and allegations made therein, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 200, 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 233, 245, 246, 248, 248.2, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1401, 2802, and 2698, et seq., California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, et seq., Business and Professions Code sections 17200, et seq., and California Code of Civil Procedure section 1021.5 during the Release Period.
- d. The Parties agree that all payments under the Settlement to Settlement Class Members shall be deemed to be income to such Settlement Class Members solely in the year in which such awards actually are received by the Settlement Class Members, and that the payments will not entitle any Settlement Class Members to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class Members to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. The Parties agree that it is the intent of this Settlement that the payments provided for in the Settlement are the sole payments to be made by Defendants to the Settlement Class Members in connection with this Settlement, and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Awards (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).
- e. *Definition of "PAGA Released Claims"*: Those claims for civil penalties asserted in the Complaint or Plaintiff's LWDA letter under the Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA") based on predicate violations of California Labor

Code sections 200, 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 233, 245, 246, 248, 248.2, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1401, 2802, and 2698, et seq., California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, et seq., during the PAGA Release Period.

- f. *Definition of "Released Parties"*: "Released Parties" shall mean (i) Defendants; (ii) each of Defendants' respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, or partnership; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing, including, but not limited to, temporary staffing agencies.
11. In the event that: (a) the Court does not finally approve the Settlement in substantially the same form as set forth herein or the long form Settlement; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning and the Parties shall be in the same position as they were prior to agreeing to this MOU. However, in such event, if the Court rejects the Settlement despite the Parties' best efforts, Defendants shall still be liable for all Settlement Administration costs incurred.
12. Defendants will not oppose a request by the named Plaintiff to be appointed Class Representative and for an enhancement payment of up to \$15,000, to be deducted from the Settlement Fund Amount, in exchange for his service as Class Representative. This enhancement payment is in addition to the payment to which he is entitled as Settlement Class Member and in addition to the payment described in Paragraph 9(a). In the event that the Court reduces or does not approve the requested Class Representative enhancement payment, Plaintiff shall not have the right to revoke this MOA or the Stipulation of Settlement, and it will remain binding.
13. The Parties designate \$125,000 of the Settlement Fund Amount towards payment of civil penalties for violations of PAGA. This amount will be allocated as follows: 75% will be payable to the LWDA and the remaining 25% will be payable to the Settlement Class.
14. Defendants will not oppose an application for an award to Class Counsel, from the Settlement Fund Amount, of up to one-third of the Settlement Fund Amount in attorneys' fees, plus actual costs and expenses, of up to \$25,000, as supported by declaration. Even in the event that the Court reduces or does not approve the requested Class Counsel Award and costs, Plaintiff's Counsel shall not have the right to revoke this MOA or this settlement, and it will remain binding.
15. The Parties will select a Settlement Administrator on the basis of cost and competence, with the best interests of the Class in mind. Defendants and Defendants' counsel shall not enter into any contractual relationship with the Settlement Administrator. Fees of the Settlement Administrator shall be paid out of the Settlement Fund Amount, in the amount up to \$25,000. The

Stipulation of Settlement shall make clear that Plaintiff, Plaintiff's counsel, Defendants, and Defendants' counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or development of the list of recipients of settlement payments or any increase in the fees of the Settlement Administrator that may result from such errors or omissions.

16. The Class Notice will contain an estimated individual settlement payment, dates of employment, how to opt-out of the settlement, how to contest the workweek calculation (*i.e.*, a "Share" form), and how to object to the settlement. Settlement Class Members will be mailed a Class Notice and return postage-paid envelope. Settlement Class Members shall have 30 days to respond to the mailing.
 - a. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment except as to that portion of the settlement and final judgment dedicated to alleged violations of the PAGA and associated penalties.
 - b. After reductions for the PAGA Claim, attorneys' fees, costs, administrative costs, and class representative enhancement payment, (including without limitation any penalties and interest payable thereon), the Net Settlement Amount (the "NSA") shall be distributed on a pro rata basis to Settlement Class Members, based on a reasonable allocation method to be agreed upon by the Parties, such as by shifts worked or weeks worked; however, shifts worked and/or workweeks worked by direct hire employees shall be given twice the weight, at least, as shifts worked and/or workweeks worked by agency employees to account for the difference in their legal claims and the impact of putative arbitration agreements governing agency employees. Payments shall be reduced as necessary to account for mandatory tax withholdings. Recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations.
 - c. Bay State shall transmit the names and contact information confidentially for all Settlement Class members to a mutually agreed upon claims administrator within 5 calendar days after the entry of a Court order preliminarily approving the Settlement (the "Class List"). To comply with Paragraph 18, the Class List provided by Defendants to the administrator as part of the administration process shall also contain the start and ends dates of employment for Class Members, as well as Defendants' calculation of workweeks worked by each Class Member, subject to the confirmatory discovery referenced above.
17. The settlement payment for each individual claimant shall be allocated as follows: (a) 33% as wages; (b) 33% as penalties; and (c) 34% as interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated to penalties and interest.
18. Defendants maintain the right, in their sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that 7% or more of Settlement Class Members opt out of the settlement. In such case, they shall be solely responsible for all administration fees incurred through that date.

19. Defendants have represented that there are 105 direct hire Settlement Class Members during the period from April 10, 2019 through September 17, 2023, who worked a combined 7,589 workweeks during that period. Defendants have further represented that there are 667 agency hire Settlement Class Members during the period from April 10, 2019 through September 17, 2023, who worked a combined 4,066 workweeks during that period. Defendants have represented that 64 of the agency hire Settlement Class Members were also direct hire Settlement Class Members. Plaintiff has relied upon these material representations in entering into this MOA. Should the total number of workweeks worked by direct hire Settlement Class Members exceed 8,348 (10% more than 7,589 workweeks), Defendants, in their sole discretion, may elect to shorten the Class Period for the direct hire Settlement Class Members to the date that the total workweeks meets but does not exceed 8,348 or Defendant may choose to pay the pro rata percentage increase in excess of 10% to the MSA to include the additional workweeks; e.g. a 12% increase in workweeks would result in a 2% increase in the MSA. Should the total number of workweeks worked by agency hire Settlement Class Members exceed 4,473 (10% more than 4,066 workweeks), Defendants, in their sole discretion, may elect to shorten the Class Period for the agency hire Settlement Class Members to the date that the total workweeks meets but does not exceed 4,473 or Defendant may choose to pay the pro rata percentage increase of 0.5% for workweeks in excess of 10% to the MSA to include the additional workweeks or class members; e.g. a 12% increase in workweeks would result in a 1% increase in the MSA.
20. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.
21. The Parties and their counsel agree not to take any action to encourage, support, or induce any Settlement Class Members to opt out of and/or object to the Settlement. This includes requiring or asking Class Members to sign any arbitration agreements that purport or could be read to limit a Class Member's right to participate in this Settlement prior to Entry of Judgment and disbursement of the MSA.
22. Defendants expressly deny any liability. Neither this MOA nor the Stipulation of Settlement shall constitute an admission of liability or the accuracy of any allegation made by Plaintiff or his counsel.
23. Neither Defendants nor their counsel shall have any liability for any tax implications related to the receipt of settlement funds herein, including by the claims administrator. Any and all such liability and/or obligations shall be borne solely by the recipients of any funds to be paid by Bay State herein, except that in no case shall any Class Member be required to pay, reimburse, or indemnify Bay State for any amounts characterized or recharacterized as employer-side tax liabilities. The Parties acknowledge neither Defendants' nor Plaintiff's counsel have provided any tax-related advice whatsoever.

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24. The Parties shall present the Stipulation of Settlement to the Court for Approval through a noticed motion requesting approval of the settlement. Plaintiff shall move expeditiously to file a Motion for Preliminary Approval after the Parties execute the long-form Settlement.

IT IS SO AGREED.

PLANTIFF

Dated: 09/10/2023

Rafael Lopez
Rafael Lopez (Oct 9, 2023 19:20 PDT)

Rafael Lopez

DEFENDANTS

Dated: _____

Bay State Milling Company