

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Blvd., Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff WILLIAM APPEL individually
10 and on behalf of similarly situated employees

11 DOWNEY BRAND LLP
12 CASSANDRA M. FERRANNINI (Bar No. 204277)
13 cferrannini@downeybrand.com
14 DARIA A. GOSSETT (Bar No. 316717)
15 dgossett@downeybrand.com
16 621 Capitol Mall, 18th Floor
17 Sacramento, California 95814
18 Telephone: 916.444.1000
19 Facsimile: 916.444.2100
20 *Attorneys for Defendants*
21 *SUNFOODS, LLC, and MATT ALONSO*

22
23
24
25
26
27
28
SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF YOLO

29 WILLIAM APPEL, individually and on behalf
30 of all other similarly situated employees,

31 Plaintiff,

32 vs.

33 SUNFOODS, LLC, a California Corporation;
34 MATT ALONSO, an individual; and DOES 1
35 to 100, inclusive,

36 Defendants.

Case No.: CV2023-2012

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: September 25, 2023

Trial Date: None Set

1 This Private Attorneys General Act Settlement is made and entered into between the Plaintiff
2 William Appel (“Plaintiff”), on behalf of himself, the Labor and Workforce Development Agency, and
3 Aggrieved Employees, and Defendants Sunfoods, LLC, and Matt Alonso (“Defendants”). This Agreement
4 is subject to the terms and conditions set forth below and approval of the Court.

5 **1. DEFINITIONS**

6 The following terms, when used in this Agreement, have the following meanings:

7 1.1 “Action” means the above stated lawsuit, *Appel v. SunFoods, LLC*, Yolo County Superior
8 Court, Case No. CV2023-2012, filed September 25, 2023.

9 1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, work for
10 Defendant in California as non-exempt employees from July 18, 2022, up to either (1) the End Date, or
11 (2) sixty (60) days after this Agreement is fully executed, whichever is earlier.

12 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys
13 General Act Settlement.

14 1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

15 1.5 “Court” means the Yolo County Superior Court.

16 1.6 “Defendants” means Sunfoods, LLC, and Matt Alonso.

17 1.7 “Defendants’ Counsel” means Downey Brand LLP.

18 1.8 “Enhancement Payment” means the amount approved by the Court to be paid to Plaintiff
19 in recognition of the time and effort expended on behalf of Aggrieved Employees for the benefit of
20 Aggrieved Employees, which is in addition to any Individual PAGA Amount paid to Plaintiff as an
21 Aggrieved Employee. This payment shall also be in exchange for a waiver of individual claims by Plaintiff
22 beyond the Private Attorneys General Act, including a waiver of California Civil Code section 1542.

23 1.9 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
24 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
25 after a signed order approving this settlement has been filed provided no appellate proceeding having been
26 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
27 finally dismissed with no material change to the terms of this Settlement and there is no right to pursue
28 further remedies or relief, whichever is later.

1 1.10 "End Date" means the date the Court issues a signed order granting approval of the
2 Agreement.

3 1.11 "Final Approval Date" means the date the Court issues a signed order granting approval of
4 the Agreement.

5 1.12 "Gross Settlement Amount" is the sum of Ninety-Nine Thousand Dollars (\$99,000).

6 1.13 "Individual PAGA Amount" means an individual Aggrieved Employees' allocation of the
7 Net Settlement Amount, as defined in Section 1.15 and 5.8.

8 1.14 "LWDA" means the California Labor and Workforce Development Agency.

9 1.15 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
10 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
11 deduction of Plaintiff's attorneys' fees and litigation costs, Enhancement Payment, and Settlement
12 Administrator Costs.

13 1.16 "Notice of Settlement" means the document substantially in the form attached hereto as
14 Exhibit 1.

15 1.17 "PAGA" means Private Attorneys General Act.

16 1.18 "PAGA Claim Period" means July 18, 2022, up to either (1) the End Date, or (2) sixty (60)
17 days after this Agreement is fully executed, whichever is earlier.

18 1.19 "PAGA Payment" means the 75% share of the Net Settlement Amount paid to the LWDA
19 pursuant to Labor Code section 2699(i).

20 1.20 "Parties" mean Defendants and Plaintiff.

21 1.21 "Plaintiff" means William Appel.

22 1.22 "Plaintiff's Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
23 Shimoda & Rodriguez Law, PC.

24 1.23 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the
25 benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made.
26 Any amounts Defendants have agreed to pay under this Agreement shall remain the property of
27 Defendants until the payments required under the Agreement are made.

1 1.24 “Qualifying Pay Periods” are pay periods worked by Aggrieved Employees during the
2 PAGA Claim Period in California. Defendants shall provide a confidential list to the Settlement
3 Administrator which contains the names, addresses, telephone numbers, and dates of employment of the
4 Aggrieved Employees.

5 1.25 “Released PAGA Claims” means any and all claims for civil penalties that were brought
6 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, that were asserted in Plaintiff’s
7 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
8 been brought based on the facts alleged therein during the PAGA Claim Period. Aggrieved Employees
9 cannot opt out of this waiver of claims.

10 1.26 “Plaintiff’s Released Claims” means any and all individual claims, causes of action,
11 debts, liabilities, demands, penalties, obligations, guarantees or damages, in law or equity, tort, contract,
12 by statute, or otherwise which have been or could have reasonably been asserted in the Action, whether
13 known or unknown. These claims include, but are not limited to: individual wage and hour claims,
14 claims of failure to pay overtime compensation and minimum wages, claims of failure to pay overtime
15 compensation and minimum wages, claims of failure to provide meal periods, rest breaks, and recovery
16 periods, claims of failure to provide reimbursements or bonuses, claims of failure to pay all wages due
17 to discharged or quitting employees, claims of failure to maintain required records or furnish accurate
18 itemized statements, claims of failure to provide COVID-19 supplemental paid sick leave, and claims
19 that could have been brought in the Action, all under the Fair Labor Standards Act, the California Labor
20 Code, the Industrial Welfare Commission Wage Orders, or any other state or federal wage and hour
21 laws; individual claims and penalties under Labor Code section 2699 *et seq.* that were asserted in
22 Plaintiff’s notice letter to the LWDA and any additional individual claims for civil penalties under the
23 PAGA that could have been brought based on the facts alleged therein; any other violation of the Fair
24 Labor Standards Act, the California Labor Code, the Industrial Welfare Commission Wage Orders, or
25 any other state or federal wage and hour laws; violation of the California Business and Professions
26 Code, including, but not limited to section 17200, *et seq.*; breach of contract; fraud; discrimination;
27 harassment; retaliation; whistleblowing; violation of the California Fair Employment and Housing Act
28

(Government Code section 12940. et seq.); wrongful termination and/or constructive discharge; intentional infliction of emotional distress; and/or any other claim or theories of recovery arising out of Plaintiff's employment relationship with SunFoods, or any termination of any such relationship. It is agreed that this is a general release and is to be broadly construed as a release of all of Plaintiff's current or potential individual claims against the Released Parties prior to the Effective Date. Plaintiff acknowledges and agrees that upon the Effective Date and receipt of funds due under this Agreement, he will have been paid all wages and other sums due to him as required by law and he will not be an "aggrieved employee" as defined in Labor Code section 2699. Plaintiff further acknowledges and agrees that he will not prosecute a lawsuit under PAGA as an "aggrieved employee" for any alleged violations or penalties under Labor Code sections 2699, *et seq.* that predate the PAGA Claim Period. This release includes a waiver of the protections found in California Civil Code section 1542, which states:

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

1.27 "Released Parties" means SunFoods, its predecessors in interest, its present and former members, officers, directors, employees, agents, parents, subsidiaries, affiliates, joint employers, related entities, successors and assigns and Matt Alonso.

1.28 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator.

1.29 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees,

Plaintiff's Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual PAGA Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual PAGA Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about July 18, 2023, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (3) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof (4) Failure to Provide Accurate Wage statements, (5) Failure to Pay Final Wages, (6) Failure to Pay Reimbursement for Expenses, (7) Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), and (8) Failure to Provide Paid Sick Leave. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on September 25, 2023, in Yolo County Superior Court on behalf of himself and Aggrieved Employees for claims alleged in the July 18, 2023, notice to the LWDA.

2.3 Through informal discovery, Defendants and Defendants' Counsel provided Plaintiff's Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees' workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved Employees.

1 2.4 After Plaintiff's Counsel received the data, the Parties engaged in informal settlement
2 negotiations, but were not able to come to a resolution. On February 22, 2024, the Parties participated in
3 a lengthy mediation with private mediator Russ. J. Wunderli. Although the parties did not achieve
4 resolution at mediation, they continued to rigorously negotiate in the months that followed and eventually
5 resolved the case. At all times, the Parties' settlement negotiations have been non-collusive, adversarial,
6 and at arm's length.

7 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the
8 mediator, document productions, extensive legal analysis, the provision of information by Defendants to
9 Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative
10 merits of the PAGA claims and the defenses to those claims.

11 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
12 incorporate the value of non-discretionary safety bonuses into Aggrieved Employees' regular rates of pay
13 for the purpose of calculating overtime premiums and paid sick time; 2) paying Aggrieved Employees
14 two different rates of pay in the same workweek and failing to use the weighted average method to
15 calculate Aggrieved Employees' regular rates of pay; 3) failing to provide all meal periods, including
16 second meal periods; 4) failing to provide all rest periods, including third rest periods; 5) failing to pay
17 meal premiums and paid sick time at the correct regular rate of pay; 6) failing to reimburse Aggrieved
18 Employees for the use of their personal tools for work, 7) failing to provide meal period and rest period
19 premium pay for missed meal and rest breaks to Aggrieved Employees, 8) failing to provide Aggrieved
20 Employees with accurate wage statements, and 9) failing to pay Aggrieved Employees at termination or
21 separation all wages owed. Defendants have denied each of Plaintiff's claims. The agreed upon Gross
22 Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the PAGA
23 claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the
24 potential liability based on Defendants' factual and legal contentions and defenses.

25 2.7 The Parties agree that the above-described investigation and evaluation, as well as
26 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
27 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff,
28 Plaintiff's Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the

PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, penalties, interest, fees, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the asserted PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, and are expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges, including compelling Appel's individual claims to arbitration.

4. SCOPE OF THE AGGRIEVED EMPLOYEES

4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Aggrieved Employees as defined in Section 1.2.

4.2 Aggrieved Employees entitled to recover under this Agreement will include only those individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendants shall pay the Gross Settlement Amount (\$99,000.00). Funding of the Gross Settlement Amount shall occur within twenty-eight (28) calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum amount payable under this Agreement by Defendants, and includes without limitation, the PAGA Payment, all payments to the Aggrieved Employees, all attorneys' fees, costs and litigation expenses directly related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining approval of the Agreement. Under no circumstances shall Defendants pay any amounts in excess of the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Plaintiff's Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$8,500, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$8,500 threshold. The Settlement Administrator will issue Plaintiff's Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the Net Settlement Amount as defined in section 1.15.

5.3 Enhancement Payment: Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000) to compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of

1 this Agreement for Aggrieved Employees and the LWDA. The Enhancement Payment is in addition to
2 the Individual PAGA Amount Plaintiff would otherwise be due under the Agreement as an Aggrieved
3 Employee. This payment is also in exchange for a waiver of individual claims by Plaintiff, including a
4 waiver of Civil Code section 1542. Defendants have agreed to not oppose Plaintiff's Counsel's request
5 for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. For tax
6 reporting and allocation purposes, \$250 of any Enhancement Payment will be designated as wages and
7 reported on an IRS Form W-2 and any remaining amount of any awarded Enhancement Payment will be
8 designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court
9 awards less than the Enhancement Payment amount requested, then any portion of the requested amount
10 not awarded to Plaintiff shall be added to the Net Settlement Amount to be distributed to the Aggrieved
11 Employees on a pro rata basis.

12 5.4 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from
13 the Gross Settlement Amount and shall not exceed \$5,000. The difference between any actual costs and
14 the allocated \$5,000 shall be added to the Net Settlement Amount as defined in section 1.14.

15 5.5 Treatment of Residue: For any portion of the Net Settlement Amount allocated to
16 Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective
17 settlement checks before the deadline to do so, that remaining amount shall be forwarded to the California
18 State Controller's Unclaimed Property Fund in the name of the employee who did not cash their individual
19 PAGA payment. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

20 5.6 No Additional Benefits Contributions: All Individual PAGA Amounts paid to Aggrieved
21 Employees shall be deemed to be income solely in the year in which such amounts were actually received
22 by Aggrieved Employees. It is expressly understood and agreed that the receipt of such Individual PAGA
23 Amounts will not entitle any Aggrieved Employee to any new or additional compensation or benefits
24 under any company bonus or other compensation or benefit plan or agreement in place during the period
25 covered by the Agreement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k)
26 benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that
27 the Individual PAGA Amounts provided for in this Agreement are the sole payments to be made by
28 Defendants to the Aggrieved Employees in connection with this Agreement (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 Agreement).

5.7 Tax Allocation: The Parties recognize that the Individual PAGA Amounts to be paid to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of Individual Settlement Amounts to Aggrieved Employees are as follows:

5.7.1 One Hundred percent (100%) of each Aggrieved Employees' Individual PAGA Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual PAGA Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099-MISC.

5.7.2 Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement. Aggrieved Employees and Plaintiff agree they will assume any tax obligations or consequences that may arise from this Agreement, and will not seek indemnification from Defendants or Defendants' Counsel in this regard. Aggrieved Employees and Plaintiff further agree to hold Defendants and Defendants' Counsel harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, attorney fees or recoveries by any governmental entity for any failure by the Aggrieved Employees and/or Plaintiff to pay taxes due and owing, if any, on the Gross Settlement Amount or Enhancement Payment.

5.8 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, any Enhancement Payment to Plaintiff, and Settlement Administrator Costs are determined and a Net Settlement Amount has been established, that Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount. 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual Aggrieved Employees' Individual PAGA Amount shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount.

Payment to Aggrieved Employees of their Individual PAGA Amount will not require the submission of any claim form.

5.9 No Additional Contribution by Defendants: Defendants' monetary obligation under this Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein.

6. RELEASE

6.1 Release by Aggrieved Employees: Upon the Effective Date, Plaintiff and each Aggrieved Employee shall be deemed to fully, finally, and forever release the Released Parties from all Released PAGA Claims.

6.2 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and forever release the Released PAGA Claims, and Plaintiff's Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims, and Plaintiff's Released Claims against any of the Released Parties.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating estimated Individual PAGA Amounts and any and all taxes associated with the Individual Settlement Amount, if any; 3) taking appropriate steps to trace and locate any individual Aggrieved Employees whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the Agreement after resolution of awarded attorneys' fees and costs and Settlement Administrator Costs; 7) paying any residual funds from uncashed checks to the pursuant to Paragraph 5.5; 8) reporting to Plaintiff's Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of

1 Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces
2 performed for undeliverable Notice of Settlements; (g) the number of Notice of Settlements undeliverable
3 from traced addresses; 9) providing a declaration to the Court regarding the final statistics of the
4 administration and compliance with all payment obligations under the Agreement; 10) completing all
5 necessary tax reporting on the QSF and payment of the Individual PAGA Amounts to Aggrieved
6 Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of this Agreement
7 and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to
8 perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
9 the terms and conditions of this Agreement, until all payments and obligations contemplated by the
10 Agreement have been fully executed.

11 7.2 Aggrieved Employee Data: Within seven (7) calendar days after the Effective Date,
12 Defendants shall provide the Settlement Administrator with the name, last known mailing address, last
13 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved
14 Employee. The Settlement Administrator shall review the data to determine the number of Qualifying
15 Pay Periods for each Aggrieved Employee. Defendants shall not provide any information for pay periods
16 during which an Aggrieved Employee may have worked as an exempt employee, worked outside
17 California, or worked outside the PAGA Claim Period. The Settlement Administrator shall maintain all
18 information received from Defendants confidential to itself, and Defendants' Counsel. However,
19 Plaintiff's Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated
20 Individual PAGA Amounts for Aggrieved Employees, but not names or other associated identifying
21 information including addresses or phone numbers, prior to mailing for quality assurance.

22 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:
23 Within seven (7) calendar days after Defendants have provided the Settlement Administrator with
24 information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net
25 Settlement Amount, PAGA Payment, and the final Individual PAGA Amounts for Aggrieved Employees,
26 and report the results of these calculations to Plaintiff's Counsel and Defendants' Counsel.

27 7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the
28 LWDA: Defendants shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement

1 Administrator within fourteen (14) calendar days after receiving the funding calculation and report from
2 the Settlement Administrator to be to be held in trust in a QSF. Within seven (7) calendar days after the
3 Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall
4 deliver payment of Plaintiff's Counsels' attorney's fees and costs, the PAGA Payment payable to the
5 LWDA, Settlement Administrator Costs, and payment for Individual PAGA Amounts to Aggrieved
6 Employees as required under this Agreement and approved by the Court. Plaintiff's Counsel shall provide
7 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
8 for the attorney's fees and costs after the Effective Date.

9 7.5 Notice to Aggrieved Employees: Defendants represent and warrant that Aggrieved
10 Employees are able to read and write in English such that no translation of the Notice of Settlement into
11 another language is necessary. The Settlement Administrator will provide a Notice of Settlement,
12 substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing
13 payment for Individual PAGA Amounts as described in Sections 5.8 and 7.4. The Notice of Settlement
14 will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement. The
15 Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net
16 Settlement Amount, attorneys' fees and costs allocations, Settlement Administrator Cost allocations,
17 PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent
18 of the Released PAGA Claims.

19 7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement
20 Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a
21 national change of address ("NCOA") search, update the addresses per the results of the NCOA search
22 and will mail the respective Individual PAGA Amount, as determined in Sections 5.8 and 7.4, and Notice
23 of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

24 7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and
25 Individual PAGA Amount payment is returned to the Settlement Administrator as undeliverable, the
26 Notice of Settlement and Individual PAGA Amount payment shall be sent to the forwarding address
27 affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement
28 Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer

1 or other search using the name, address and/or Social Security number of the individual involved, and
2 shall then perform a single re-mailing within seven (7) calendar days. In the event the procedures in this
3 paragraph are followed and the intended recipient of a Notice of Settlement and Individual PAGA Amount
4 payment still does not receive the Notice of Settlement and/or Individual PAGA Amount payment, the
5 Aggrieved Employee shall still be bound by all terms of the Agreement, including the releases contained
6 in Sections 1.25 and 6.1, 6.2, and any final judgment entered by the Court.

7 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2
8 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
9 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
10 Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly
11 required by the Court.

12 7.9 Settlement Check Expiration and Residue: The Settlement Administrator shall issue
13 Individual PAGA Amounts to Aggrieved Employees in the form of a check, which shall become null and
14 void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty
15 (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall
16 be transmitted as identified in Section 5.5. The Settlement Administrator shall deliver the funds within
17 fourteen (14) calendar days after the check cashing deadline.

18 7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within
19 twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks,
20 the Settlement Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with a signed
21 declaration under penalty of perjury providing a complete and detailed report regarding the settlement
22 administration and that all the obligations of the Settlement Administrator have been completed.

23 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

24 8.1 The schedule may be modified depending on whether and when the Court grants
25 necessary approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The
26 schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as
27 described above. In the event of such modification, the Parties shall cooperate to complete the settlement
28

procedures as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual PAGA Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendants to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks pursuant to Paragraph 5.5	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. MISCELLANEOUS TERMS

1 9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released
2 PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to
3 enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party
4 in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and
5 costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for
6 attorney's fees and costs is filed.

7 9.2 Additional Pay Period Contingency: Defendants have represented that there are no more
8 than 1,827 pay periods during the PAGA Claim Period. In the event the number of pay periods during
9 the PAGA Claim Period is more than 2,009.7 (*i.e.*, greater than 10% more than 1,827), then the End
10 Date shall be moved back in time such that the number of Qualifying Pay Periods within the PAGA
11 Claim Period meets, but does not exceed, the 2,009.7 threshold.

12 9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
13 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
14 execution of such other documents and the taking of such other action as may reasonably be necessary to
15 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
16 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
17 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
18 modifying and/or resubmitting the Agreement for approval, however under no circumstances shall
19 Defendants pay more than \$99,000.00. Plaintiff's Counsel shall be responsible for drafting the court
20 approval paperwork. All parties agree to act immediately and diligently to perform their obligations under
21 this Agreement, including the review and approval of settlement documents, such that there are no
22 substantial delays in seeking court approval or administration of this settlement. Plaintiff's Counsel shall
23 endeavor to file a motion for approval of this settlement within thirty (30) calendar days of the date this
24 Agreement is signed. Plaintiff's Counsel shall provide Defendants' Counsel with a draft approval motion
25 within 1 week after this Agreement is fully executed. Defendants' Counsel will provide comments and/or
26 proposed revisions within 1 week after receipt of the draft motion.

27 9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
28 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to

1 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
2 Complaint, the representative character of the Action, the validity of any of the claims that were or could
3 have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of
4 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
5 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved
6 Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability,
7 negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the
8 Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

9 9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
10 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
11 the third business day after mailing by United States certified mail, return receipt requested, addressed as
12 follows:

13 To the Plaintiff:

14 Galen T. Shimoda,
15 Justin P. Rodriguez
16 Renald Konini
17 Shimoda & Rodriguez Law, PC
18 9401 East Stockton Blvd., Suite 120
19 Elk Grove, CA 95624

20 To Defendants:

21 Cassandra M. Ferrannini
22 Daria A. Gossett
23 Downey Brand LLP
24 621 Capitol Mall, 18th Floor
25 Sacramento, CA 95814
26 Telephone: 916.444.1000
27 Facsimile: 916.444.2100

28 9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the

terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein.

9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms.

9.10 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement

9.11 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Plaintiff's Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals. If any party elects to execute the Agreement with an electronic signature, a Final Audit Report (Adobe E-sign) or an equivalent certificate validating the electronic signature process shall be included as Exhibit 2 to this Agreement.

9.12 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

1 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
3 scope of this Agreement, or any provision thereof.

4 9.14 Integrated Agreement: This Agreement sets forth the entire understanding between the
5 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
6 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
7 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
8 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
9 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
10 fully understood and voluntarily accepted by the Parties.

11 9.15 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
12 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
13 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

14 9.16 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
15 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
16 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

17 9.17 Waiver of Compliance: No waiver of any condition or covenant contained in this
18 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
19 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

20 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
21 attorneys, as of the day and year herein set forth.

22 **For Plaintiff:**

23 Date: 10/30/2024

William Appel
William Appel (Oct 30, 2024 15:34 PDT)
William Appel

25 **For Defendants:**

26 Date: _____

27 By: _____
28 For SunFoods, LLC

9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

9.14 Integrated Agreement: This Agreement sets forth the entire understanding between the Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

9.15 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

9.16 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

9.17 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: _____

William Appel

For Defendants:

Date: 1 November 2024

By: Kate Cooper
For SunFoods, LLC

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

Date:

11/5/2024

Matt Alonso



APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

DOWNEY BRAND LLP

Dated: _____

By: _____

Cassandra M. Ferrannini
Daria A. Gossett
Attorneys for Defendants

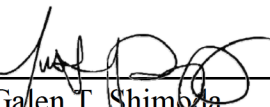
1 Date: _____

2 _____
Matt Alonso

3
4 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

5
6 Dated: 10/30/2024

7 By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff and Aggrieved
Employees

8
9
10 APPROVED AS TO FORM

DOWNEY BRAND LLP

11
12 Dated: 11/08/2024

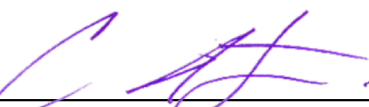
13 By: 
Cassandra M. Ferrannini
Daria A. Gossett
Attorneys for Defendants

Exhibit 1

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT PAYMENT
William Appel v. SunFoods, LLC et. al, Yolo County Superior Court Case No. CV2023-2012

Why are you receiving this Notice?

This Notice is being provided to you to inform you of a Private Attorneys General Act (“PAGA”) Settlement and your proportional share of the settlement payment in *Appel v. SunFoods, LLC*, Yolo County Superior Court, Case No. CV2023-2012, filed September 25, 2023 (the “Action”). You are receiving this payment because you worked as a non-exempt employee at SunFoods at some point during the time period July 18, 2022 to _____ (“PAGA Period”).

What do you need to do? Nothing. Employees cannot opt out of this settlement.

How was my portion of the settlement calculated? The California Labor Code requires that 75% of the Net PAGA Settlement be paid to the State of California. The remaining 25% is distributed to the employees. Each employee’s share is determined by taking their individual number of pay periods worked between July 18, 2022, up to _____, dividing that number by the number of pay periods worked for all employees that worked at some point between July 18, 2022, up to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount. Enclosed in this mailing, you will find a check containing your share of the Settlement based on this allocation.

What was the case about? Plaintiff William Appel filed a lawsuit seeking penalties, attorneys fees, and costs under PAGA. PAGA is a “representative action,” meaning it is brought on behalf of the State. Plaintiff alleged violations of Labor Code sections 510, 1194, 226.7, 512, 226, 226.3, 201-203, 256, 558, 558.1, 246, 246.5, 248.5, 2802 for the PAGA period.

Did the Court decide who was right? No. This notice is not intended to be, and should not be construed as, an expression of any opinion with respect to the truth of the allegations or the merits of the claims or defenses asserted. Defendant denies engaging in any unlawful conduct in any respect and disputes all of the allegations. By entering into the Settlement, Defendants do not admit any liability.

Exhibit 2

Appel long form PAGA settlement Final For Signature

Final Audit Report

2024-10-30

Created:	2024-10-30
By:	Shaniya Baird (sbaird@shimodalaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyqRtfDiU0pFFVT9nWSbBDcFgJP7JoXa9

"Appel long form PAGA settlement Final For Signature" History

-  Document created by Shaniya Baird (sbaird@shimodalaw.com)
2024-10-30 - 7:24:50 PM GMT
-  Document emailed to wappelm@hotmail.com for signature
2024-10-30 - 7:24:57 PM GMT
-  Email viewed by wappelm@hotmail.com
2024-10-30 - 8:37:59 PM GMT
-  Signer wappelm@hotmail.com entered name at signing as William Appel
2024-10-30 - 10:34:50 PM GMT
-  Document e-signed by William Appel (wappelm@hotmail.com)
Signature Date: 2024-10-30 - 10:34:52 PM GMT - Time Source: server
-  Agreement completed.
2024-10-30 - 10:34:52 PM GMT