

Settlement Agreement and Release of Claims

This Settlement Agreement and Release of Claims ("Settlement Agreement") is entered into by: (1) Nayeli Orea ("Plaintiff"), and (2) J & S Food Sales, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to as the "Parties" or individually as "Party."

Recitals

- A. Plaintiff Nayeli Orea filed a Complaint in the Superior Court of the State of California for the County of Orange on or around October 11, 2023 in the action entitled Nayeli Orea v. J & S Food Sales, Inc., Case No. 30-2023-01356610-CU-OE-CXC (the "Action"). The Complaint raised eight causes of action for 1) failure to pay all overtime wages, 2) minimum wage violations, 3) meal period violations, 4) rest period violations, 5) wage statement violations, 6) waiting time penalties, 7) unfair competition, and 8) penalties under Private Attorney General Act ("PAGA").
- B. Defendant denies all claims set forth in the Action.
- C. To avoid further controversy and litigation of this matter, and without admission of any liability, fact, claim, or defense by any Party, the Parties wish to settle all disputes now existing between them on terms and conditions set forth below.

Agreement

Pursuant to the terms and conditions of this Settlement Agreement, which all Parties acknowledge as fair, reasonable, and adequate and in their mutual best interests, the Parties agree to settle all claims and finally resolve all disputes between the Parties as follows:

- 1. **Settlement Amount.** In exchange for the promises and releases contained in this Settlement Agreement, Defendant will pay to Plaintiff Nayeli Orea the gross settlement amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) (the "Settlement Amount") made payable as follows:
 - a. One check in the amount of Five Hundred Dollars and Zero Cents (\$500.00), less applicable payroll and tax withholdings, made payable to "Nayeli Orea" and sent to the office of Plaintiff's counsel, representing wages, for which Nayeli Orea will receive an IRS Form W-2.
 - b. One check in the amount of Nine Thousand Two Hundred and Fifty Dollars and Zero Cents (\$9,250.00) made payable to "Nayeli Orea" and sent to the office of Plaintiff's counsel, representing non-wage damages, for which Nayeli Orea will receive an IRS Form 1099.

- c. One check in the amount of Two Hundred and Fifty Dollars and Zero Cents (\$250.00) made payable to "The Sweeney Law Firm Client Trust Account" and sent to the office of Plaintiff's counsel, representing the portion of PAGA penalties payable to the LWDA pursuant to Labor Code section 2699, subdivision (i), for which Plaintiff and Plaintiff's counsel shall submit to the LWDA.
2. **Condition Precedent.** This Agreement shall not be effective unless and until 1) the court in the Action enters an order granting approval to the PAGA action settlement, and 2) the expiration of any and all appeal deadlines. The date on which this Agreement becomes effective and binding is the Effective Date. The "Effective Date" shall mean the date by which the settlement of the PAGA claims is approved by the court in the Action and that approval becomes final. The approval becomes final when the later of the following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the settlement in the PAGA action shall not become effective until the court's approval of the settlement is completely final, and no further recourse exists by an appellant or objector who seeks to contest the settlement. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Settlement Amount under this Agreement.
3. **Timing and Delivery of Payments.** The Settlement Amount shall be due within 15 days after the later of 1) the Effective Date and 2) Defendant's counsel's receipt of the fully executed Agreement with Plaintiff's signatures, and completed W-9 forms signed by Plaintiff and Plaintiff's Counsel. The Total Settlement Amount shall be delivered to:

Brandon J. Sweeney
The Sweeney Law Firm
15303 Ventura Blvd., Suite 900
Sherman Oaks, California 91403
4. **Plaintiff's Release.** On delivery of the Settlement Amount, Plaintiff agrees to release, discharge, and agrees to hold harmless Defendant and the Released Parties, from any and all claims, damages, debts, agreements, lawsuits, and judgments, whether known or unknown, arising out of or in any way connected with 1) the claims asserted in the Action, 2) any other claims arising from Plaintiff's employment by Defendant and/or any Released Parties, and 3) any and all transactions, occurrences, or matters between the Parties and/or the Released Parties occurring prior to the date

of this Settlement Agreement (the “Released Claims”). The “Released Parties” is defined to mean Defendant and all of Defendant’s parents, predecessors, successors, subsidiaries, affiliates, partners, trusts, employment agencies, and professional employer organizations, as well as each of their owners, employees, officers, board members, agents, attorneys, insurers, stockholders, members, fiduciaries, service providers, and assigns. The Released Claims includes, but is not limited to, Plaintiff Nayeli Orea’s individual claims for PAGA penalties pursuant to Labor Cde section 2699, et seq.

5. **Release of Unknown Claims.** As further consideration for the release being provided, the Plaintiff expressly waives any right or benefit available to them under the provisions of California Civil Code section 1542, which provides as follows:

“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.”

Notwithstanding anything to the contrary in this Settlement Agreement, the release described does not apply to claims arising from workers’ compensation laws or any rights which, by law, may not be waived. Moreover, nothing in this Agreement shall be deemed to prohibit the Parties from participating or cooperating with any governmental or law enforcement agency in any investigation, administrative proceeding, or action involving any other Party.

6. **Dismissal of Action.** Plaintiff agree that payment of the amount under the Section 1 of this agreement shall be conditioned upon the full and complete withdrawal/dismissal, with prejudice, of any and all claims by Plaintiff against Defendant and the Released Parties, including but not limited to those asserted in the Action. Within seven (7) calendar days after execution of this Agreement, Plaintiff shall execute and submit a Notice of Settlement with the court in the Action. Plaintiff represents that she has not filed any other complaints, claims, lawsuits, or actions against Defendant or Released Parties other than the Action. Plaintiff agrees that she will not do so at any time hereafter, and that if any agency or court assumes or maintains jurisdiction of any complaint, claim, lawsuit, or action against Defendant or Released Parties on behalf of Plaintiff, she will direct that agency or court to withdraw from or dismiss the matter with prejudice.
7. **ADEA Release.** Plaintiff understand and agree that she:

- (1) Has had up to twenty-one (21) days within which to consider this Agreement before executing it.

- (2) Has carefully read and fully understand all of the provisions of this Agreement.
 - (3) Is, through this Agreement, releasing Defendant and Released Parties from any and all rights or claims she may have against Defendant and/or Released Parties under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621, et seq.).
 - (4) Knowingly and voluntarily intends to be legally bound by the same.
 - (5) Was advised and hereby is advised in writing to consider the terms of this Agreement and consult with an attorney of their choice prior to executing this Agreement.
 - (6) Has a full seven (7) days following the execution of this Agreement to revoke this Agreement and has been and hereby are advised in writing that this Agreement shall not become effective or enforceable until the revocation period has expired. If Plaintiff chooses to revoke this Agreement within this seven-day period, she must send written notice of her intent to revoke the Agreement to the attention Mr. Andrew Woo by email to awoo@littler.com or by next day delivery to Littler Mendelson, P.C., Andrew H. Woo, 5200 North Palm Avenue, Suite 302, Fresno, California 93704.
 - (7) Understands that rights or claims under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621, et seq.) that may arise after the date this Agreement is executed are not waived.
8. **Attorneys' Fees and Costs.** Except as provided in this Settlement Agreement, the Parties shall bear their own costs, expenses, and attorneys' fees. The Parties further agree to not seek to recover their costs, expenses, and attorneys' fees from the other Party incurred in or arising out of or in any way related to the matters released in this Settlement Agreement, except for those costs and attorneys' fees as specifically stated herein.
9. **Medicare Warranty.** Plaintiff and Defendant, hereby acknowledges the following: (1) Under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. §1395y(b), and its accompanying regulations ("the MSP Provisions"), the Centers for Medicare and Medicaid Services (the "CMS") in certain circumstances may have an obligation to seek reimbursement of conditional payments made by the Medicare program (Title XVIII of the Social Security Act) (the "Medicare Program") on claims for items and services relating to injuries allegedly sustained by Plaintiff; (2) Plaintiff and Plaintiff's counsel are in the best position to determine if any reimbursement obligation exists, based on Plaintiff's entitlement (or lack thereof) to Medicare Program benefits, Plaintiff's actual receipt of such benefits, and, if there is a reimbursement obligation, to ensure that the Medicare Program's interests are properly considered and discharged; (3) If there is a reimbursement obligation to the Medicare Program, Plaintiff and Plaintiff's counsel are responsible under the MSP Provisions to verify, resolve and satisfy such obligation; and (4) If Plaintiff are now or in the past has been enrolled in the Medicare Program, Defendant will report the Settlement to

the CMS pursuant to the MSP Provisions (even if Defendant do not agree that the evidence actually establishes liability for injuries allegedly sustained by Plaintiff).

Plaintiff represents and warrants that Plaintiff and Plaintiff's counsel have reviewed the underlying facts and evidence of this case. Plaintiff understands and acknowledges that if Plaintiff is Medicare-enrolled at the time of settlement, Defendant is required to report this Settlement to the CMS but further acknowledges that by doing so, Defendant does not concede or admit that it necessarily agrees that Defendant is liable for Plaintiff's alleged injuries.

Plaintiff further represents and warrants that, to the extent any other government payer (including but not limited to Medicaid, Veteran's Administration, Tricare/CHAMPUS) has a right to be reimbursed for any payments made on claims for items and services relating to the alleged injuries that are the subject of this action being resolved by this Settlement, Plaintiff has, or will, fully reimburse, resolve, otherwise satisfy, or properly consider, the rights of such payers.

Plaintiff represents and warrants that she is not enrolled in the Medicare Program and has not in the past been enrolled in the Medicare Program and no reimbursement obligation to the Medicare Program exists.

Plaintiff acknowledges that in making payment to Plaintiff pursuant to this Agreement, Defendant is reasonably relying on the representation and warranties made by Plaintiff herein and these representations and warranties are a material inducement to Defendant to make payment as part of this Agreement.

10. **Mutual Non-Disparagement.** Each Party agrees to refrain from making or soliciting comments, statements, or the like to the media or to others that may be considered to be derogatory or detrimental to their good name and/or business reputation. This provision shall not prohibit the Parties from giving truthful responses or testimony in any legal or regulatory proceeding or inquiry.
11. **Neutral Reference.** Defendant agrees that on any employment-related inquiry, other than one based on a subpoena or other process of law compelling testimony, Defendant, and/or any of its agents shall disclose only the following: confirmation of Plaintiff's employment, position(s) held, and dates of employment.
12. **Remedies for Breach.** The Parties agree that in the event any action or motion is initiated by either Party to interpret or enforce this Settlement Agreement, or to recover damages for breach of this Settlement Agreement, or to collect the Settlement Amount to be paid by Defendant under this Agreement, the prevailing party will be entitled to recover its costs and

reasonable attorneys' fees incurred in conjunction with the litigation or motion, in addition to any other relief granted.

13. **Covenant to Effectuate Agreement.** Each Party agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Settlement Agreement.
14. **Disclaimer of Liability.** Nothing in this Settlement Agreement shall constitute or be construed as an admission of liability or wrongdoing by the Parties. The Parties expressly deny that they have done anything wrong or unlawful.
15. **No Representation of Tax Liabilities.** No Party, including the attorneys for any Party, has made any representations or warranties regarding whether the Settlement Amount is subject to taxation. No Party shall bear any responsibility for tax liability of any other Party that may arise because of the payment of the Settlement Amount. Each Party agrees to assume any responsibility for payment of taxes for any of the Settlement Amounts. Each Party agrees to hold all other Released Parties harmless from any and all tax liability which may become due as a result of the payment of the Settlement Amount under this Settlement Agreement.
16. **No Prior Assignments.** The Parties represent that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or any interest therein against any other Party.
17. **Binding Nature.** This Settlement Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of Plaintiff, and inure to the benefit of Defendant, Defendant's agents, managers, members, officers, employees, servants, successors, and assigns.
18. **Consultation with Counsel.** The Parties affirm that, prior to execution of this Settlement Agreement, they have consulted with their respective legal counsel concerning the terms and conditions set forth herein, and that they understand the advice provided to them.
19. **Severability.** Should any clause of this Settlement Agreement be found void by a court of law, with the exception of the requirement that Defendant pay Plaintiff and Plaintiff's counsel the Settlement Amount, that fact shall not impair the remainder of this Settlement Agreement.
20. **Interpretation.** This Settlement Agreement has been jointly negotiated and drafted by counsel for the Parties. The language in this Settlement Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties. This Settlement Agreement shall be interpreted according to the laws of the State of California.

21. **Counterparts.** This Settlement Agreement may be executed in identical counterparts, each of which shall constitute an original of this Settlement Agreement. Signatures of the Parties may be exchanged electronically and shall be treated as an original.
22. **Amendment.** This Settlement Agreement may not be modified, altered, or changed, except in writing and signed by the Parties.
23. **Entire Agreement.** This Settlement Agreement contains all the terms and conditions agreed on by the Parties regarding the subject matter of this Settlement Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Settlement Agreement, not expressly set forth in this Settlement Agreement, are of no force or effect.
24. **Confidentiality.** The Parties and their counsel agree to keep the settlement confidential, to the maximum extent permitted by law. Plaintiff and Plaintiff's counsel agree, to the maximum extent permitted by law, to refrain from publicizing the fact of the settlement and the terms of the settlement. Neither party will issue any press release or other public or non-public representation regarding the settlement other than as necessary to effectuate the terms of the settlement. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful.
25. **Responsibilities of Plaintiff's Counsel.** Plaintiff's counsel shall be responsible for drafting and filing a motion seeking approval of this Settlement Agreement with the court to obtain approval of the settlement of Plaintiff's individual claims under PAGA (Labor Code section 2699, et seq.). Plaintiff's counsel shall draft and file any necessary paperwork to effectuate the release of Plaintiff's PAGA claims. Plaintiff's counsel also agrees to provide any and all notices to the LWDA required to effectuate this Settlement Agreement, including but not limited to the notice required by California Labor Code section 2699 subdivision (1)(2). Plaintiff and their counsel agree to cooperate and use their best efforts, in good faith, to implement the Settlement Agreement in preparing and filing any necessary paperwork to obtain approval of this Settlement Agreement.
26. **Stay of Litigation.** The Parties agree that upon the execution of this Settlement Agreement the litigation of the Action shall be stayed, except to effectuate the terms of this Settlement Agreement.
27. **No Waiver of Arbitration.** Nothing in this Settlement Agreement is intended by the Parties to constitute a waiver of the enforcement of any arbitration agreement between Plaintiff and Defendant, or the waiver of any individual terms within any such arbitration agreement between Plaintiff

and Defendant, including but not limited to the "J & S Food Sales, Inc. Arbitration Agreement" signed by Plaintiff Nayeli Orea on May 21, 2021.

Approval and Execution by the Parties

Plaintiff:

Dated: 1/30/2024

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Nayeli Orea
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Nayeli Orea
Plaintiff

Defendant:

Dated: 2/1/2024

J & S Food Sales, Inc.

[Signature]

By: STEVE STOICO

Title: PRESIDENT