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FILED
ALAMEDA COUNTY

OCT 04 2017

CLERK OF THE SUPERIOR COURT
By *Jamie Thomas*
JAMIE THOMAS, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KEITH LACY; individually, and on behalf of
all other members of the general public
similarly situated and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

v.

AZUMA FOODS INTERNATIONAL, INC.,
a California Corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: RG16827402

Assigned for All Purposes to:
Honorable Winifred Y. Smith
Department 21.

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Toshie Azuma; and
[Proposed] Order filed concurrently herewith]

[Reservation No.: R-1891672]

Date: October 27, 2017
Time: 10:00 a.m.
Place: Dept. 21

Complaint Filed: August 15, 2016
Trial Date: None Set

BY FAX

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on October 27, 2017, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 21 of the above-entitled Court, located at 1221 Oak Street
4 Oakland, California 94612, Plaintiff Keith Lacy ("Plaintiff") will, and hereby does, move this Court
5 for an order:

- 6 • Granting preliminary approval of the proposed class action settlement described herein and
7 as set forth in the parties' Joint Stipulation of Class Action Settlement and Release
8 ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the
9 Declaration of Douglas Han ("Han Decl."), including, and not limited to, the means of
10 allocation and distribution of funds, and the allocations for penalties under the California
11 Labor Code Private Attorneys General Act of 2004 ("PAGA"), an award of attorneys' fees
12 and reimbursement of litigation costs and expenses, Class Representative Enhancement
13 Payment, and the charges and expenses of the Settlement Administrator;
- 14 • Certifying the proposed Class for settlement purposes;
- 15 • Appointing Plaintiff Keith Lacy as the Class Representative;
- 16 • Appointing Justice Law Corporation ("Plaintiff's Counsel" or "Class Counsel") as Class
17 Counsel;
- 18 • Approving the proposed Notice of Class Action Settlement ("Class Notice" or "Notice of
19 Class Action Settlement"), attached as "Exhibit A" to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Notice of Class Action Settlement to the Class
21 Members;
- 22 • Approving the proposed deadlines for the notice and settlement administration process;
- 23 • Approving Phoenix Settlement Administrators as the Settlement Administrator; and
- 24 • Scheduling a hearing to consider whether to grant final approval of the Settlement
25 Agreement; at which time the Court will also consider whether to grant final approval of
26 the requests for an award of attorneys' fees and reimbursement of litigation costs and
27 expenses, Class Representative Enhancement Payment, and the charges and expenses of
28 the Settlement Administrator ("Settlement Administration Costs").

1 This motion is made pursuant to California Rules of Court, rule 3-769 on the ground that the
2 proposed Settlement is within the range of possible final approval, and notice should therefore be
3 provided to the Class. This motion is based upon this notice, the following Memorandum of Points
4 and Authorities in support thereof, and the Declaration of proposed Class Counsel (Douglas Han) filed
5 concurrently herewith, any such argument of counsel as may be presented at the hearing on this
6 matter, and all papers and records on file herein.

7
8 Dated: October 3, 2017

JUSTICE LAW CORPORATION

9
10 By: 
11 Douglas Han
12 *Attorneys for Plaintiff*

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1 Settlement (“Final Approval Hearing”), at which time the Court will also decide on an award of the
2 Attorneys’ Fees and Costs and Class Representative Enhancement Payment.

3 Finally, to facilitate the administration of the Settlement, the Parties request that the Court
4 enjoin all Class Members from filing or prosecuting any claims, suits, or administrative proceedings
5 (e.g., filing a claim with the California Division of Labor Standards Enforcement) regarding claims
6 released by the Settlement unless and until such Class Members have submitted valid requests for
7 exclusion to the Settlement Administrator and the time for submitting such requests to the Settlement
8 Administrator has elapsed.

9 **II. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION** 10 **SETTLEMENTS**

11 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal.
12 App. 4th 1794, 1800 (1996); see also Code Civ. Proc. § 1781(f); Cal. R. Ct. 3.769(a). Courts review
13 class settlements in two steps: (1) an earlier conditional review by the court, and (2) a later detailed
14 review after the period during which notice is distributed to the class members for their comments or
15 objections. Cal. R. Ct. 3.769(c)-(g). If the court has not yet certified the action as a class action when
16 settlement is reached, the court may certify the class following preliminary approval of the settlement.
17 Cal. R. Ct. 3.769(d); see also Code Civ. Proc. § 382.

18 At the preliminary approval stage, “the judge must make a preliminary determination on the
19 fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of
20 notice of the certification, proposed settlement, and date of the final fairness hearing.” MANUAL FOR
21 COMPLEX LITIGATION (FOURTH) § 21.632 (2004). A court should grant preliminary approval of a class
22 action settlement where it is within the “range of reasonableness.” Alba Conte & Herbert B. Newberg,
23 *Newberg on Class Actions*, § 11.26 (4th Ed. 2009); see also *Hernandez v. Vitamin Shoppe Indus., Inc.*,
24 174 Cal. App. 4th 1441, 1446 (2009) (finding the proposed settlement was “within the range of
25 reasonableness”).

26 ///

27 ///

28 ³ A true and correct copy of the Notice of Class Action Settlement is attached to the Settlement Agreement as Exhibit A.

1 **III. SUMMARY OF THE CASE**

2 **A. Legal and Factual Basis for Plaintiff's Claims**

3 Plaintiff filed his class action complaint on August 15, 2016. The parties stipulated to amend
4 the complaint to include a cause of action under the Private Attorney General Act. The Second
5 Amended Complaint was filed on May 3, 2017. Plaintiff's operative complaint asserts eight (8) class-
6 wide and representative causes of action under the California Labor Code and Business and
7 Professions Code as follows: (1) Violation of Labor Code sections 510 and 1198 (Unpaid Overtime);
8 (2) Violation of Labor Code sections 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation
9 of Labor Code section 226.7 (Unpaid Rest Period Premiums); (4) Violation of Labor Code sections
10 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of Labor Code sections 201 and 202
11 (Final Wages Not Timely Paid); (6) Violation of Labor Code section 226(a) (Non-Complaint Wage
12 Statements); (7) Violation of Labor Code sections 2698, *et seq.* (recovery of civil penalties under the
13 PAGA); and (8) Violation of Business and Professions Code sections 17200, *et seq.*

14 **1. Meal and Rest Breaks**

15 Plaintiff alleged that he and other Class Members were not provided with meal and rest periods
16 to which they were entitled under the California Labor Code. Specifically, Plaintiff alleged that
17 Defendant failed to maintain a lawful meal and rest period policy that provided them and the Class
18 Members the adequate number of meal and rest breaks according to the law. (Han Decl. ¶¶ 21-23.)

19 With respect to meals, they allege that Defendant did not authorize and permit two (2) meal
20 breaks in a day where California law required two (2) meal breaks (i.e., shifts greater than ten (10)
21 hours in length). Instead, Defendant only provided one 60-minute meal period per shift (*Id.*)

22 With respect to rest breaks, Plaintiff alleged Defendant had no written policy and did not
23 authorize and permit employees to take rest breaks according to law but only provided two 15-minute
24 rest breaks per shift regardless of the length of the shift. (*Id.*) Moreover, Plaintiff alleged that because
25 of the donning and doffing requirement to work in the food processing facility, the actual length of the
26 breaks provided were less than 10-minutes. (*Id.*)

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1 Further, Plaintiff alleged Defendant did not have a written policy to pay him and Class
2 Members a premium wage for late rest periods, interrupted rest periods, short rest periods, missed
3 meal periods, late meal periods, interrupted meal periods, and short meal periods. Plaintiff alleged
4 that the non-payment of meal or rest period premiums and the lack of a policy to pay premiums
5 violates the law. (Han Decl. ¶¶ 21-23.)

6 Defendant contends that its meal and rest periods are compliant because it provides 60-minute
7 meal periods where operations shut down and provides two 15-minute rest periods, which is more than
8 the 10-minutes required under the law. Any failure by non-exempt employees to timely take their meal
9 periods or rest breaks was based on the employee's voluntary waiver of such meal period and/or rest
10 break, since employers are not required to police their employees' meal periods and rest breaks.
11 *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012).

12 **2. Overtime Wages and Minimum Wages – Rounding of Time to Favor The**
13 **Employer.**

14 Plaintiff alleged that Defendant required Plaintiff and the Class Members to arrive at work
15 prior to their shifts, and to don their uniforms prior to starting their shift. Plaintiff alleged that
16 Defendant also required Plaintiff and the Class Members of clock out first prior to taking off their
17 uniform at the end of their shift. Plaintiff alleged despite Class Members arriving early and staying
18 late the time system rounds up the time (at the beginning of the shift) or rounds back time (at the end
19 of the shift), depriving Class Members of all time worked. (Han Decl. ¶ 24-25)

20 Further, Plaintiff alleged that, the rounding system also systematically deprives employees 60
21 minutes of time each and every shift, even if employees punched out for less than 60 minutes for meal
22 breaks. (*Id.*)

23 Defendant contends that the donning and doffing time takes seconds to complete and is not
24 compensable as it is *de minimis*. (*Id.*)

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1 **3. Accurate Payroll Records**

2 Based on the violations stated above, Plaintiff asserts that Defendant has failed to keep
3 accurate records as required under the California Labor Code. (Han Decl., ¶ 27-29) More specifically,
4 section 226 states:

5 Every employer shall, semimonthly or at the time of each payment of
6 wages, furnish each of his or her employees, either as a detachable part of
7 the check, draft, or voucher paying the employee's wages, or separately
8 when wages are paid by personal check or cash, an accurate itemized
9 statement in writing showing (1) gross wages earned, (2) total hours
10 worked by the employee . . . (4) all deductions, provided that all
deductions made on written orders of the employee may be aggregated
and shown as one item, (5) net wages earned . . . and (9) all applicable
hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee.

11 Cal. Lab. Code § 226(a).

12 Plaintiff asserts that Defendant's failure to properly document all hours worked constitutes a
13 willful violation of its obligation to document the total hours worked by each Class Member. (*Id.* ¶
14 33.)

15 Defendant contends that it has complied with all recordkeeping requirements under Section
16 226. (*Id.* ¶ 29.) Defendant further contends that if there was an error, it was not willful, knowing, or
17 intentional, and Plaintiff and Class Members suffered no damage as a result. (*Id.*)

18 **4. Waiting Time Penalties**

19 Where an employer willfully fails to timely pay wages due to an employee who is discharged
20 or quits, the wages of the employee continue as a penalty for a maximum of thirty (30) days. Cal. Lab.
21 Code § 203(a). An employee who is discharged must be paid any unpaid wages immediately upon
22 termination, and an employee who quits must be paid within seventy-two (72) hours thereafter. Cal.
23 Lab. Code §§ 201(1), 202(a). Based on the allegation that Defendant failed to timely pay overtime
24 and minimum wages, as well as the underpayment due to the timekeeping policy, Plaintiff asserts that
25 the waiting time penalties are justified. (*Id.*, ¶ 34.)

26 Defendant denies any legal violations and contends that even if any underlying liability is
27 found, there was no "willful" violation to trigger waiting time penalties.

28 ///

1 **5. PAGA**

2 Under the Labor Code Private Attorneys General Act of 2004, as amended, Labor Code
3 sections 2698, *et seq.*, civil penalties to be assessed and collected by the California Labor Workforce
4 and Development Agency (“LWDA”), for a violation of the Labor Code, may, as an alternative, be
5 recovered by an aggrieved employee plaintiff. Cal. Lab. Code §§ 2698, *et seq.* If a Labor Code
6 provision that is alleged to be violated specifically provides for a civil penalty, said civil penalty is
7 recoverable by the aggrieved employee plaintiff. The PAGA establishes a civil penalty that is
8 recoverable by an aggrieved employee plaintiff, for violation of provisions of the Labor Code which
9 do not otherwise specifically provide for a civil penalty. Additionally, the PAGA mandates payment
10 of “an amount sufficient to recover underpaid wages” for violation of California’s minimum wage and
11 overtime wage provisions. Cal. Lab. Code §§ 558, 1197.1.

12 Plaintiff need only prevail on one of the claims asserted in order to recover civil penalties
13 pursuant to the PAGA. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of the
14 penalties recovered must be allocated to the LWDA, with the remaining twenty-five percent (25%)
15 allocated to the aggrieved employees.

16 **B. Investigation and Discovery**

17 The Parties have engaged in diligent investigation and discovery in this matter for over close to
18 one year. (Han Decl. ¶¶ 10-12.) Specifically, Plaintiff conducted an extensive investigation of the facts
19 surrounding the claims asserted in this action prior to the commencement of this action, including
20 interviewing current and former employees and reviewing various documents obtained from those
21 employees. (*Id.*)

22 The Parties engaged in comprehensive discovery. Defendant produced, and Plaintiff’s Counsel
23 reviewed and analyzed a large volume of documents, including time records, payroll records, meal and
24 rest period documentation, and personnel records of numerous putative class members. (*Id.*, ¶ 11.)
25 Prior to the mediation, Defendant produced comprehensive electronic data reflecting the time cards,
26 punch records and wage payments for all putative class members from August 2012 to January 2017.
27 (*Id.*) In addition, Plaintiff: (1) propounded formal written discovery requests; (2) obtained the class
28 contact information by engaging in a privacy opt-out procedure; (3) interviewed numerous putative

1 class members obtaining comprehensive witness statements in support of Plaintiff's case; (4) reviewed
2 voluminous documents (class time and payroll data) containing thousands of pages of payroll data,
3 and hundreds of pages of employment records; (5) requested and reviewed personnel records of other
4 putative class members; (6) reviewed documents produced by Defendant, relating to its employment
5 policies, practices, and procedures; and (7) analyzed class-wide payroll data provided by Defendant,
6 which Plaintiff used to extract the number of shifts, the length of each shift, hourly pay rates, number
7 of employees at a given time, violation rates, and number of pay periods affecting class-wide damages.
8 (Han Decl. ¶ 11.)

9 The Parties reached the proposed Settlement based on this large volume of facts, evidence, and
10 investigation. (*Id.*)

11 **C. Estimate of the Value of the Claims**

12 As of December 31, 2016, the Class was comprised of approximately 774 individuals. (*Id.*, ¶
13 17.) Based upon the payroll summaries produced by Defendant, the average rate of pay for the
14 proposed Class during the time period from August 15, 2012 through December 31, 2016, was \$13.32.
15 The number of shifts worked by the putative class members during the relevant time period, from
16 August 15, 2012 to December 31, 2016 was 89,326 shifts.⁴ (*Id.*)

17 Plaintiff provides the following estimate of the value of the claims, so that the Court can assess
18 the reasonableness of the settlement amount. *Glass v. UBS Fin. Svs., Inc.*, 2007 U.S. Dist. LEXIS
19 8476 at *28 (N.D. Cal. Jan. 26, 2007) (holding that a class settlement for a wage-and-hour action that
20 sought penalties was within the range of reasonableness, as it provided for "approximately 25% to
21 35% of the estimated actual loss"); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 325 (3d Cir. 2011)
22 (there appears to be "no authority that requires a district court to assess the fairness of a settlement in
23 light of the potential for treble damages.").

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28 ⁴The shifts were counted based on Plaintiff's analysis of time records, for the months of August 2012 to December 2016.
(Han Decl. ¶ 17)

1 **1. Meal and Rest Breaks**

2 a. Meal Breaks

3 With respect to meal break premiums, Plaintiff concedes that a 60-minute meal period
4 provided by Defendant complied with its obligation for the first meal periods. However, the issue
5 with Defendant's practice of providing only a 60-minute meal period is with respect to the second
6 meal periods. Plaintiff assumed a violation rate of 100% based on the theory that Defendant had no
7 provision informing employees of the right or provision of second meal breaks for employees working
8 shifts of greater than ten (10) hours in length (where a second meal break would be owed). Based on
9 Plaintiff's Counsel's review and analysis of Defendant's punch data, a reasonable estimate of the
10 value of this claim would be \$210,722.40 (15,820 shifts of greater than 10 hours in length x \$13.32
11 average hourly rate). (Han Decl., ¶ 21.)

12 b. Rest Breaks

13 With respect to rest break premiums, Plaintiff alleged that Defendant maintained a practice that
14 did not authorize or permit rest breaks for shifts greater than 10 hours. Plaintiff assumed a violation
15 rate of 100% with respect to shifts exceeding 10 hours in length. Plaintiff's Counsel's analysis of the
16 punch data revealed that approximately 15,820 shifts during the relevant time period fell within these
17 shifts where a rest period should have been authorized but was not provided. If Plaintiff's rest break
18 claims were certified, a reasonable estimate of the value stemming from this claim would be
19 \$210,722.40 (15,820 shifts of greater than 10 hours in length x \$13.32 average hourly rate). (*Id.*, ¶
20 22.)

21 Defendant contended that discretionary second meal breaks and rest periods were waived. (*Id.*,
22 ¶ 23.) In fact, Defendant argued that it was vigilant in enforcing its meal and rest break policies. (*Id.*)
23 This, along with other arguments, would likely be raised by Defendant to challenge certification of
24 this claim. (*Id.*) Therefore, significant discounts were applied when evaluating this claim for
25 settlement purposes. (*Id.*)

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1 **2. Overtime and Minimum Wages – Rounding of Time to Favor The**
2 **Employer.**

3 Plaintiff's rounding theory is based on Defendant's practice requiring its employees to don and
4 doff their uniforms off-the-clock as well as automatic rounding/deduction of 60-minute meal periods.
5 Plaintiff's detailed analysis of actual punch records compared to the time actually paid revealed that
6 the time was rounded in favor of Defendant 97.6% of the shifts. (Han Decl., ¶ 24.) Based on a
7 detailed analysis of the punch records belonging to the entire class, the difference between the actual
8 punch data and rounded punch data amounts to approximately 34,542 hours. With most shifts
9 exceeding eight (8) hours, the resulting exposure was calculated as \$690,149.16 (34,542 x \$19.98 O.T.
10 rate) in unpaid overtime. (*Id.*)

11 These figures are estimates of potential exposure, and there are significant risks with respect to
12 certification and appeal, summary judgment, and factual risks with respect to proving up the estimated
13 damages. (*Id.*, ¶ 25.) At jury trial, assuming certification is granted and affirmed on possible appeal,
14 Plaintiff's certified common theories of liability and estimated damages may not result in the full
15 recovery of the estimated damages. (*Id.*) Moreover, with respect to the off-the-clock work, finding of
16 *de minimis* defense's applicability in California may eliminate the damages related to the rounding.
17 *Troester v. Starbucks Corp.*, 2014 WL 1004098, at *3 (C.D. Cal. Mar. 7, 2014).

18 At jury trial, assuming certification is granted and affirmed on possible appeal, Plaintiff's
19 certified common theories of liability and estimated damages may not result in the full recovery of the
20 estimated damages. (*Id.*, ¶ 26.) Plaintiff would have to apply a discount for the certification risk and
21 further apply a discount based on the argument that the Court may not find a willful violation for
22 waiting time penalties. (*Id.*)

23 **3. Paystub Violations.**

24 Plaintiff also alleged a cause of action under Labor Code section 226(a). (*Id.*, ¶ 27.) That
25 section states that an employer must provide an accurate itemized wage statement twice a month or
26 each time wages are paid, whichever is more frequent. Failing to do so entitles employees to recover
27 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
28 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000). See Labor Code section 226(e).

2 This cause of action is entirely derivative of the foregoing causes of action because if
3 Defendant required off-the-clock work, did not record all hours worked, did not provide premium pay
4 for missed meal periods or rest breaks, etc., the wage statements would inevitably be inaccurate. (Han
5 Decl., ¶ 28.) Therefore, Plaintiff's Counsel took into account the same factors as outlined above when
6 assessing liability and damages for this cause of action. (*Id.*)

7 Further, Defendant contended that Labor Code section 226(e) penalties are not automatic. (*Id.*,
8 ¶ 29.) Rather, the employee must show (1) that he or she "suffered injury" from the employer's failure
9 to provide compliant wage statements, see *Elliot v. Spherion Pacific Work, LCC* (2008) 572 F.Supp.2d
10 1169, 1181 (applying California law)(holding employee was not entitled to penalties because no injury
11 was shown), and (2) Defendant's non-compliance was "knowing and intentional." Defendant
12 contended that Class Members suffered no injury from any failure to issue accurate wage statements
13 and, furthermore, that any non-compliance was not knowing and intentional. (*Id.*)

14 Finally, because the damages for this cause of action are penalties, the statute of limitations
15 only runs from one year prior to the filing of the original complaint. See Cal. Civ. Pro. § 340. The
16 Parties discussed these issues, and in light of these and other considerations, Class Counsel factored in
17 a reduction of liability and damages for this cause of action. (*Id.*)

18 At the time of the mediation, approximately 291 individuals were employed by Defendant
19 within the one-year limitations period and worked a total of 6,963 eligible pay periods. (*Id.*)
20 According to Plaintiff's calculation, the statutory penalties exposure at \$334,650 ([\$50 for the initial
21 pay period + (\$100 x 11 subsequent pay periods)] x 291 individuals). (*Id.*)

22 4. Waiting-Time Penalties.

23 Labor Code section 203 provides that if an employer fails to pay an employee all wages due at
24 termination or within seventy-two (72) hours of resignation, then that employee's wages shall continue
25 as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because
26 some class members stopped working for Defendant but, again, were not paid their full compensation
27 for the reasons discussed above, they did not receive all wages due upon termination. (*Id.*, ¶ 30.)

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1 Defendant was adamant that no waiting-time penalties should be awarded. (Han Decl., ¶ 30).
2 Defendant pointed out that waiting-time penalties are derivative of each and every other cause of
3 action. (*Id.*) Moreover, Defendant emphasized that, under Labor Code section 203, employers are
4 only obligated to pay waiting-time penalties if they “willfully” fail to pay wages due and owing at the
5 time of termination or resignation. (*Id.*) As Title 8, section 13520 of the California Code of
6 Regulations states:

7 A willful failure to pay wages within the meaning of Labor Code Section
8 203 occurs when an employer intentionally fails to pay wages to an
9 employee when those wages are due. However, a good faith dispute that
10 any wages are due will preclude imposition of waiting time penalties
under Section 203.

11 A “good faith dispute” that any wages are due occurs when an employer
12 presents a defense, based in law or fact, which, if successful, would
13 preclude any recovery on the part of the employee. The fact that a defense
14 is ultimately unsuccessful will not preclude a finding that a good faith
dispute did exist. Defenses presented which, under all the circumstances,
are unsupported by any evidence, are unreasonable, or are presented in
bad faith, will preclude a finding of a “good faith dispute.”

15 Defendant maintained that, because it had viable defenses in both law and fact to the other
16 claims, waiting-time penalties could not be awarded. (*Id.*) Approximately 549 putative class members
17 were terminated within the applicable limitations period. (*Id.*) The maximum waiting time penalty for
18 each individual is \$3,196.80. (\$13.32/hour average hourly rate x 8-hour workday x 30 days.) (*Id.*)
19 Therefore, the total maximum exposure was \$1,755,043.20. (549 x \$3,196.80) (*Id.*)

20 Nevertheless, when assessing damages under this cause of action, Plaintiff’s Counsel took into
21 consideration the chances of prevailing on the derivative causes of action, as well as the additional
22 hurdles of prevailing under this cause of action, including recent case law, and applied the appropriate
23 discounts. (*Id.*)

24 5. PAGA Penalties.

25 The provisions of the Labor Code potentially triggering PAGA penalties in this case include
26 but are not limited to Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d),
27 1194, 1197, 1197.1, and 1198. (*Id.*, ¶ 31.). Defendant asserted that, regardless of the results of the
28 underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary.

1 (Han Decl., ¶ 31). Defendant maintained that, in addition to its strong arguments against the
2 underlying claims, it had a strong argument that it would be unjust to award maximum PAGA
3 penalties given the current unsettled state of law. (*Id.*)

4 Plaintiff's counsel calculated damages under this cause of action by multiplying the number of
5 active Class Members (because of the shortened statutory period for this claim), by the civil penalties
6 that each could be awarded for the Labor Code sections enumerated under Labor Code section 2699.5
7 that were applicable in this case. (*Id.*, ¶ 32.) Plaintiff's Counsel then applied discounts in light of the
8 countervailing arguments with regard to the other causes of action, as well as the Court's power to
9 award "a lesser amount than the maximum civil liability." Lab. Code. § 2699(e)(2).

10 Given the state of the law and the range of PAGA penalties requested and actually awarded in
11 California courts, it is difficult to determine a reasonable value and actual exposure for PAGA
12 penalties. (*Id.*, ¶ 33.). However, if PAGA penalties are granted on any one of the violations alleged in
13 Plaintiff's operative complaint, the total penalties exposure for the eligible pay periods could be
14 approximately \$0 to \$669,300 (\$2,300 x 291). (*Id.*) Plaintiff calculated Defendant's PAGA exposure
15 using a 100% violation rate based on the number of pay periods during the one-year statutory period.
16 (*Id.*)

17 Plaintiff also recognized the risk that any PAGA award could be significantly reduced. It was
18 indeed arguable that the Court would not award the maximum penalties under the law. Thus,
19 allocating \$40,000.00 to PAGA civil penalties was reasonable. (*Id.*, ¶ 34; Settlement Agreement, ¶
20 10.1). Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount
21 was the result of self-interest at the expense of other Class Members," such amounts are generally
22 considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS
23 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579
24 (20 10) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate
25 any damages to the PAGA claims.").

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1 6. **Summary of the Risk Analysis and Reasonableness of the Class Settlement**
2 **Amount**

3 Excluding the civil penalties for the reasons stated above, the total estimated potential
4 exposure, assuming certification and prevailing at trial, would be approximately \$3,201,287.10. (Han
5 Decl., ¶ 36.).

Category	Potential Exposure
Meal Premiums	
2 nd Meal Periods	\$210,722.40
3 rd Rest Premiums	\$210,722.40
Overtime: Rounding	\$690,149.16
Waiting Time Penalty	\$1,755,043.20
Paystub Penalty	\$334,650.00
MAXIMUM TOTAL EXPOSURE	\$3,201,287.10

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12 The Class Settlement Amount of \$1,900,000 is approximately 59 percent of the maximum
13 potential exposure, which are in the ball-park of reasonableness considering the risks and defenses.
14 (*Id.*).

15 The only question at preliminary approval is whether the settlement is within the range of
16 possible approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).
17 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
18 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
19 *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F. 2d 448, 455, *see also Linney v. Ceullar*
20 *Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,1242 (“[I]t is the very uncertainty of outcome in
21 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The
22 proposed settlement is not to be judged against a hypothetical or speculative measure of what might
23 have been achieved by the negotiators.”).

24 Here, as discussed above, the settlement falls well within the range of reasonableness. (*Id.*, ¶
25 40). The parties’ Settlement Agreement is fair, free from collusion, and provides a substantial benefit
26 to the Settlement Class. (*Id.*). For all of the foregoing reasons, Plaintiff respectfully requests that the
27 Court grant preliminary approval of the proposed Settlement.
28

1 **D. Arm's-Length Negotiations**

2 At all times, the Parties negotiated at arm's-length. (Han Decl., ¶¶ 14, 40.) On April 24, 2017,
3 the Parties participated in a full-day mediation conducted by David A. Rotman, Esq. an experienced
4 class action and employment mediator. (*Id.*, ¶ 14.) During the mediation, the Parties exchanged
5 further information and discussed all aspects of the case, including the risks and delays of further
6 litigation and the risks to both parties of proceeding with class certification and/or representative
7 adjudication, Plaintiff's theory of liability, wage-and-hour enforcement under both state and federal
8 law, the law relating to off-the-clock theory, meal and rest periods, the evidence produced and
9 analyzed, and the possibility of appeals, among other things. (*Id.*) While the mediation did not end
10 with settlement, the mediator made a mediator's proposal that was later accepted by the parties. (*Id.*)
11 The Parties then continued the discussions during the drafting of the long-form settlement agreement.
12 (*Id.*)

13 **IV. CLASS CERTIFICATION**

14 Class Members are defined as all current and former hourly-paid or non-exempt employees
15 who worked for Defendant Azuma Foods International, Inc., USA directly or through a staffing
16 agency within the State of California at any time during the period between August 15, 2012, through
17 December 31, 2016 (the "Class Period"). (Settlement Agreement, ¶ 6.)

18 **A. The Class is Sufficiently Numerous**

19 Based upon Defendant's representation and Plaintiff's review of Defendant's records, the
20 putative class consists of approximately 774 persons. (Han Decl., ¶ 17.) Thus, the proposed class is
21 sufficiently numerous. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1531 n.5 (2008).

22 **B. The Class is Ascertainable**

23 "Ascertainability is achieved by defining the class in terms of objective characteristics and
24 common transactional facts making the ultimate identification of class members possible." *Sevidal v.*
25 *Target Corp.*, 189 Cal. App. 4th 905, 919 (2010) (internal quotation marks and citations omitted).
26 "Thus, class members are 'ascertainable' where they may be readily identified without unreasonable
27 expense or time by reference to official or business records." *Id.*

28 ///

1 As stated above, Class Members are defined as all current and former hourly-paid or non-
2 exempt employees who worked for Defendant Azuma Foods International, Inc., USA directly or
3 through a staffing agency within the State of California at any time during the Class Period. Here, the
4 proposed class is readily identified without unreasonable expense for four primary reasons: (1) the
5 class definition is stated in terms that are objectively easy to understand and do not require any
6 specific knowledge of Defendant's business, (2) all of the Class Members worked for Defendant in
7 California, (3) Defendant maintains its records such that it can readily identify whether or not an
8 employee was exempt or non-exempt and has already so identified, and (4) Defendant's entire
9 workforce consists predominately of Class Members. The proposed class is therefore ascertainable.
10 *Id.* (proposed class definition must provide "an objective means of identifying those persons who will
11 be bound by the results of the litigation").

12 **C. There Exists a Community of Interests Amongst Class Members**

13 The community interest requirement has three essential elements: (1) predominant questions of
14 law and fact, (2) class representatives with claims or defenses typical of the class; and (3) class
15 representatives who can adequately represent the class. *Linder v. Thriftv Oil Co.*, 23 Cal. 4th 429, 435
16 (2000).

17 **1. Common Questions of Law and Fact Predominate**

18 For common questions of law or fact to predominate, "the issues which may be jointly tried,
19 when compared with those requiring separate adjudication, must be sufficiently numerous and
20 substantial to make the action advantageous to the judicial process and to the litigants." *Washington*
21 *Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913-14 (2001); *see also Medrazo v. Honda of N.*
22 *Hollywood*, 166 Cal. App. 4th 89, 99-100 (2008) ("Predominance is a comparative concept, and 'the
23 necessity for class members to individually establish eligibility and damages does not mean individual
24 fact questions predominate.' [Citations.] Individual issues do not render class certification
25 inappropriate so long as such issues may effectively be managed."). "The existence of even one
26 significant issue common to the class" has been found sufficient to warrant certification. *Californians*
27 *for Disability Rights, Inc. v. Cal. Dep't of Transp.*, 249 F.R.D. 334, 346 (N.D. Cal. 2008).

28 ///

1 This action concerns Defendant's statewide policies and practices that affected all Class
2 Members equally. *See Stephens v. Montgomery Ward*, 193 Cal. App. 3d 411, 421 (1987) (finding that
3 company-wide policies and practices that affected all within the proposed class satisfied the
4 commonality requirement). Plaintiff contends that Defendant, as a uniform policy and practice, failed
5 to properly pay for all time worked, and permit all required duty-free meal and rest breaks. Thus,
6 Plaintiff contends that the only question that needs to be resolved is whether Defendant's policies and
7 practices complied with California law.

8 **2. The Claims of the Named Plaintiff are Typical of the Claims of the Class**

9 "The test of typicality is whether other members have the same or similar injury, whether the
10 action is based on conduct which is not unique to the named plaintiffs, and whether other class
11 members have been injured by the same course of conduct." *Martinez v. Joe's Crab Shack Holdings*,
12 2013 Cal. App. LEXIS 979 at *20 (2013) (internal quotation marks and citations omitted).

13 The requirement is satisfied here, where the claims alleged by Plaintiff arise from the same
14 course of conduct that gave rise to the claims of other Class Members. Specifically, Plaintiff's
15 allegations regarding off-the-clock work, rounding claim, and failure to receive duty-free second meal
16 periods and third rest breaks are based upon Defendant's policies, practices, and procedures that
17 uniformly apply to all other Class Members. Plaintiff's claims are typical of the class as a whole
18 because they arise from the same factual basis and are based on the same legal theory as is applicable
19 to the class.

20 **3. Class Counsel and the Class Representative are Adequate**

21 "It is axiomatic that a putative representative cannot adequately protect the class if his interests
22 are antagonistic to or in conflict with the objectives of those he purports to represent." *Richmond v.*
23 *Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981). "But only a conflict that goes to the very subject matter
24 of the litigation will defeat a party's claim of representative status." *Id.*

25 Here, no conflict exists between Plaintiff and the Class where Plaintiff contend they have been
26 damaged by the same alleged conduct and has the incentive to fairly represent all Class Members to
27 achieve the maximum possible recovery. Plaintiff is fully informed of his duties as the class
28 representative and is further aware that he surrendered any right to compromise the group action for

1 his own respective, individual gains. (Han Decl. ¶¶ 18-19.) Plaintiff spent considerable efforts in this
2 case, including assisting with discovery, gathering evidence, communicating with Class Members, and
3 investigating the facts of the action. (*Id.*) The Plaintiff was and remains willing to vigorously
4 prosecute this action to the benefit of the class.

5 Furthermore, Plaintiff is represented by Plaintiff's Counsel who has extensive experience in
6 complex wage-and-hour litigation and has protected the interests of the Class Members. (*Id.*, ¶¶ 2-7,
7 37). Plaintiff's Counsel carefully reviewed and analyzed a volume of documents, which included
8 Defendant's wage-and-hour policies, punch card data, and time and payroll data. (*Id.* ¶¶ 10-12).
9 Plaintiff's Counsel propounded numerous written discovery requests on behalf of Plaintiff, conducted
10 formal investigation into the allegations and spent numerous hours prosecuting the case. Accordingly,
11 Plaintiff and Plaintiff's Counsel can adequately protect the interests of the proposed class and will
12 continue to fairly and adequately represent the proposed class.

13 **D. The Class Action Method Is the Superior Means of Adjudication**

14 Class actions are the superior method of adjudication when they unify claims that would
15 otherwise require adjudication of numerous separate actions arising out of the same basic facts. *See*
16 *Jaimez v. Daihatsu USA, Inc.*, 181 Cal. App. 4th 1286, 1308 (2010) (“[I]n light of the numerous
17 common issues of fact and law that predominate in this lawsuit, we conclude that proceeding by way
18 of class action is the superior method of adjudication”); *Sav-On Drug Stores, Inc. v. Superior Court*,
19 34 Cal. 4th 319, 326 (2004) (“As alleged, each class member’s claim to unpaid overtime depends on
20 whether he or she worked for defendant during the relevant period in a position that was misclassified
21”). Further, there is recognition by the courts that class actions are encouraged where “absent
22 effective enforcement, the employer’s cost of paying occasional judgments and fines may be
23 significantly outweighed by the cost savings of not paying overtime.” *Gentry v. Superior Court*, 42
24 Cal. 4th 443, 462 (2007).

25 Here, the numerous common issues of law and fact that predominate in this case make class
26 treatment the superior method of adjudication. Plaintiff's claims are based on the same system-wide
27 policies, procedures, and practices that apply to all Class Members. This class action will serve to
28 deter Defendant from engaging in further unlawful employment practices. In fact, Defendant stopped

1 its rounding practice in December 2016. For all these reasons, a class action is the superior means of
2 resolving Plaintiff's and Class Members' claims, and this action should be certified accordingly.

3 **V. THE SETTLEMENT TERMS**

4 **A. Summary of the Terms of the Settlement**

5 The Settlement provides for \$1,900,000 as the Class Settlement Amount. This is a
6 guaranteed, non-reversionary fund. (Settlement Agreement, ¶ 11.)⁵ Following the deduction of
7 Plaintiff's Counsel's Attorneys' Fees and Costs, the Class Representative Enhancement Payment,
8 Settlement Administration Costs, and the PAGA penalties paid to the California Labor and Workforce
9 Development Agency, the Net Settlement Amount will automatically be distributed to all Class
10 Members who do not validly request exclusion (or "opt out") from the Settlement in the manner
11 provided by the Settlement and the Notice of Class Action Settlement (the "Participating Class
12 Members"). (*Id.*, ¶¶ 18 and 22.)

13 The Class Settlement Amount will be funded and hence distributed in three installments.
14 Within fifteen (15) calendar days after the Effective Date, Defendant will make a deposit of the Class
15 Settlement Amount into a Qualified Settlement Account ("QSA") to be established by the Settlement
16 Administrator as follows:

- 17 1) One Million Dollars (\$1,000,000) within fifteen (15) calendar days after the
18 Effective Date;
- 19 2) Four Hundred and Fifty Thousand Dollars (\$450,000) within one hundred and
20 ninety-five (195) calendar days after the Effective Date; and
- 21 3) Four Hundred and Fifty Thousand Dollars (\$450,000) within three hundred and
22 eighty (380) calendar days after the Effective Date. (*Id.*, ¶ 33).

23 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
24 Amount based on the number of Workweeks a Class Member worked during the Class Period. To
25 determine each Class Member's estimated "Individual Settlement Payment," the Settlement
26 Administrator will use the following formula: The Net Settlement Amount will be divided by the
27

28 ⁵ Any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions will be paid separately and apart from the Class Settlement Amount.

1 aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's
2 "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's
3 total number of Workweeks by the Workweek Value. (Settlement 40(b).)

4 All payments to Participating Class Members shall be deemed to constitute 33.33% wage
5 compensation and 66.66% penalties and interest payable by law directly to employees. (Settlement
6 Agreement ¶ 57.) The wage portion of the payments will be subject to regular payroll deductions and
7 withholdings, and reported to applicable taxing authorities by means of IRS Form W-2s. No income
8 taxes or withholdings will be deducted from the interest and penalties portions of the payments, and
9 those payments will be reported by means of IRS Form 1099s. This allocation of wages to penalties
10 and interest is consistent with the *Kullar* analysis where wage claims are roughly one-third of the
11 overall exposure and penalties results in roughly two-thirds. (Han Decl., ¶ 36).

12 The Notice of Class Action Settlement, attached as Exhibit A to the Settlement Agreement,
13 explains the terms of the Settlement to Class Members and their right to object to and/or opt-out of the
14 Settlement. (Settlement Agreement, ¶¶ 50 & 52; Exhibit A to Settlement Agreement.)

15 Class Members have sixty (60) calendar days from the initial mailing of the Notice of Class
16 Action Settlement to request exclusion from the Settlement. (*Id.*, ¶ 29.) Most, if not all, Class
17 Members reside in the State of California, and thus should receive their Notices of Proposed
18 Settlement shortly after the mailing. Because the Class Members are generally limited to California,
19 they may learn of the Settlement simply by word-of-mouth, even in the event any Class Member does
20 not actually receive a Notice of Class Action Settlement.

21 Subject to court approval, the Settlement provides for an award of attorneys' fees to Plaintiff's
22 Counsel in an amount not to exceed 35% of the Class Settlement Amount, or \$665,000. It also
23 provides for actual litigation costs at a maximum of \$35,000. (Settlement Agreement ¶ 34.) The
24 Settlement also provides for a Class Representative Enhancement Payment to the Plaintiff in an
25 amount up to \$15,000. (*Id.*, ¶ 35.) The requests for Plaintiff's Counsel's attorneys' fees and costs,
26 and the Class Representative Enhancement Payment are fully disclosed in the Notice of Class Action
27 Settlement. (*Id.*, Exhibit A to Settlement Agreement.)

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1 Class Members may opt-out of the Settlement Class by providing the Settlement Administrator
2 with a written request to opt-out of the Settlement and to be excluded from the Settlement Class that
3 must be postmarked by no later than sixty (60) calendar days after the date on which the Settlement
4 Administrator send the first Notice of Class Action Settlement to any Class Member ("Request for
5 Exclusion"). (Settlement Agreement, ¶¶ 29.) In the event 10% or more Class Members submit a
6 Request for Exclusion, Defendant shall have the right and option to unilaterally withdraw from and
7 rescind the Settlement. (*Id.*, ¶ 50.)

8 The release is narrowly tailored to any and all causes of action, claims, rights, damages,
9 punitive or statutory damages, penalties, liabilities, expenses, and losses alleged in the operative
10 complaint or which could reasonably have been alleged in the operative complaint filed in the Action
11 based on the operative facts contained therein, including, but not limited to:

12 (a) any alleged failure by Defendant (1) to pay wages, minimum wages, or overtime; (2) to
13 provide meal or rest periods; (3) to provide accurate wage statements to employees; (4) to timely pay
14 wages during employment; (5) to pay all wages due upon separation of employment; or (6) to maintain
15 payroll records; (b) any right or claim for civil penalties pursuant to the Labor Code Private Attorneys
16 General Act of 2004, California Labor Code § 2698 *et seq.*, or any penalties arising under the Labor
17 Code or Wage Order based on the alleged failures set forth in (a)(1) through (a)(6) above; (c) any right
18 or claim for unfair business practices in violation of California Business & Professions Code § 17200
19 *et seq.* based on the alleged failures set forth in (a)(1) through (a)(6) above; and (d) any violation of
20 the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(6) above,
21 including, without limitation, violation of Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558,
22 1174, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, or any other state statute, rule and/or regulation (Wage
23 Order), or similar causes of action which any Class Member has or might have, known or unknown, of
24 any kind whatsoever, that was alleged or could reasonably have alleged out of the factual allegations
25 in the complaint. The release does not include a 1542 waiver.

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1 Finally, the Settlement requires Plaintiff and Plaintiff's Counsel to apply for the Attorneys'
2 Fees and Costs, and Class Representative Enhancement Payment by application to the Court. The
3 purpose of the application is to provide the Class Members with sufficient information justifying the
4 requested the Attorneys' Fees and Costs, and Class Representative Enhancement Payment. Plaintiff's
5 Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument
6 at the time of filing Plaintiff's motion for final approval of the proposed Settlement and the requests
7 for Attorneys' Fees and Costs, Class Representative Enhancement Payment, Claims Administration
8 Costs, and the PAGA allocation, to be heard at the Final Approval Hearing.

9 **B. Notice to the Class**

10 The Settlement provides that, within fourteen (14) calendar days of Preliminary Approval,
11 Defendant will provide the Class List to the Settlement Administrator and Class Counsel. (Settlement
12 Agreement ¶ 43). Within ten (10) calendar days after receiving the Class List from Defendant, the
13 Settlement Administrator, Phoenix Settlement Administrators, will send by First-Class U.S. Mail a
14 copy of the court-approved Notice of Class Action Settlement to all Class Members. (*Id.* ¶ 44) Prior
15 to mailing, the Settlement Administrator shall conduct a national change of address search. (*Id.* ¶ 45)
16 The Settlement Administrator will use reasonable efforts, including tracing, to identify the correct
17 address and re-mail all returned, undelivered mail (*Id.*).

18 The Notice of Class Action Settlement provides the following information to the Class
19 Members: (1) information regarding the nature of the Actions; (2) a summary of the Settlement's
20 principal terms; (3) the Settlement Class definition; (4) the total number of Workweeks each
21 respective Class Member worked for Defendant during the Class Period; (5) each Class Member's
22 estimated Individual Settlement Payments; (6) the dates which comprise the Class Period; (7)
23 instructions on how to submit a Request for Exclusion or Notices of Objection; (8) the deadline to
24 submit a Request for Exclusion or Notices of Objection to the Settlement; and (9) the claims to be
25 released. (Settlement Agreement, ¶ 46 & Exhibit A.)

26 The Parties contemplate posting of the Judgment on the Settlement Administrator's website for
27 a period of 120 days after entry in satisfaction of California Rule of Court 3.771.

28 ///

1 **C. Settlement Administration Process**

2 As discussed above, the Settlement is a guaranteed, non-reversionary fund. Class Members are
3 not required to submit claims to receive compensation. Thus, the anticipated claims rate is close to
4 100%, as all persons who do not opt-out of the Settlement will receive their Individual Settlement
5 Payment.

6 The deadline to submit a Request for Exclusion or written objection is reasonable as it provides
7 sixty (60) calendar days from the initial mailing of the Notice of Class Action Settlement.

8 The Parties have agreed to retain Phoenix Settlement Administrators as the Settlement
9 Administrator to handle the notice and claims administration. After Defendant provides the contact
10 information of the Class Members to Phoenix Settlement Administrators, Phoenix Settlement
11 Administrators will print and distribute the Notice of Class Action Settlement to the Class Members
12 by First Class mail; establish a mailing address, and telephone number to receive Class Members'
13 inquiries about the proposed Settlement; receive, review, and process Requests for Exclusion or
14 written objections; receive and process any written disputes and supporting documentation as to the
15 validity of the information regarding the number of Workweeks provided by Defendant; handle
16 inquiries from Class Members regarding the proposed Settlement; calculate each Class Member's
17 Individual Settlement Payments; administer the Class Settlement Amount in an account established by
18 the Settlement Administrator; mail the payment checks required by the Settlement to the Settlement
19 Class Members, Plaintiff, Plaintiff's Counsel, and the LWDA; and perform any other usual and
20 customary duties for administering a class action settlement. (Settlement Agreement, ¶¶ 40, 42, 44,
21 45, 48, 53, and 58).

22 The Settlement Administration Costs shall be paid out of the Class Settlement Amount. (Han
23 Decl. ¶ 45; Settlement Agreement, ¶ 37.)

24 Accordingly, Plaintiff respectfully requests that this Court appoint Phoenix Settlement
25 Administrators to handle the notice and claims administration in this matter.

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1 **D. Children’s Advocacy Centers of California Is An Appropriate Cy Pres**
2 **Recipient.**

3 Any Individual Settlement Payment that is not cashed for more than 180 days of issuance will
4 be tendered to a mutually agreed upon 501(c)(3) organization to be determined, subject to section 384
5 of the California Code of Civil Procedure, as amended by Assembly Bill No. 103 (June 27, 2017).
6 (Settlement, ¶ 55.) Subject to approval, the parties have agreed to Children’s Advocacy Centers of
7 California as the charity.

8 Pursuant to the newly amended Code of Civil Procedure section 384, the Parties’ request that
9 the allocation of any amount of the unclaimed Individual Settlement Payments be made consistent
10 with Code of Civil Procedure section 384. To that end, the parties request that the Court allocate any
11 funds represented by Individual Settlement Payment checks returned as undeliverable and Individual
12 Settlement Payment checks remaining uncashed for more than 180 days to be allocated as follows:
13 (1) 25% of the unclaimed funds to the State Treasury for deposit in the Trial Court Improvement and
14 Modernization Fund, established in Section 77209 of the Government Code, and subject to
15 appropriation in the annual Budget Act for the Judicial Council to provide grants to trial courts for
16 new or expanded collaborative courts or grants for Sargent Shriver Civil Counsel; (2) 25% of the
17 funds to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch, to be
18 distributed in accordance with Sections 6216 to 6223, inclusive, of the Business and Professions Code;
19 and (3) the remaining 50% of the funds to Children’s Advocacy Centers of California.

20 California Code of Civil Procedure section 384 provides that residual funds in a class
21 settlement should be distributed, to the extent possible, in a manner designed either to further the
22 purposes of the underlying causes of action, or to promote justice for all Californians. In particular,
23 subdivision (b) of Section 384 provides that an appropriate designated nonprofit organization or
24 foundation may, among other things, be a “child advocacy program[.]” Children’s Advocacy Centers
25 of California is a non-profit organization that coordinates the investigation, prosecution, and treatment
26 of child abuse. There is a local chapter located in San Leandro, California in Alameda County. (Han
27 Decl., ¶ 46.) (Declaration of Toshie Azuma, ¶¶ 5-6.) The parties do not have any financial interest in
28 the organization and do not serve in any advisory capacity. (*Id.*) Therefore, Children’s Advocacy

1 Centers of California directly satisfies California Code of Civil Procedure section 384(b).

2 **F. Attorneys' Fees and Costs and Class Representative Enhancement**
3 **Payment**

4 **1. The Requested Attorneys' Fees and Costs Are Reasonable.**

5 The Settlement provides for Attorneys' Fees and Costs in an amount up to \$665,000 for
6 attorneys' fees, which is thirty-five percent (35%) of the Class Settlement Amount, and up to \$35,000
7 for litigation costs and expenses. (Settlement Agreement, ¶ 34.) Plaintiff's counsel will file a Motion
8 for Attorneys' Fees and Costs with a detailed explanation of the hours worked and tasks performed by
9 Plaintiff's counsel, in addition to an itemization of the costs incurred.

10 The attorneys' fee award provided for by the Settlement is commensurate with (1) the risk the
11 Plaintiff's Counsel took in bringing and litigating this case, (2) the extensive time, effort and expense
12 dedicated to the case, (3) the skill and determination Plaintiff's Counsel has shown, (4) the results
13 Plaintiff's Counsel has achieved throughout the litigation, (5) the value of the Settlement that
14 Plaintiff's Counsel has achieved for the Class, and (6) the other cases Plaintiff's Counsel had to turn
15 down in order to devote its time and efforts to this matter. The proposed Notice of Class Action
16 Settlement provides the Class Members with information about the amounts allocated toward
17 attorneys' fees and litigation costs and expenses, and that an attorneys' fee and costs award will be
18 sought, as provided for by the Settlement.

19 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions
20 will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.*
21 (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best
22 judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.
23 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in
24 the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half*
25 *Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). In *Lealao*, the
26 court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of
27 certainty, the trial court should "ensure that the fee awarded is within the range of fees freely
28 negotiated in the legal marketplace in comparable litigation." *Leolao, supra*, 82 Cal.App.4th at p. 50.

1 In cases where class members present claims against a maximum settlement fund and the settlement
2 agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of
3 that percentage method is appropriate. Settlement Agreement at p. 32.

4 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary fund
5 that has, by litigation, been preserved or recovered for the benefit of others, has recently been
6 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at pp. 486 & 506. The
7 California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a
8 lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-
9 check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he
10 percentage of fund method survives in California." *Id.* (internal quotation marks omitted).

11 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
12 depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust*
13 *Litig.* (D.D.C. 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45% of the \$7.3
14 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
15 480 F.Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees). California
16 Courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the
17 recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40
18 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v.*
19 *Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage
20 and hour); *Moore v. IKEA*, Los Angeles Superior Court Case No. BC263646 (Sept. 2006) (wage and
21 hour).

22 Plaintiff's Counsel bore the risks and difficulty on numerous levels. (Han Decl., ¶ 43) First, it
23 was clear from the outset that this case could be strongly contested and would require the dedication of
24 significant attorney resources to litigate properly and successfully. (*Id.*) Second, Plaintiff's counsel
25 bore all of the risks and costs of litigation and will not receive any compensation until recovery is
26 obtained. (*Id.*)

27 ///

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1 Further, Plaintiff's Counsel expended significant time and effort in the prosecution of this
2 matter, including propounding written discovery; conducting an extensive number of interviews with
3 Class Members and preparing declarations concerning Defendant's employment policies and
4 practices; reviewing voluminous documents containing of thousands of pages of time and payroll data
5 and documents; reviewing personnel records obtained on behalf of Plaintiff and other Class Members;
6 reviewing documents relating to Defendant's employment policies, practices, and procedures;
7 reviewing Defendant's electronic data relating to the number of shifts, hourly pay rates, number of
8 employees for each year in the Class Period, number of pay periods affecting class-wide damages; and
9 preparing a class wide damages analysis and model. (Han Decl., ¶¶ 10-12.)

10 Moreover, Plaintiff's Counsel is well-versed in wage-and-hour class actions, which they
11 practice almost exclusively. Justice Law Corporation has been appointed class counsel in numerous
12 class actions in California courts, both after class certification and for purposes of settlement. (*Id.*, ¶¶
13 2-7.)

14 **2. Plaintiff's Class Representative Enhancement Payment Is Reasonable.**

15 Plaintiff respectfully request that the Court appoint Keith Lacy as Class Representative and
16 preliminarily approve Class Representative Enhancement Payment in an amount up to \$15,000 to
17 Keith Lacy. The requested amount is fully disclosed in the proposed Notice of Class Action
18 Settlement that will be mailed to the Class Members. Plaintiff will apply to the Court for final
19 approval of their Enhancement Payment with detailed explanations of the tasks performed and the
20 hardships endured in this action. However, in order to provide the Court with an understanding why
21 the requested tentative Class Representative Enhancement Payment should be preliminarily approved,
22 Plaintiff describe the events as follows:

23 Plaintiff Keith Lacy commenced this litigation in August 2016 and has been actively involved
24 ever since. (*Id.*, ¶¶ 18-19). Plaintiff has expended significant time and resources on this case. (*Id.*)
25 Plaintiff also did not pursue an individual failure to accommodate a disability claims so that he would
26 not create a conflict with the class and to pursue this action as a class action and benefit others. (*Id.*)
27 He has sacrificed his own personal gain in exchange to benefit the entire class. (*Id.*)

28 ///

1 “Incentive awards are fairly typical in class actions.” *Cellphone Termination Fee Cases*, 186
2 Cal. App. 4th 1380, 1393 (2010) (internal quotation marks and citations omitted). “The rationale for
3 making enhancement or incentive awards to named plaintiffs is that they should be compensated for
4 the expense or risk they have incurred in conferring a benefit on other members of the class.” *Id.* at
5 1394. Particularly in employment class actions, the named plaintiff should be entitled to an
6 enhancement payment as an incentive to take the risks associated with pursuing employment claims on
7 behalf of other employees. An award is justified where the plaintiff is a “present or past employee
8 whose present position or employment credentials or recommendation may be at risk by reason of
9 having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of
10 litigation at some personal peril.” *Roberts v. Texaco*, 979 F. Supp. 185, 201 (S.D.N.Y. 1997).

11 The amount sought by the Plaintiff is reasonable. Plaintiff conferred with counsel on numerous
12 occasions, spent a substantial amount of time and effort producing relevant documents and past
13 employment records, provided detailed and crucial information in this case, assisted with identifying
14 potential witnesses to assist in Plaintiff’s counsel’s investigation, and assisted in all aspects of
15 discovery. (Han Decl., ¶¶ 18-19.) Plaintiff was available whenever Plaintiff’s Counsel needed him and
16 actively tried to obtain information that would benefit the proposed Class. (*Id.*) The Plaintiff also
17 signed a general release that is broader than the release that applies to the proposed Class. (Settlement
18 Agreement, ¶ 66). Plaintiff thus surrenders much more than the Class Members by participating in this
19 Settlement.

20 Further, by being the named representative, the Plaintiff put his names forward on the public
21 record at the risk of possible future adverse employment consequences by future or potential
22 employers who might not choose to hire any of them because they took the lead in this lawsuit. This,
23 too, is a significant risk that they have borne for the Class of employees who have reaped the benefits
24 of this case without having to face this risk personally themselves. *See Roberts*, 979 F. Supp. at 201.
25 Plaintiff’s Counsel believes this should also be considered in the award of the Class Representative
26 Enhancement Payment. (Han Decl., ¶ 19.)

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1 The requested Class Representative Enhancement Payment to Plaintiff in an amount up to
2 \$15,000.00 each is reasonable given the risks that they took and bore for the Class, and given the
3 benefits he conveyed on the Class Members. Based on the foregoing, Plaintiff request that the Court
4 preliminarily approve the requested Class Representative Enhancement Payment.

5 The Plaintiff will provide a declaration at the time of final approval, which will detail the
6 above described events and will also update the Court of his efforts after notice is distributed.

7 **VI. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED AS FAIR,**
8 **REASONABLE, AND ADEQUATE**

9 Courts will consider the following non-exhaustive list of factors when making a determination
10 regarding final settlement approval: (1) the strength of the plaintiff's claims, (2) the expense,
11 complexity and likely duration of continued litigation, (3) the risk of maintaining class action status
12 through trial, (4) the settlement amount, (5) the stage of the proceedings and extent of any completed
13 discovery, (6) experience and views of respective counsel, and (7) the reaction of the class members to
14 the proposed settlement. *Dunk*, 48 Cal. App. 4th at 1800.

15 As discussed above, Plaintiff believes he has strong meritorious claims; however, he
16 recognizes the risks associated with continued litigation. In particular, a portion of the damages
17 assessed above are attributable to penalties for violation of Labor Code §§ 203 and 226, which permit
18 good faith defenses and therefore pose a greater hurdle to recovery. Further, courts have broad
19 discretion to reduce the amount of PAGA penalties awarded to an employee based upon discretionary
20 factors other than the employer's ability to pay. *Thurman v. Bayshore Transit Management, Inc.*, 203
21 Cal. App. 4th 1112, 1136 (2012), *cert. denied*, 2012 Cal. LEXIS 5624 (2012).

22 Further, although this litigation has endured for nearly a year and was approaching a phase of
23 the litigation where Plaintiff and Plaintiff's Counsel were preparing to file their class certification
24 motion, continued litigation is likely to result in significant expenditure of additional time and
25 resources. Plaintiff has not yet engaged the services of an expert, which would be required for class
26 certification. Additionally, Plaintiff has not yet taken all required depositions nor had sufficient
27 opportunity to contact Defendant's contemplated Class Member declarants, and may have required
28 additional depositions for this purpose. Thus, the expense and complexity of continued litigation

1 would impose a significant burden on the Parties and the Court, and would likely endure for several
2 years. (See Han Decl., ¶¶ 9, 38-39.)

3 The Settlement is fair, reasonable, and adequate. (*Id.*, ¶ 40.) The Parties have negotiated a
4 guaranteed, non-reversionary Settlement that provides the Class with significant benefit when
5 compared with the risks of continued litigation. The raw average of the Class Settlement Amount by
6 the number of Class Members is about \$2,454.78.

7 Accordingly, the Court should preliminarily approve the Settlement as fair, reasonable, and
8 adequate.

9 **VII. CONCLUSION**

10 Based on the foregoing, Plaintiff respectfully requests the Court enter an order granting
11 preliminary approval of the class action Settlement in this action.

12
13
14 DATED: October 3, 2017.

JUSTICE LAW CORPORATION

15
16 By: 
17 Douglas Han
18 Attorneys for Plaintiff



1 DOUGLAS HAN (State Bar No. 232858)
 2 SHUNT TATAVOS-GHARAJEH (State Bar No. 272164)
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FILED
ALAMEDA COUNTY

OCT 04 2017

CLERK OF THE SUPERIOR COURT
 By *Jamie Thomas*
 JAMIE THOMAS, Deputy

5 *Attorneys for Plaintiff*

6
 7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 8 **FOR THE COUNTY OF ALAMEDA**
 9

10 KEITH LACY; individually, and on behalf of all
 11 other members of the general public similarly
 12 situated and on behalf of aggrieved employees
 pursuant to the Private Attorneys General Act
 ("PAGA"),

13 Plaintiff,

14 v.

15 AZUMA FOODS INTERNATIONAL, INC., a
 16 California Corporation; and DOES 1 through
 100, inclusive,

17 Defendants.
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Case No.: RG16827402

Assigned for All Purposes to:
 Honorable Winifred Y. Smith
 Department 21

**DECLARATION OF DOUGLAS HAN IN
 SUPPORT OF PLAINTIFF'S MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT**

[Notice of Motion and Motion for Preliminary
 Approval of Class Action Settlement; Declaration
 of Toshie Azuma; and [Proposed] Order filed
 concurrently herewith]

[Reservation No.: R-1891672]

Date: October 27, 2017
 Time: 10:00 a.m.
 Place: Dept. 21

Complaint Filed: August 15, 2016
 Trial Date: None Set

BY FAX

1 approval of a class action settlement. The Los Angeles Superior Court Case
2 Number is BC554214.

3 g. Our firm, in association with other co-counsel, represented Plaintiffs in a wage-
4 and-hour class action against a national beauty products distributor, on behalf of
5 hourly-paid or non-exempt employees. On November 19, 2015, the court granted
6 final approval of a class action settlement. The Los Angeles Superior Court Case
7 Number is BC545000.

8 h. Our firm represented plaintiffs in a wage-and-hour class action against a regional
9 roofing contracting company, on behalf of hourly-paid or non-exempt employees.
10 On November 19, 2015, the court granted final approval of a class action
11 settlement. The San Joaquin County Superior Court Case No. 39-2014-00316043-
12 CU-OE-STK.

13 i. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
14 and-hour class action against a large beverage distributor, on behalf of hourly-paid
15 or non-exempt employees. On November 10, 2015, the court granted final
16 approval of a class action settlement. The Santa Clara Superior Court Case
17 Number is 1-14-CV-266154.

18 j. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
19 and-hour class action against a national retailer of specialty paper products, on
20 behalf of hourly-paid or non-exempt employees. On September 10, 2015, the
21 court granted final approval of a class action settlement. The Los Angeles
22 Superior Court Case Number is BC506121.

23 k. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
24 and-hour class action against a national oil drilling company, on behalf of hourly-
25 paid or non-exempt employees. On August 19, 2015, the court granted final
26 approval of a class action settlement. The Kern County Superior Court Case
27 Number is S-1500-CV-279842.

- 1 l. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
2 and-hour class action against a national oil drilling company, on behalf of hourly-
3 paid or non-exempt employees. On May 28, 2015, the court granted final
4 approval of a class action settlement. The Kern County Superior Court Case
5 Number is S-1500-CV-279549.
- 6 m. Our firm represented plaintiffs in a wage-and-hour class action against a regional
7 oil field services company, on behalf of hourly-paid or non-exempt employees.
8 On December 12, 2014, the court granted final approval of a class action
9 settlement. The Kern County Superior Court Case Number is S-1500-CV-
10 279879.
- 11 n. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
12 and-hour class action against a regional property management company, on behalf
13 of salaried employees. On November 14, 2014, the court granted final approval of
14 a class action settlement. The San Diego County Superior Court Case Number is
15 37-2013-00051617-CU-OE-CTL.
- 16 o. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
17 and-hour class action against a national retailer, on behalf of salaried employees.
18 On November 5, 2014, the court granted final approval of a class action
19 settlement. The Alameda County Superior Court Case Number is RG13687151.
- 20 p. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
21 and-hour class action against an electronic repair company, on behalf of hourly-
22 paid or non-exempt employees. On October 15, 2014, the court granted final
23 approval of a class action settlement. The Los Angeles County Superior Court
24 Case Number is BC51644.
- 25 q. Our firm, in association with other co-counsel, represented plaintiffs in a wage-
26 and-hour class action against a regional property management company, on behalf
27 of hourly-paid or non-exempt employees. On August 14, 2014, the court granted

1 final approval of a class action settlement. The Los Angeles County Superior
2 Court Case No. BC506120.

3 6. Shunt Tatavos-Gharajeh is an associate at my office. He received his undergraduate
4 degree from the *University of California, Los Angeles* and earned a Juris Doctorate from the
5 *Southwestern University School of Law*. He was admitted to practice in California in 2010. Mr.
6 Tatavos-Gharajeh is admitted to practice in the Courts of the State of California. The focus of his
7 practice is class action wage and hour law. He has worked on several class action cases that have
8 been granted final approval, including *Keles, et al. v. The Art of Shaving – FL, LLC* Alameda County
9 Superior Court Case No. RG13687151, *Esters et al v. HDB LTD. Limited Partnership* Kern County
10 Superior Court Case No. S-1500-CV-279879 DRL, *Bridgette Guzman, et al. v. International City*
11 *Mortgage, Inc.* (San Bernardino Superior Court Case No. CIVDS1502516), *Davidson et al. v. Lentz*
12 *Construction General Engineering Contractor* Kern County Superior Court Case No. S-1500-CV-
13 279853 LHB, *Betancourt v. Hugo Boss USA, Inc.* Los Angeles County Superior Court Case No.
14 BC506988, *Porras et al. v. DBI Beverage, Inc. et al.* Santa Clara County Superior Court Case No. 1-
15 14-CV-266154, *Hartzell et al. v. Truitt Oilfield Maintenance Corporation* Kern County Superior
16 Court Case No. S-1500-CV-283011, *Navarro-Salas et al. v. Markstein Beverage Co. et al.*,
17 Sacramento County Superior Court Case No. 34-2015-00174957-CU-OE-GDS, *David White, et al.*
18 *v. Pilot Travel Centers, LLC*, (San Joaquin County Superior Court Case No. STK-CV-UOE-2013-
19 0009098), *McKinnon, et al. v. Renovate America, Inc., et al.*, San Diego Case No. 37-2015-
20 00038150-CU-OE-CTL, *Evelyn Antoine, et al. v. Riverstone Residential CA, Inc., et al.* (Sacramento
21 Superior Court Case No. 34-2013-00155974), and *Pina v. Zim Industries, Inc.*, Kern County
22 Superior Court Case No. S-1500-CV-284498 SPC. He was also certified as class counsel in *Fulmer*
23 *et al. v. Golden State Drilling, Inc.*, Kern County Superior Court Case No. S-1500-CV-279707, a
24 case that was certified as a class action. He is also handling at least a dozen class actions currently
25 pending in various courts throughout the state of California.

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1 of time as opposed to waiting additional years for the same, or possibly, a worse, result; (2) a
2 guaranteed result that compares favorably with other similar class action settlements of this type; and
3 (3) significant savings in Plaintiff's Counsel's fees and costs which would have only increased
4 significantly had the case progressed through certification, trial, and/or appeals.

5 **SUMMARY OF RESEARCH, DISCOVERY AND INVESTIGATION**

6 10. Before filing the initial lawsuit, Plaintiff's Counsel investigated and researched the
7 facts and circumstances underlying the pertinent issues and applicable law. This required thorough
8 discussions and interviews between Plaintiff's Counsel and Plaintiff and research into the various legal
9 and factual issues involved in the case, namely, the current state of the law as it applied to
10 certification, representative PAGA actions, off-the-clock theory, *de minimis* defense, and meal period
11 and rest break law. Plaintiff's Counsel also engaged in extensive factual investigation into the
12 organization and operations of Defendant's business operations in California and the specific facts
13 giving rise to potential liability – to scheduling practices, automatic deductions, donning and doffing
14 practices, and failing to compensate employees for premium wages for missed meal and rest breaks.
15 After conducting their initial investigation, Plaintiff's Counsel determined that Plaintiff's claims were
16 well suited for class and/or representative action adjudication owing to what appeared to be a common
17 course of conduct affecting a similarly situated group of employees – Defendant's non-exempt
18 employees in its California operation.

19 11. Plaintiff's Counsel has actively litigated this case since the filing of the action on
20 August 15, 2016. Plaintiff's Counsel used the pre-mediation time period to investigate the veracity,
21 strength, and scope of the class claims. The parties engaged in comprehensive discovery. Defendant
22 produced, and Plaintiff's Counsel reviewed and analyzed a large volume of documents, including time
23 records, payroll records, meal and rest period documentation, and personnel records of numerous
24 putative class members. Prior to the mediation, Defendant produced a comprehensive electronic data
25 reflecting the time cards, punch records and wage payments for all putative class members from
26 August 2012 to January 2017. In addition, Plaintiff: (1) propounded formal written discovery
27 requests; (2) obtained the class contact information by engaging in a privacy opt-out procedure; (3)

1 interviewed numerous putative class members obtaining comprehensive witness statements in support
2 of Plaintiff's case; (4) reviewed voluminous documents (class time and payroll data) containing
3 thousands of pages of payroll data, and hundreds of pages of employment records; (5) requested and
4 reviewed personnel records of other putative class members; (6) reviewed documents produced by
5 Defendant, relating to its employment policies, practices, and procedures; and (7) analyzed class-wide
6 payroll data provided by Defendant, which Plaintiff used to extract the number of shifts, the length of
7 each shift, hourly pay rates, number of employees at a given time, violation rates, and number of pay
8 periods affecting class-wide damages. The Parties reached the proposed Settlement based on this large
9 volume of facts, evidence, and investigation.

10 12. Plaintiff's Counsel also closely followed the case law relating to certification, off-the-
11 clock theory, *de minimis* defense, meal and rest period claims, as well as wage-and-hour enforcement
12 under state and federal law. Moreover, Plaintiff's Counsel monitored other class certification
13 appellate decisions that frequently modify or change this volatile area of law. Particularly helpful in
14 leading to settlement discussion was the case *Safeway, Inc. v. Superior Court* (2015) 238 Cal. App. 4th
15 1138 as well as uncertainty caused by the pending California Supreme Court case *Troester v.*
16 *Starbucks Corp.*, 2014 WL 1004098, at *3 (C.D. Cal. Mar. 7, 2014).

17 13. Throughout the pendency of this case, Plaintiff's Counsel and Defense Counsel
18 engaged in discussions and correspondence regarding the above issues, among others, as well as the
19 risks of further litigation and certifiability more generally; and from these communications the parties
20 agreed that this lawsuit was conducive to mediation given the complexity of the legal and factual
21 issues at play and the high level of risk present for both sides.

22 14. On April 24, 2017, the parties participated in extensive private, full-day mediation
23 conducted by David A. Rotman, Esq., an experienced class action litigator and mediator of over
24 twenty-five years. During the mediation, the parties exchanged further information and discussed all
25 aspects of the case, including the risks and delays of further litigation and the risks to both parties of
26 proceeding with class certification and/or representative adjudication, Plaintiff's theory of liability,
27 wage-and-hour enforcement under both state and federal law, the law relating to off-the-clock theory,

1 meal and rest periods, the evidence produced and analyzed, and the possibility of appeals, among other
2 things. While the mediation did not end with settlement, the mediator made a mediator's proposal that
3 was later accepted by the parties. The Parties then continued the discussions during the drafting of the
4 long-form settlement agreement.

5 15. As a result of the mediation and further extensive negotiation, the parties agreed that
6 this case was well-suited for settlement given the outstanding legal and factual issues relating to
7 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
8 litigation. Thus, with the Mediator's assistance and proposal, the parties agreed, subject to Court
9 approval, to enter into the Settlement Agreement to resolve the claims in the above-entitled lawsuit.

10 16. It is usually preferable to reach an early resolution of a dispute because such resolutions
11 save time and money that would otherwise go to litigation. Most cases settle sooner or later. If this
12 case ended up settling after further litigation, the settlement amount would have taken into account the
13 additional costs incurred, and there might have been less money available for Class Members after all
14 was said and done. This is not just an abstract contention. The parties were moving into the phase of
15 this litigation where they would have had to depose a number of people such as managers, supervisors,
16 and employees in order to establish class certification, and discovery disputes would have certainly
17 increased. In contrast, the Settlement provides real and immediate benefits for Class Members. The
18 benefits are not insignificant for anyone, especially given the current economic climate.
19 Consequently, the risk and expense of further litigation outweighed any benefit that might have been
20 gained otherwise.

21 17. Based upon Defendant's representation and Plaintiff's review of Defendant's records,
22 the putative class consists of approximately 774 persons. Based upon the payroll summaries produced
23 by Defendant the average rate of pay for the proposed Class during the time period from August 15,
24 2012 through December 31, 2016, was \$13.32, and the number of shifts worked by the putative class
25 members during the same time period was 89,326 shifts.

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1 18. The Settlement provides for \$1,900,000 as the Class Settlement Amount, on a non-
2 reversionary, opt-out basis. The Settlement also provides for a Class Representative Enhancement
3 Payment in an amount up to \$15,000.00 to Plaintiff, which shall be paid out of the Class Settlement
4 Amount. The requested Class Representative Enhancement Payment is fair, reasonable, and adequate.
5 Plaintiff Keith Lacy commenced this litigation in August 2016 and has been actively involved ever
6 since. Plaintiff has expended significant time and resources on this case. Plaintiff also did not pursue
7 an individual failure to accommodate a disability claims so that he would not create a conflict with the
8 class and to pursue this action as a class action and benefit others. He has sacrificed his own personal
9 gain in exchange to benefit the entire class. Plaintiff conferred with counsel on numerous occasions,
10 spent a substantial amount of time and effort producing relevant documents and past employment
11 records, provided detailed and crucial information in this case, assisted with identifying potential
12 witnesses to assist in Plaintiff's counsel's investigation, and assisted in all aspects of discovery.
13 Plaintiff was available whenever Plaintiff's Counsel needed him and actively tried to obtain
14 information that would benefit the proposed Class. The Plaintiff also signed a general release that is
15 broader than the release that applies to the proposed Class. Plaintiff thus surrenders much more than
16 the Class Members by participating in this Settlement.

17 19. Further, by being the named representative, the Plaintiff put his names forward on the
18 public record at the risk of possible future adverse employment consequences by future or potential
19 employers who might not choose to hire any of them because they took the lead in this lawsuit. This,
20 too, is a significant risk that they have borne for the Class of employees who have reaped the benefits
21 of this case without having to face this risk personally themselves. Plaintiff's Counsel believes this
22 should also be considered in the award of the Class Representative Enhancement Payment.

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1 23. Defendant contended that discretionary second meal breaks and rest periods were
2 waived. In fact, Defendant argued that it was vigilant in enforcing its meal and rest break policies.
3 This, along with other arguments, would likely be raised by Defendant to challenge certification of
4 this claim. Therefore, significant discounts were applied when evaluating this claim for settlement
5 purposes.

6 24. Overtime and Minimum Wages – Rounding of Time in Favor of Defendant. Plaintiff's
7 rounding theory is based on Defendant's practice requiring its employees to don and doff their
8 uniforms off-the-clock as well as automatic rounding/deduction of 60-minute meal periods. Plaintiff's
9 detailed analysis of actual punch records compared to the time actually paid revealed that the time was
10 rounded in favor of Defendant 97.6% of the shifts. Based on a detailed analysis of the punch records
11 belonging to the entire class, the difference between the actual punch data and rounded punch data
12 amounts to approximately 34,542 hours. With most shifts exceeding eight (8) hours, the resulting
13 exposure was calculated as \$690,149.16 (34,542 x \$19.98 O.T. rate) in unpaid overtime.

14 25. These figures are estimates of potential exposure, and there are significant risks with
15 respect to certification and appeal, summary judgment, and factual risks with respect to proving up the
16 estimated damages. At jury trial, assuming certification is granted and affirmed on possible appeal,
17 Plaintiff's certified common theories of liability and estimated damages may not result in the full
18 recovery of the estimated damages. Moreover, with respect to the off-the-clock work, finding of *de*
19 *minimis* defense's applicability in California may eliminate the damages related to the rounding.
20 *Troester v. Starbucks Corp.*, 2014 WL 1004098, at *3 (C.D. Cal. Mar. 7, 2014).

21 26. At jury trial, assuming certification is granted and affirmed on possible appeal,
22 Plaintiff's certified common theories of liability and estimated damages may not result in the full
23 recovery of the estimated damages. Plaintiff would have to apply a discount for the certification risk
24 and further apply a discount based on the argument that the Court may not find a willful violation for
25 waiting time penalties.

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1 27. Paystub Violations. Plaintiff also alleged a cause of action under Labor Code section
2 226(a). That section states that an employer must provide an accurate itemized wage statement twice a
3 month or each time wages are paid, whichever is more frequent. Failing to do so entitles employees to
4 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
5 violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
6 exceeding an aggregate penalty of four thousand dollars (\$4,000). See Labor Code section 226(e).

7 28. This cause of action is entirely derivative of the foregoing causes of action because if
8 Defendant required off-the-clock work, did not record all hours worked, did not provide premium pay
9 for missed meal periods or rest breaks, etc., the wage statements would inevitably be inaccurate. Thus,
10 Plaintiff asserts that Defendant's failure to properly document all hours worked constitutes a willful
11 violation of its obligation to document the total hours worked by each Class Member. Therefore,
12 Plaintiff's Counsel took into account the same factors as outlined above when assessing liability and
13 damages for this cause of action.

14 29. Further, Defendant contended that Labor Code Section 226(e) penalties are not
15 automatic. Rather, the employee must show (1) that he or she "suffered injury" from the employer's
16 failure to provide compliant wage statements, see *Elliot v. Spherion Pacific Work, LCC* (2008) 572
17 F.Supp.2d 1169, 1181 (applying California law)(holding employee was not entitled to penalties
18 because no injury was shown), and (2) Defendant's non-compliance was "knowing and intentional."
19 Defendant contended that Class Members suffered no injury from any failure to issue accurate wage
20 statements and, furthermore, that any non-compliance was not knowing and intentional. Finally,
21 because the damages for this cause of action are penalties, the statute of limitations only runs from one
22 year prior to the filing of the original complaint. See Cal. Civ. Pro. § 340. The Parties discussed these
23 issues, and in light of these and other considerations, Plaintiff's Counsel factored in a reduction of
24 liability and damages for this cause of action. At the time of the mediation, approximately 291
25 individuals were employed by Defendant within the one-year limitations period and worked a total of
26 6,963 eligible pay periods. According to Plaintiff's calculation, the statutory penalties exposure at
27 \$334,650 ([\$50 for the initial pay period + (\$100 x 11 subsequent pay periods)] x 291 individuals).

1 However, realistic recovery under this theory would not be the maximum exposure. Rather, it was
2 possible that Plaintiff would not have certified the derivative claims giving rise to this inaccurate
3 paystub theory.

4 30. Waiting-Time Penalties. Labor Code section 203 provides that if an employer fails to
5 pay an employee all wages due at termination or within seventy-two (72) hours of resignation, then
6 that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from
7 the date they were due. Because some Class Members stopped working for Defendant but, again,
8 were not paid their full compensation for the reasons discussed above, they did not receive all wages
9 due upon termination. Defendant was adamant that no waiting-time penalties should be awarded.
10 Defendant pointed out that waiting-time penalties are derivative of each and every other cause of
11 action. Moreover, Defendant emphasized that, under Labor Code section 203, employers are only
12 obligated to pay waiting-time penalties if they "willfully" fail to pay wages due and owing at the time
13 of termination or resignation. Defendant maintained that, because it had viable defenses in both law
14 and fact to the other claims, waiting-time penalties could not be awarded. Approximately 549 putative
15 class members were terminated within the applicable limitations period. The maximum waiting time
16 penalty for each individual is \$3,196.80. ($\$13.32/\text{hour}$ average hourly rate x 8-hour workday x 30
17 days.) Therefore, the total maximum exposure was \$1,755,043.20. ($549 \times \$3,196.80$). Nevertheless,
18 Plaintiff's Counsel took into consideration the chances of prevailing on the derivative causes of action,
19 as well as the additional hurdles of prevailing under this cause of action, including recent case law,
20 and applied the appropriate discounts.

21 31. PAGA Penalties. The provisions of the Labor Code potentially triggering PAGA
22 penalties in this case include but are not limited to Labor Code sections 201, 202, 203, 204, 226(a),
23 226.7, 510, 512, 1194 and 1198. Defendant asserted that regardless of the results of the underlying
24 causes of action, PAGA penalties are not mandatory but permissive and discretionary. Defendant
25 maintained that in addition to its strong arguments against the underlying claims it had a strong
26 argument that, given the current unsettled state of law, it would be unjust to award maximum PAGA
27 penalties.

1 32. Plaintiff's Counsel calculated damages under this cause of action by multiplying the
2 number of active Class Members (because of the shortened statutory period for this claim), by the civil
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
4 section 2699.5 that were applicable in this case, and then applied discounts in light of the
5 countervailing arguments with regard to the other causes of action, as well as the Court's power to
6 award "a lesser amount than the maximum civil liability."

7 33. Given the state of the law and the range of PAGA penalties requested and actually
8 awarded in California courts, it is difficult to determine a reasonable value and actual exposure for
9 PAGA penalties. However, if PAGA penalties are granted on any one of the violations alleged in
10 Plaintiff's operative complaint, the total penalties exposure for the eligible pay periods could be
11 approximately \$0 to \$669,300 (\$2,300 x 291). Plaintiff calculated Defendant's PAGA exposure using
12 a 100% violation rate based on the number of pay periods during the one-year statutory period.

13 34. Again, these penalties are maximum penalties based on the assumption that the
14 violations occurred consistently and evenly over time to all aggrieved employees. However, Plaintiff
15 understood that these claims are discretionary and history of PAGA penalties granted by trial courts in
16 California have not been near the maximum exposure possible. Given the potentially large PAGA
17 penalties at issue, Plaintiff also recognized the risk that any PAGA award could be significantly
18 reduced. Plaintiff also took into consideration that this Court might not levy the maximum penalties
19 under the law. Thus, allocating \$40,000.00 to PAGA civil penalties was reasonable.

20 35. The foregoing discussion has sought to explain how the Settlement amount is adequate
21 in light of the merits of the case by explaining the legal basis for each of Plaintiff's causes of action,
22 summarizing the evidence that Plaintiff's Counsel gathered in support of those causes of action, and
23 evaluating Defendant's legal and factual arguments against those causes of action. The conclusion to
24 be drawn from the foregoing analysis is that neither liability nor damages was clear-cut, which is why
25 the parties elected to settle this matter. Plaintiff's Counsel had to apply appropriate discounts in light
26 of the real defenses in this case because they posed real risks to being able to recover anything. Thus
27 this settlement, like most others, was the product of compromise.

1 36. Excluding the civil penalties for the reasons stated above, the total estimated potential
2 exposure, assuming certification and prevailing at trial would be approximately \$3,201,287.10. To
3 summarize:

4 Category	Potential Exposure
5 Meal Premiums	
6 2 nd Meal Periods	\$210,722.40
7 3 rd Rest Premiums	\$210,722.40
8 Overtime: Rounding	\$690,149.16
9 Waiting Time Penalty	\$1,755,043.20
10 Paystub Penalty	\$334,650.00
11 MAXIMUM TOTAL	
12 EXPOSURE	\$3,201,287.10

13
14 The Class Settlement Amount of \$1,900,000 is approximately 59 percent of the maximum
15 potential exposure, which are in the ball-park of reasonableness considering the risks and defenses.
16 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's
17 unopposed motion for preliminary approval of class action settlement.

18 **EXPERIENCE AND VIEWS OF COUNSEL**

19 37. Plaintiff's Counsel are well-qualified because of our experience, knowledge, and
20 resources to act as counsel and represent the Plaintiff and the Class Members in this action. Plaintiff's
21 Counsel has represented employees in numerous class-action lawsuits involving wage-and-hour
22 violations in California. A substantial percentage of the firm's practice is devoted to litigating wage
23 and hour violations, and the bulk of these cases are class actions. Plaintiff's Counsel has obtained
24 favorable settlements against a range of defendants, including Fortune 100 companies, in wage-and-
25 hour class actions.

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1 38. Based on investigation and information discovered, Plaintiff's Counsel believes that
2 there is sufficient evidence to support the allegation that Defendant, *inter alia*, failed to pay its non-
3 exempt or hourly-paid employees for all hours worked, and non-compliant meal and rest periods.
4 Plaintiff claimed that all hourly-paid or non-exempt employees who worked for Defendant during the
5 Class Period were subject to the same or similar job duties, and uniform operations and employment
6 policies, practices, and procedures. Plaintiff also asserted that Defendant's recordkeeping practices
7 with respect to the Class Members were substantially the same during the Class Period. As a result,
8 Plaintiff claimed that all of the Class Members, including Plaintiff, were uniformly not paid properly
9 for all of the hours they worked for Defendant during the Class Period. Plaintiff's Counsel is aware of
10 the defenses and positions of Defendant, but believe that Plaintiff would ultimately succeed in the
11 action despite potential obstacles. Plaintiff's Counsel further believes that Plaintiff would have
12 obtained class certification and prevailed at trial. Plaintiff, however, have taken into account the
13 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
14 such litigation, including those involved in class certification. Plaintiff recognizes the burdens of
15 proof necessary to establish liability for the claims asserted in this lawsuit, Defendant's defenses
16 thereto, and the difficulties in establishing damages. Plaintiff has also considered the settlement
17 negotiations conducted by the parties and the Mediator's evaluations.

18 39. Defendant, on the other hand, denied all material allegations, and contended that they
19 would ultimately succeed in the action. Both sides have also had the opportunity to interview
20 witnesses and review documents relating to the wages and work history for the Class Members in an
21 effort to determine the potential value and strength of the claims. The available information and data
22 enabled Plaintiff's Counsel to estimate the potential claim of each Class Member. Accordingly,
23 sufficient investigation and discovery have been conducted for the parties to be adequately informed
24 of the nature and extent of Plaintiff's and the other Class Members' claims, and to enable both sides to
25 fully evaluate the proposed Settlement for its fairness, adequacy, and reasonableness. In light of all of
26 the facts and circumstances in this case, the parties agreed that this case was well-suited for Settlement
27 given the legal issues relating to the Plaintiff's principal claims, as well as the costs and risks to both

1 sides that would attend further litigation. The proposed Settlement takes into account the strengths
2 and weaknesses of each side's position and the uncertainty of how the case might have concluded at
3 certification and/or trial.

4 40. Plaintiff's Counsel's experience with similar wage-and-hour class action cases has been
5 helpful in assessing the reasonableness of settlements such as the one at issue here. Based on their
6 experience, Plaintiff's Counsel submit that a Class Settlement Amount of \$1,900,000, plus any interest
7 paid thereon, represents a fair, adequate, and reasonable settlement of this lawsuit, and is in the best
8 interest of the Class. This is a guaranteed, non-reversionary fund. Plaintiff's Counsel conducted a
9 thorough investigation of Defendant's wage-and-hour policies and practices and engaged in non-
10 collusive, arm's-length negotiations with defense counsel in order to reach a settlement. Defendant
11 has agreed to pay fair value to settle Plaintiff's claims given the existence of the numerous legal
12 hurdles and challenges that Plaintiff faced. From Plaintiff's Counsel's substantial experience with
13 wage-and-hour-class-action lawsuits, this case could not have settled on better terms under the
14 circumstances. Plaintiff's Counsel therefore request that the Settlement be granted preliminary
15 approval so that those persons whom it was intended to benefit shall be afforded the opportunity to
16 determine whether it is fair, adequate, and reasonable.

17 **REQUEST FOR ATTORNEYS' FEES**

18 41. Subject to Court approval, the proposed Settlement provides for Attorneys' Fees and
19 Costs in an amount up to thirty-five percent (35%) of the Class Settlement Amount (or \$665,000) for
20 Attorneys' fees, and up to \$35,000 for litigation costs and expenses, both of which shall be paid out of
21 the Class Settlement Amount. The requested fee award is fair, reasonable, and adequate to
22 compensate Plaintiff's Counsel for the substantial work they have put into this case and, moreover, the
23 risks they assumed by taking it in the first place. Additionally, it is consistent with the contingency-
24 fee agreement entered into by and between Plaintiff and Plaintiff's Counsel, which provides for a fee
25 award of thirty-five (35%) of recovery. I have practiced law in Southern California since December of
26 2004, with the vast majority of my time focused solely on the prosecution of employment and wage-
27 and-hour class action litigation. I am aware that the common and acceptable rate for contingency

1 representation in wage-and-hour class action litigation is normally 40% before trial, with the range
2 being from 33.3% up to 50%.

3 42. The Attorneys' Fees and Costs provision is intended to reimburse Plaintiff's Counsel
4 for all uncompensated work that they have already done and for all the work they will continue to
5 perform in carrying out and overseeing the notification to the Class Members, communicating with
6 them regarding the proposed Settlement, and administering the Settlement if it is preliminarily
7 approved.

8 43. Plaintiff's counsel bore the risks and difficulty on numerous levels. First, it was clear
9 from the outset that this case could be strongly contested and would require the dedication of
10 significant attorney resources to litigate properly and successfully. Second, Plaintiff's counsel bore all
11 of the risks and costs of litigation and will not receive any compensation until recovery is obtained.
12 Plaintiff's Counsel took this case on a contingent-fee basis against a business represented by a
13 reputable defense firm. When we take contingent cases, we must pay careful attention to the
14 economics involved. Accordingly, when we take contingent cases, we anticipate that we shall, if
15 successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often too great to
16 bear. This risk is even greater when starting a new law firm. Even when we work long hours, the
17 number of hours in a day is limited. Because of this, when we take on one particular matter, we are
18 unable to take on other matters. When Plaintiff's Counsel became involved in this case, we realized
19 the time commitment that it would entail. We were forced to turn down matters that we otherwise
20 could have handled because of the thorough factual investigations and development required to
21 prosecute this matter. In sum, this case claimed a significant portion of Plaintiff's Counsel's time and
22 attention throughout its pendency.

23 44. The requested fee is reasonable for the services provided to the Class Members and for
24 the benefits they will receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
25 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, the requested fee award would
26 still be justified.

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1 45. The Parties have agreed to retain Phoenix Settlement Administrators (“Phoenix
2 Settlement Administrators” or “Settlement Administrator”) to handle the notice and settlement
3 administration and respectfully request this Court appoint Phoenix Settlement Administrators to
4 handle these procedures. After Defendant provides the contact information of the Class Members to
5 Phoenix Settlement Administrators, Phoenix Settlement Administrators will print and distribute both
6 English and Spanish versions of the Notice of Proposed Settlement to the Class Members by First
7 Class mail; establish a mailing address, and telephone number to receive Class Members’ inquiries
8 about the proposed Settlement; receive, review, and process Requests for Exclusion or written
9 objections; receive and process any written disputes and supporting documentation as to the validity of
10 the information regarding the number of Workweeks provided by Defendant; handle inquiries from
11 Class Members regarding the proposed Settlement; calculate each Class Member’s individual share of
12 the Net Settlement Amount; administer the Class Settlement Amount in an account established by the
13 Settlement Administrator; mail the payment checks required by the Settlement to the Participating
14 Class Members, Plaintiff, Plaintiff’s Counsel, and the LWDA; and perform any other usual and
15 customary duties for administering a class action settlement. The Settlement Administration Costs
16 shall be paid out of the Class Settlement Amount. I have engaged Phoenix Settlement Administrators
17 to administer class action settlements in the past and am well aware of their good reputation and the
18 quality of their work.

19 **Children’s Advocacy Centers of California as the *Cy Pres* Recipient.**

20 46. California Code of Civil Procedure section 384 provides that residual funds in a class
21 settlement should be distributed, to the extent possible, in a manner designed either to further the
22 purposes of the underlying causes of action, or to promote justice for all Californians. In particular,
23 subdivision (b) of Section 384 provides that an appropriate designated nonprofit organization or
24 foundation may, among other things, be a “child advocacy program[.]” Children’s Advocacy Centers
25 of California is a non-profit organization that coordinates the investigation, prosecution, and treatment
26 of child abuse. There is a local chapter located in San Leandro, California in Alameda County.
27 Justice Law Corporation and Plaintiff do not have any financial interest in the organization and does

1 not serve in any advisory capacity.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing is
3 true and correct.

4 Executed this 3rd day of October 2017, at Glendale, California.

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6 _____
7 Douglas Han

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EXHIBIT 1

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13 Attorneys for Plaintiff KEITH LACY, and
14 putative class

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ALAMEDA**

17
18 KEITH LACY; individually, and on behalf of
19 other members of the general public similarly
20 situated and on behalf of aggrieved employees
pursuant to the Private Attorneys General Act
(PAGA),

21 Plaintiff,
22 v.

23 AZUMA FOODS INTERNATIONAL, INC.,
24 USA, a California Corporation; and DOES 1
through 100, inclusive,

25 Defendants.

Case No. RG16827402

[Assigned to Hon. Winifred Y. Smith,
Department 21 for all purposes]

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

1 formatted in Microsoft Office Excel and will include each Class Member's full name; most recent
2 mailing address and telephone number; Social Security number; dates of employment; the respective
3 number of Workweeks that each Class Member worked during the Class Period; and any other relevant
4 information needed to calculate settlement payments.

5 6. "Class Member(s)" or "Settlement Class" means all current and former hourly-paid or
6 non-exempt employees who worked for Defendant Azuma Foods International, Inc., USA directly or
7 through a staffing agency within the State of California at any time during the Class Period.

8 7. "Class Notice" means the Notice of Class Action Settlement substantially in the form
9 attached hereto as Exhibit A.

10 8. "Class Period" means the period from August 15, 2012 through December 31, 2016.

11 9. "Class Representative Enhancement Payment" means the amounts to be paid to Plaintiff
12 in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for a
13 general release of claims. Subject to the Court granting final approval of this Settlement Agreement and
14 subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of Class
15 Representative Enhancement Payment of Fifteen Thousand Dollars (\$15,000) to Plaintiff.

16 10. "Class Representative" means Keith Lacy.

17 11. "Class Settlement Amount" means the Class Settlement Amount of One Million Nine
18 Hundred Thousand Dollars (\$1,900,000), to be paid by Defendant in full satisfaction of all claims
19 alleged in the Action or could have been alleged in the Action based on the operative facts contained
20 therein, which includes all Individual Settlement Payments to Participating Class Members, the Labor
21 and Workforce Development Agency Payment, Plaintiff's Class Representative Enhancement Payment,
22 Attorneys' Fees and Costs, and Settlement Administration Costs. Any employer payroll taxes required
23 by law, including the employer FICA, FUTA, and SDI contributions will be paid separately and apart
24 from the Class Settlement Amount. This Class Settlement Amount has been agreed to by Plaintiff and
25 Defendant based on the aggregation of the agreed-upon settlement value of individual claims. There will
26 be no reversion of the Class Settlement Amount to Defendant.

27 12. "Court" means Department 21 of the Alameda County Superior Court.

28 13. "Defendant" means Defendant Azuma Foods International, Inc., USA.

1 14. "Effective Date" shall be when Final Approval of the Settlement can no longer be
2 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn with
3 Court approval by the time of the Final Approval hearing), five (5) calendar days following Notice of
4 Entry of Judgment. If objections are heard by the Court and overruled, and no appeal is taken of the
5 Judgment by an objector, then the Effective Date shall be sixty-five (65) calendar days after Notice of
6 Entry of Judgment. If any appeal is taken from the Court's overruling of any objections to the
7 Settlement, then the Effective Date shall be ten (10) calendar days after all appeals are withdrawn or after
8 an appellate decision affirming the Final Approval and Judgment become final.

9 15. "Final Approval" means the Court's Order granting final approval of the Settlement.

10 16. "Individual Settlement Payment" means each Participating Class Member's respective
11 share of the Net Settlement Amount.

12 17. "Labor and Workforce Development Agency Payment" means the payment of Thirty
13 Thousand Dollars (\$30,000) to the California Labor and Workforce Development Agency for its portion
14 of the civil penalties.

15 18. "Net Settlement Amount" means the portion of the Class Settlement Amount remaining
16 after deducting the Class Representative Enhancement Payment, the Labor and Workforce Development
17 Agency Payment, Attorneys' Fees and Costs, and Settlement Administration Costs. The Net Settlement
18 Amount will be distributed to Participating Class Members. There will be no reversion of the Net
19 Settlement Amount to Defendant.

20 19. "Notice of Entry of Judgment" means a Notice of Entry of Judgment pursuant to Code
21 of Civil Procedure § 664.5(c) filed and served by Plaintiff.

22 20. "Notice of Objection" means a Class Member's valid and timely written objection to the
23 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full
24 name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection
25 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
26 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
27 at the Fairness Hearing. Any Class Member who does not submit a timely written objection to the
28 Settlement Administrator, or who fails to otherwise comply with the specific and technical requirements

1 of this section, will be foreclosed from objecting to the Settlement and seeking any adjudication or
2 review of the Settlement, by appeal or otherwise. Class Members who submit Notices of Objection must
3 make themselves available for deposition.

4 21. "Parties" means Plaintiff and Defendant collectively.

5 22. "Participating Class Members" means all Class Members who do not submit timely and
6 valid Requests for Exclusion.

7 23. "Plaintiff" means Keith Lacy.

8 24. "Plaintiff's Counsel" means Douglas Han, Shunt Tatavos-Gharajeh, Daniel J. Park and
9 Justice Law Corporation.

10 25. "Preliminary Approval" means the Court order granting preliminary approval of the
11 Settlement Agreement.

12 26. "Released Claims" means any and all causes of action, claims, rights, damages, punitive
13 or statutory damages, penalties, liabilities, expenses, and losses alleged in the operative complaint or
14 which could reasonably have been alleged in the operative complaint filed in the Action based on the
15 operative facts contained therein, including, but not limited to: (a) any alleged failure by Defendant (1)
16 to pay wages, minimum wages, or overtime; (2) to provide meal or rest periods; (3) to provide accurate
17 wage statements to employees; (4) to timely pay wages during employment; (5) to pay all wages due
18 upon separation of employment; or (6) to maintain payroll records; (b) any right or claim for civil
19 penalties pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code §
20 2698 et seq., or any penalties arising under the Labor Code or Wage Order based on the alleged failures
21 set forth in (a)(1) through (a)(6) above; (c) any right or claim for unfair business practices in violation of
22 California Business & Professions Code § 17200 et seq. based on the alleged failures set forth in (a)(1)
23 through (a)(6) above; and (d) any violation of the California Labor Code arising from or related to the
24 conduct alleged in (a)(1) through (a)(6) above, including, without limitation, violation of Sections 201,
25 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2698 et seq., or any other state
26 statute, rule and/or regulation (Wage Order), or similar causes of action which any Class Member has or
27 might have, known or unknown, of any kind whatsoever, that was alleged or could reasonably have
28 alleged out of the factual allegations in the complaint.

1 27. "Released Parties" means Defendant (along with any of its past, present, and future
2 parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers,
3 directors, board members, trustees, shareholders, members, employees, agents, attorneys, auditors,
4 accountants, benefits administrators or third-party administrators, experts, contractors, stockholders,
5 representatives, partners, insurers, reinsurers, and other persons acting on their behalf).

6 28. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a
7 request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
8 address, telephone number and last four digits of the Social Security Number of the Class Member
9 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
10 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
11 and (v) be postmarked on or before the Response Deadline.

12 29. "Response Deadline" means the deadline by which Class Members must postmark to
13 the Settlement Administrator Requests for Exclusion or Notices of Objection to the Settlement. The
14 Response Deadline will be sixty (60) calendar days from the initial mailing of the Class Notice by the
15 Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the
16 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

17 30. "Settlement Administration Costs" means the costs to the Settlement Administrator for
18 administering this Settlement, including, but not limited to, printing, distributing, and tracking documents
19 for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary
20 reports and declarations, as requested by the Parties. Based on an estimated Settlement Class of
21 approximately 774 members, the Settlement Administration Costs are currently estimated to be Twenty-
22 Five Thousand Dollars (\$25,000).

23 31. "Settlement Administrator" means Simpluris, Inc., or any other third-party class action
24 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
25 administering this Settlement. The Parties each represent that they do not have any financial interest in
26 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
27 could create a conflict of interest.

28 ///

1 36. Payments paid pursuant to the Settlement. Plaintiff will be solely and legally responsible
2 to pay any and all applicable taxes on the payments made pursuant to this paragraph.

3 37. Settlement Administration Costs. The Settlement Administrator will be paid for the
4 reasonable costs of administration of the Settlement and distribution of payments from the Class
5 Settlement Amount, which is currently estimated to be Twenty-Five Thousand Dollars (\$25,000). These
6 costs, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the
7 issuing of 1099 and W-2 IRS Forms, distributing Class Notices, calculating and distributing the Class
8 Settlement Amount and Attorneys' Fees and Costs, and providing necessary reports and declarations.

9 38. PAGA Allocation. The Parties agree to allocate Forty Thousand Dollars (\$40,000) from
10 the Class Settlement Amount to the resolution of all Class Members' claims arising under the California
11 Labor Code Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*,
12 "PAGA"). Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA allocation, or Thirty
13 Thousand Dollars (\$30,000), will be paid to the California Labor and Workforce Development Agency,
14 and the remaining Twenty Five Percent (25%) of the PAGA allocation, or Ten Thousand Dollars
15 (\$10,000) will be allocated to the Net Settlement Amount.

16 39. Net Settlement Amount. The entire Net Settlement Amount will be distributed to
17 Participating Class Members. No portion of the Net Settlement Amount will revert or be retained by
18 Defendant.

19 40. Individual Settlement Payment Calculations. Individual Settlement Payments will be
20 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class
21 Member worked during the Class Period. Specific calculations of Individual Settlement Payments will
22 be made as follows:

23 40(a) Defendant will calculate the total number of Workweeks worked by each
24 Class Member during the Class Period, and based on those calculations the
25 Settlement Administrator will calculate the aggregate total number of
26 Workweeks worked by all Class Members during the Class Period.

27 40(b) To determine each Class Member's estimated "Individual Settlement
28 Payment," the Settlement Administrator will use the following formula:

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The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value.

40(c) The Settlement Administrator shall be responsible for reducing Individual Settlement Payment based on any required deductions for each Participating Class Members as specifically set forth herein, including employee-side tax withholdings or deductions.

40(d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for Exclusion from members of the Plaintiff Class, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

41. No Credit To Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

42. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

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1 43. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary Approval,
2 Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

3 44. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class List from
4 Defendant, the Settlement Administrator will mail a Class Notice to all Class Members via regular First-
5 Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

6 45. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement
7 Administrator will perform a search based on the National Change of Address Database for information
8 to update and correct for any known or identifiable address changes. Any Class Notices returned to the
9 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
10 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
11 Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is
12 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
13 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
14 involved, and will then perform a single re-mailing.

15 46. Class Notices. All Class Members will be mailed a Class Notice. Each Class Notice
16 will provide: (i) information regarding the nature of the Actions; (ii) a summary of the Settlement's
17 principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective
18 Class Member worked for Defendant during the Class Period; (v) each Class Member's estimated
19 Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the
20 dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or
21 Notices of Objection; (viii) the deadlines by which the Class Member must postmark Request for
22 Exclusions or Notices of Objection to the Settlement; and (ix) the claims to be released.

23 47. Disputed Information on Class Notices. Class Members will have an opportunity to
24 dispute the information provided in their Class Notices. To the extent Class Members dispute their
25 employment dates or their Workweeks, Class Members may produce evidence to the Settlement
26 Administrator showing that such information is inaccurate. The Settlement Administrator will decide the
27 dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate
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1 the evidence submitted by the Class Member and will make the final decision as to the merits of the
2 dispute. All disputes will be resolved within 10 business days of the Response Deadline.

3 48. Defective Submissions. If a Class Member's Request for Exclusion is defective as to
4 the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
5 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
6 receiving the defective submission to advise the Class Member that his or her submission is defective
7 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will
8 have until the later of (i) Response Deadline or (ii) fifteen (15) calendar days from the date of the cure
9 letter, whichever date is later, to postmark a revised Request for Exclusion. If the revised Request for
10 Exclusion is not postmarked within that period, it will be deemed untimely.

11 49. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
12 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
13 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
14 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
15 for Exclusion has been timely submitted.

16 50. Option to Rescind the Settlement Agreement: Defendant may elect, at its option, to
17 rescind the Settlement if more than 10% of Class Members submit timely Requests for Exclusion. If
18 Defendant exercises its conditional right to rescind, it must do so by written communication to Class
19 Counsel that is received by Class Counsel within thirty (30) calendar days of the Response Deadline. In
20 the event that Defendant exercises its conditional right to rescind, Defendant will be responsible for all
21 Settlement Administration Costs incurred to the date of rescission.

22 51. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
23 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
24 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
25 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
26 Settlement.

27 52. Objection Procedures. To object to the Settlement Agreement, a Class Member must
28 postmark a Notice of Objection to the Settlement Administrator. The Notice of Objection must be

1 signed by the Class Member and contain all information required by this Settlement Agreement. The
2 postmark date will be deemed the exclusive means for determining whether a Notice of Objection is
3 timely. Class Members who fail to object in the manner specified above will be deemed to have waived
4 all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or
5 otherwise, to the Settlement Agreement. Class Members who postmark timely Notices of Objection will
6 have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court.
7 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
8 to submit written objections to the Settlement Agreement or appeal from the Order and Judgment. Class
9 Counsel will not represent any Class Members with respect to any such objections to this Settlement.

10 53. Certification Reports Regarding Individual Settlement Payment Calculations. The
11 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
12 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to
13 the Settlement, and whether any Class Member has submitted a challenge to any information contained
14 in their Class Notice. Additionally, the Settlement Administrator will provide to counsel for both Parties
15 any updated reports regarding the administration of the Settlement Agreement as needed or requested.

16 54. Distribution Timing of Settlement Payments. Distribution of the Settlement Payments
17 will be made in three installments as follows:

18 54(a) Within twenty-one (21) days of the Effective Date, the Settlement
19 Administrator will issue the first installment payment of the Court-approved
20 payments to: (i) Participating Class Members; (ii) the Labor and Workforce
21 Development Agency; (iii) Plaintiff; (iv) Plaintiff's Counsel; and (v) the
22 Settlement Administrator.

23 54(b) Within two hundred and one (201) days of the Effective Date, the
24 Settlement Administrator will issue the second installment payment of the
25 Court-approved payments to: (i) Participating Class Members; (ii) the Labor
26 and Workforce Development Agency; (iii) Plaintiff; (iv) Plaintiff's Counsel;
27 and (v) the Settlement Administrator.

28 54(c) Within three hundred and eighty-six (386) days of the Effective Date, the

1 Settlement Administrator will issue the third installment payment of the
2 Court-approved payments to: (i) Participating Class Members; (ii) the Labor
3 and Workforce Development Agency; (iii) Plaintiff; (iv) Plaintiff's Counsel;
4 and (v) the Settlement Administrator.

5 55. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
6 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
7 more than 180 days after issuance will be tendered to a mutually agreed upon 501(c)(3) organization to
8 be determined, subject to section 384 of the California Code of Civil Procedure, as amended by
9 Assembly Bill No. 103 (June 27, 2017)..

10 56. Certification of Completion. Upon completion of administration of the Settlement, the
11 Settlement Administrator will provide a written declaration under oath to certify such completion to the
12 Court and counsel for all Parties.

13 57. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
14 be allocated as follows: (i) Thirty-Three and One-Third Percent (33 1/3%) of each Individual Settlement
15 Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Sixty-Six and
16 Two-Thirds Percent (66 2/3%) will be allocated to alleged unpaid penalties and interest for which IRS
17 Forms 1099-MISC will be issued. The allocation to interest and statutory penalties includes all payments
18 made in connection with individual settlement agreements related to the Actions.

19 58. Administration of Taxes by the Settlement Administrator. The Settlement
20 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Plaintiff's
21 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
22 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
23 and penalties to the appropriate government authorities.

24 59. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
25 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
26 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
27 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
28 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES

1 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
2 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
3 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
4 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
5 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
6 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
7 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
8 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
9 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
10 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
11 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
12 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
13 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
14 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
15 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
16 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
17 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
18 AGREEMENT.

19 60. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
20 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
21 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
22 action or right herein released and discharged.

23 61. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
24 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
25 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
26 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
27 likewise be treated as void from the beginning.
28

1 62. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
2 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
3 Order. The Preliminary Approval Order will provide for the Class Notice to be sent to all Class
4 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will
5 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
6 proposed Class Notice, which is attached hereto as Exhibit A.

7 63. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
8 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
9 Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the
10 Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Individual
11 Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) the Class
12 Representative Enhancement Payment; (iv) Attorneys' Fees and Costs; and (v) all Settlement
13 Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than
14 thirty (30) days after the Response Deadline. Class Counsel will be responsible for drafting all
15 documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the
16 attorneys' fees and costs application to be heard at the final approval hearing.

17 64. Release by the Settlement Class. Upon the Effective Date and conditioned upon full
18 satisfaction of the payment obligations in paragraph 39, all Participating Class Members will be deemed
19 to have released the Released Claims, and will be barred and enjoined from bringing or prosecuting any
20 of the Released Claims against the Released Parties.

21 65. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
22 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to
23 the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely
24 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)
25 settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under
26 court rules or as set forth in this Settlement Agreement.

27 66. Release by Plaintiff. Upon the Effective Date, in addition to the claims being released
28 by all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to

1 the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and
2 not asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of
3 this Settlement Agreement. To the extent the foregoing releases are releases to which Section 1542 of
4 the California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly
5 waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the
6 California Civil Code or similar provisions of applicable law, which are as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
10 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
11 SETTLEMENT WITH THE DEBTOR.

12 67. Exhibit Incorporated by Reference. The terms of this Settlement Agreement include the
13 terms set forth in the attached Exhibit, which is incorporated by this reference as though fully set forth
14 herein. Any Exhibit to this Settlement Agreement is an integral part of the Settlement.

15 68. Entire Agreement. This Settlement Agreement and attached Exhibit constitute the
16 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
17 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
18 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
19 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
20 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
21 contradict the terms of this Settlement Agreement.

22 69. Amendment or Modification. No amendment, change, or modification to this
23 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

24 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
26 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
27 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
28 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with

1 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
2 unable to reach agreement on the form or content of any document needed to implement the Settlement,
3 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
4 the Parties may seek the assistance of the Court to resolve such disagreement.

5 71. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
6 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

7 72. California Law Governs. All terms of this Settlement Agreement and Exhibit hereto
8 will be governed by and interpreted according to the laws of the State of California.

9 73. Execution and Counterparts. This Settlement Agreement is subject only to the execution
10 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
11 executed counterparts and each of them, including facsimile and scanned copies of the signature page,
12 will be deemed to be one and the same instrument provided that counsel for the Parties will exchange
13 among themselves original signed counterparts.

14 74. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
15 Settlement Agreement is a fair, adequate and reasonable settlement of the Actions and have arrived at
16 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
17 account all relevant factors, present and potential. The Parties further acknowledge that they are each
18 represented by competent counsel and that they have had an opportunity to consult with their counsel
19 regarding the fairness and reasonableness of this Settlement.

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

24 76. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
25 either party may appeal any court order that materially alters the Settlement Agreement's terms.

26 77. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
27 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
28 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any

1 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
2 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
3 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
4 respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor
5 any of the negotiations connected with it, will be construed as an admission or concession by Defendant
6 of any such violations or failures to comply with any applicable law. Except as necessary in a
7 proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and
8 provisions will not be offered or received as evidence in any action or proceeding to establish any
9 liability or admission on the part of Defendant or to establish the existence of any condition constituting a
10 violation of, or a non-compliance with, federal, state, local or other applicable law.

11 78. Waiver. No waiver of any condition or covenant contained in this Settlement
12 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
13 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
14 remedy.

15 79. Enforcement Actions. In the event that one or more of the Parties institutes any legal
16 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
17 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
18 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
19 expert witness fees incurred in connection with any enforcement actions.

20 80. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
21 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
22 more strictly against one party than another merely by virtue of the fact that it may have been prepared
23 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
24 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

25 81. Representation By Counsel. The Parties acknowledge that they have been represented
26 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
27 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
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Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on the Settlement Agreement.

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82. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

83. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

84. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: Jul 26, 2017

Keith Lacy
Keith Lacy (DUI), 2017
Plaintiff Keith Lacy

**AZUMA FOODS INTERNATIONAL, INC.,
USA**

Dated: Sep 05, 2017

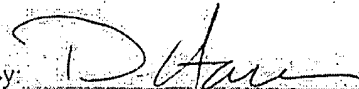
Takahiro Takamura
Please Print Name of Authorized Signatory

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APPROVED AS TO FORM

JUSTICE LAW CORPORATION

Dated: 9/11/2017

By: 
Douglas Han
Shunt Tatavos-Gharajch
Attorneys for Plaintiff Keith Lacy

LEWIS BRISBOIS BISGAARD & SMITH, LLP

Dated: 9/11/2017

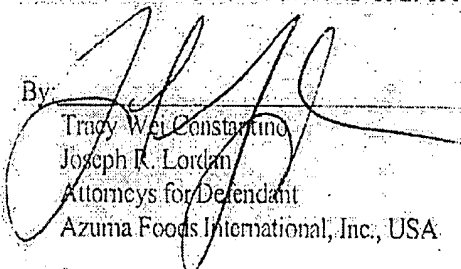
By: 
Tracy Wei Constantino
Joseph R. Lordan
Attorneys for Defendant
Azuma Foods International, Inc., USA

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

*Keith Lacy v. Azuma Foods International, Inc., USA, Alameda County Superior
Court Case No. RG16827402*

NOTICE OF CLASS ACTION SETTLEMENT

**To: ALL CURRENT AND FORMER HOURLY-PAID OR NON-EXEMPT
EMPLOYEES WHO WORKED FOR AZUMA FOODS INTERNATIONAL,
INC., USA DIRECTLY OR THROUGH A STAFFING AGENCY WITHIN
THE STATE OF CALIFORNIA FROM AUGUST 15, 2012 THROUGH
DECEMBER 31, 2016.**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE
AFFECTED.**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED
SETTLEMENT.**

This Notice is Court Approved. This is not a solicitation from an attorney.

PLEASE VERIFY YOUR NAME AND ADDRESS:

«Barcode» Claim #: MIM-«Claim»-«CD» «MailRec»
«First1» «Last1»
«c/o»
«Address1» «Address2»
«City»,«ST» «ZIP» «Country»

Name/Address Corrections (if any):

**Your Anticipated Settlement Payment is:
<< EST. INDIVIDUAL SETTLEMENT PAYMENT (Show Actual Dollars)>>**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

WHY DID I GET THIS NOTICE?

You have received this Notice because we believe that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of the lawsuit: *Lacy v. Azuma Foods International, Inc., USA*, pending in Alameda County Superior Court, Case No. RG16827402 (the "Lawsuit"). A complaint was filed on August 15, 2016. This Notice is being sent to you by the order of the Superior Court of the State of California for the County of Alameda, which preliminarily approved the settlement and conditionally certified the class on [date]. This Notice informs you of the terms of the proposed settlement, describes your rights in connection with the settlement, and explains what steps you may take to object to, or exclude yourself from, the settlement. **If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.**

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT

DO NOTHING AND REMAIN IN THE CLASS	Obtain Settlement benefits and give up your rights to ever sue the Defendant about any of the claims in this case.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Opt out of the class by [date] and get no benefits from the Settlement, and keep your rights to be part of any other lawsuit against the Defendant about any of the claims in this case.
OBJECT	Write to the Settlement Administrator by [date] about why you do not like the Settlement or any of its terms. If you want to object, you will remain in the class and may still receive a settlement payment.
IF YOU ARE A CURRENT EMPLOYEE OF DEFENDANT, STATE AND FEDERAL LAW PROHIBIT RETALIATION AND DISCRIMINATION AGAINST YOU REGARDLESS OF WHICH OF THE ABOVE OPTIONS YOU PURSUE.	

WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by Plaintiff Keith Lacy ("Plaintiff") on behalf of hourly-paid or non-exempt employees who worked for Azuma Foods International, Inc., USA ("Azuma Foods") directly or through a staffing agency during the Class Period in California.

The Lawsuit pleaded class allegations against Azuma Foods for: (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure timely to pay minimum wages; (5) failure to pay all wages due upon separation of employment; (6) failure to issue wage statements in compliance with Labor Code § 226; (7) violation of California Labor Code § 2698 et seq. for civil penalties under the Private Attorneys General Act of 2004; and (8) violation of California

Business & Professions Code § 17200 et seq. based on the alleged failures set forth in (1) through (7). Azuma Foods denies each and all of the claims and contentions alleged by the Plaintiff. The Court has not made any rulings regarding the merits of the cases. Defendant denied and continues to deny all of Plaintiff's allegations.

After engaging in extensive investigation and a full day of mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendant agreed on a class settlement that was preliminarily approved by the Court on [date]. Plaintiff and Class Counsel support the settlement.

The class settlement represents a compromise and settlement of highly disputed claims. Nothing in the settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Lawsuit have merit or that it has any liability to Plaintiff or the Class on those claims.

The parties and their counsel have concluded that the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Keith Lacy is the Class Representative or Named Plaintiff in the Lawsuit, and he asserts claims on behalf of himself and the class. Azuma Foods International, Inc., USA is the Defendant. A class action allows the Court to resolve the claims of all the class members at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All persons who were employed by Azuma Foods directly or through a staffing agency in non-exempt positions in the State of California at any time during August 15, 2012 to December 31, 2016.

The Class or Participating Class Member shall not include any person who submits a timely and valid request for exclusion.

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against it and final disposition of the Lawsuit, Defendant will pay One Million Nine Hundred Thousand Dollars and Zero Cents (\$1,900,000.00) ("Class Settlement Amount"). After attorneys' fees and costs, enhancement payment to the Named Plaintiff, a payment to the California Labor and Workforce Development Agency, and settlement administration costs are deducted from the Class Settlement Amount, the remaining "Net Settlement Amount" will be distributed to Participating Class Members. Subject to Court approval, the Class Settlement Amount will be allocated as follows:

- **Individual Settlement Payment:** All Participating Class Members are eligible to receive money from the Net Settlement Amount. Each estimated payment is the pro rata allocation of the Net Settlement Amount based on the Members' total Workweeks¹ worked during the Class Period.² Your estimated payment is on the first page of this Notice, but the actual amount may vary somewhat based on the actual implementation of the settlement.
- **Class Representatives Enhancement Payment:** Named Plaintiff will request from the Court an award of \$15,000 in recognition of his efforts and risks in assisting with the prosecution of the Lawsuit. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **Class Counsel Award:** Class Counsel will request from the Court not more than thirty-five percent (35%) of the Class Settlement Amount (\$665,000 of \$1,900,000) as attorneys' fees for litigation and resolution of the Lawsuit, as supported by declaration(s). Class Counsel will also request from the Court reimbursement for the advanced litigation costs, which are estimated to be no more than \$35,000. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **PAGA Payment:** \$40,000 from the Class Settlement Amount is allocated for payment under the Private Attorneys General Act of 2004. Upon Court approval, 75% of the allocation (\$30,000) will be paid to the California Labor and Workforce Development Agency, and 25% (\$10,000) of the allocation will be distributed as part of the Net Settlement Amount. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **Settlement Administration:** The cost of settlement administration is approximately \$12,000, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. After that time, any such unclaimed checks will be tendered to Children's Advocacy Centers of California, a 501(c)(3) charity, in accord with the procedures set forth in section 384 of the California Code of Civil Procedure, as amended by Assembly Bill No. 103 (June 27, 2017).

¹ "Workweeks" or "Weeks Worked" means the number of days of employment for each Class Member during the applicable Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek.

² Participating Class Member will receive a share of the Net Settlement Amount with the numerator being the Participating Class Members total number of Workweeks earned during the Class Period as a Class Member and the denominator being all Participating Class Members' total Workweeks worked during the Class Period. The resulting fraction will be multiplied by the Net Settlement Amount to determine the Participating Class Member's individual settlement payment.

If you do not exclude yourself you will give up your Released Claims

The Released Claims means any and all causes of action, wage and hour claims, rights, demands, liabilities, actual damages, statutory damages, penalties, liabilities, liquidated damages, interest, attorneys' fees, litigation costs, expenses, restitution, equitable relief, and losses alleged in the operative complaint or which could reasonably have been alleged in the operative complaint filed in the Action based on the operated facts contained therein, including, but not limited to: (a) any alleged failure by Defendant (1) to pay wages, minimum wages, or overtime; (2) to provide meal or rest periods; (3) to provide accurate wage statements to employees; (4) to timely pay wages during employment; (5) to pay all wages due upon separation of employment; (6) to issue wage statements in compliance with Labor Code § 226; or (7) any alleged failure by Defendant to maintain payroll records; (b) any right or claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 et seq., or any penalties arising under the Labor Code or Wage Order based on the alleged failures set forth in (a)(1) through (a)(7) above; (c) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 et seq. based on the alleged failures set forth in (a)(1) through (a)(7) above; and (d) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(7) above, including, without limitation, violation of Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., or any other state statute, rule and/or regulation (Wage Order), or similar causes of action which any Class Member has or might have, known or unknown, of any kind whatsoever, that was alleged or could reasonably have alleged out of the factual allegations in the complaint.

The release will extend to and cover Azuma Foods International, Inc., USA as well as any of its past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, members, employees, agents, attorneys, auditors, accountants, benefits administrators or third-party administrators, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf.

WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

You do not need to do anything to receive a payment from the Net Settlement Amount.

Azuma Foods's records show that you were employed from [start date] to [end date] and worked a total of [] Workweeks as a Class Member. Your anticipated settlement share as stated on page 1 of this document is calculated using that Workweek information.

If you dispute the information about the amount of Workweeks that Azuma Foods's records show you worked during the Class Period, you must advise the Settlement Administrator to substantiate your dispute.

To dispute the amount of Workweeks you must send in the mail any records (e.g. paystubs, pay checks or other records) supporting your dates of employment with a letter explaining the dispute and be sure to include the last four digits of your social security number by [the Response Deadline]. The date of the post-mark will determine if it was timely mailed.

Your anticipated settlement share will be paid in three separate payments. The first payment will be mailed within twenty-one (21) days of the date the Settlement becomes final. The second payment will be paid within two hundred and one (201) days of the date the Settlement becomes final. The final payment will be paid within three hundred and eighty-six (386) days of the date the Settlement becomes final. *If your address changes before you receive your final payment, please contact the Settlement Administrator to update your address.*

One-third of the settlement share will be characterized as wages and therefore taxes will be withheld prior to payment. IRS Form W-2 will be issued for this one-third allocation. Azuma Foods will pay the employer's share of the payroll taxes on this one-third allocation. Two-thirds of the settlement share will be characterized as penalties and interests. There will be no withholding from this portion. IRS Form 1099-MISC will issue for this two-thirds allocation.

The Settlement Administrator is:

Lacy v. Azuma Foods International, Inc., USA
c/o _____
Street
City, CA Zip Code

WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a written opt-out request to the Settlement Administrator at the following address:

Lacy v. Azuma Foods International, Inc., USA
c/o _____
Street
City, CA Zip Code

To be valid, a written request for exclusion must: (1) state your name, address, telephone number, and last four digits of your social security number; (2) be signed by you; (3) be mailed first-class postage pre-paid by [date] to the Settlement Administrator at the above address; and (4) clearly state that you do not wish to be included in the Settlement. The date of the post-mark will determine if it was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Class Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. Class Counsel will not represent your interests if you request to be excluded.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the settlement and may appear at the hearing where the Court will make a final decision whether or not to approve the settlement (the "Final Approval Hearing"). The Final Approval Hearing is scheduled to take place on [Date], at [Time] in Department 21 of the Superior Court of the State of California for the County of Alameda, located at 1221 Oak Street, Oakland, CA 94612.

To be valid, the written objection must be served on the Settlement Administrator, by [DATE]. The written objection must state: (1) your full name, address and telephone number; (2) a written statement of all grounds for the objection accompanied by any legal support for the objection; (3) a statement as to whether you intend to appear at the final approval hearing; (4) last four digits of your social security number; and (5) the signature of you or your counsel.

You have the right to hire your own attorney, at your own expense, to submit an objection or to appear on your behalf at the Final Approval Hearing. You may, but are not required to appear at the hearing to have your objection considered.

Filing an objection will *not* exclude you from the Settlement Class. You will still have the right to receive an individual settlement payment, unless you have requested to be excluded.

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court and conditioned upon full payment of the Class Settlement Amount will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Individual Settlement Payment. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from hereafter initiating a lawsuit or proceeding regarding the Released Claims. The Settlement Agreement contains additional details about the scope of the release.

DO I HAVE A LAWYER IN THIS CASE?

The Court has ordered that, for purposes of this Settlement, the interests of Plaintiff and the Class Members are represented by:

Douglas Han Shunt Tatavos-Gharajeh	
---------------------------------------	--

Daniel J. Park Justice Law Corporation 411 N. Central Ave., Suite 500 Glendale, California 91203 Telephone: (818) 230-7502 info@justice-lawcorp.com	
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(collectively, "Class Counsel"). If you want to be represented by your own lawyer, you may hire one at your own expense.

WHAT IF MY INFORMATION CHANGES?

If, after you receive this notice, you change your postal address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

FURTHER INFORMATION

The foregoing is only a summary of the settlement. To see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Lawsuit), the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, the operative Complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this Settlement, you may view all such files in the following ways: 1) Online at the Settlement Administrators Website [Insert web address]. 2) Online on the Alameda County Superior Court's website, known as 'DomainWeb' at <https://publicrecords.alameda.courts.ca.gov/PRS/> After arriving at the website, click the 'Search By Case Number' link, then enter RG16827402 and click 'SEARCH.' Images of every document filed in the case may be viewed through the "register of Actions" at a minimal charge. 3) You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. Rene C. Davison Courthouse located at 1225 Fallon St., Oakland CA 94612 and Hayward Hall of Justice located at 24405 Amador St., Hayward CA 94544 has these kiosks available.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [redacted] or the Class Counsel listed above. Please refer to the Azuma Foods International, Inc., USA Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.



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DOUGLAS HAN (State Bar No. 232858)
SHUNT TATAVOS-GHARAJEH (State Bar No. 272164)
DANIEL J. PARK (State Bar No. 274973)
JUSTICE LAW CORPORATION
411 North Central Avenue, Suite 500
Glendale, California 91203
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

FILED
ALAMEDA COUNTY

OCT 04 2017

CLERK OF THE SUPERIOR COURT
By *[Signature]*
JANWE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

KEITH LACY; individually, and on behalf of all other members of the general public similarly situated and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"),

Plaintiff,

v.

AZUMA FOODS INTERNATIONAL, INC., a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG16827402

Assigned for All Purposes to:
Honorable Winifred Y. Smith
Department 21

DECLARATION OF TOSHIE AZUMA ON BEHALF OF AZUMA FOODS INTERNATIONAL, INC. USA REGARDING FINANCIAL OWNERSHIP, RELATIONSHIP, INTEREST, OR STAKE IN CYPRES RECIPIENT

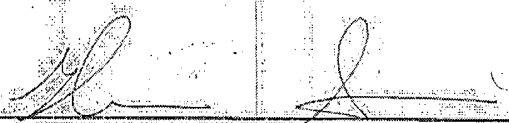
[Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; Declaration of Proposed Class Counsel (Douglas Han); and [Proposed] Order filed concurrently herewith]

[Reservation No.: R-1891672]

Date: October 27, 2017
Time: 10:00 a.m.
Place: Dept. 21

Complaint Filed: August 15, 2016
Trial Date: None Set

BY FAX



Toshie Azuma, Chief Financial Officer

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DECLARATION OF [ENTER NAME] ON BEHALF OF AZUMA FOOD INTERNATIONAL, INC. U.S.A.
REGARDING INTEREST OR STAKE IN CYPRES RECIPIENT.



1 DOUGLAS HAN (State Bar No. 232858)
 2 SHUNT TATAVOS-GHARAJEH (State Bar No. 272164)
 3 DANIEL J. PARK (State Bar No. 274973)
JUSTICE LAW CORPORATION
 4 411 N. Central Avenue, Suite 500
 Glendale, California 91203
 Telephone: (818) 230-7502
 Facsimile: (818) 230-7259

5
 6 *Attorneys for Plaintiff*

7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF ALAMEDA**

10
 11 KEITH LACY; individually, and on behalf of
 12 all other members of the general public
 13 similarly situated and on behalf of aggrieved
 employees pursuant to the Private Attorneys
 General Act ("PAGA"),

14 **Plaintiff,**

15 **v.**

16 AZUMA FOODS INTERNATIONAL, INC., a
 17 California Corporation; and DOES 1 through
 100, inclusive,

18 **Defendants.**

Case No.: RG16827402

Assigned for All Purposes to:
 Honorable Winifred Y. Smith
 Department 21

**[PROPOSED] ORDER GRANTING
 MOTION FOR PRELIMINARY
 APPROVAL OF CLASS ACTION
 SETTLEMENT**

[Reservation No.: R-1891672]

Date: October 27, 2017
 Time: 10:00 a.m.
 Place: Dept. 21

OCT 04 2017

BY FAX

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ORDER

Having considered the Motion, points and authorities, and declaration submitted in support of the Motion, including the Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”) and exhibits, and **GOOD CAUSE** appearing, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, subject to the following findings and orders:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein shall have the same meaning as set forth in the Settlement Agreement.

2. The Class shall be conditionally certified for settlement purposes only and shall consist of all current and former hourly-paid or non-exempt employees who worked for Defendant Azuma Foods International, Inc., USA (“Defendant”) directly or through a staffing agency within the State of California at any time during the period between August 15, 2012 and December 31, 2016. Should the Settlement not become final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

3. The class action settlement set forth in the Settlement Agreement, entered into among the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the range of reasonableness, to be the product of arm’s-length and informed negotiations, to treat all Class Members fairly, and to be presumptively valid, subject only to any objections that may be raised at or before the final approval hearing. The Court further finds that Plaintiff Keith Lacy adequately investigated and researched his claims and Defendant’s defenses, and that Plaintiff was able to reasonably evaluate the strengths and weaknesses of the claims and the ability to certify them. Plaintiff has provided the Court with enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.

///

1 4. The Court finds that settlement now will avoid additional and potentially
2 substantial litigation costs, as well as delay and further risks if the Parties were to continue to
3 litigate the Action.

4 5. The Court preliminarily approves the Settlement Agreement, including all the
5 terms and conditions set forth therein and the Class Settlement Amount and allocation of
6 payments.

7 6. The rights of any potential dissenters to the proposed Settlement are adequately
8 protected in that they may exclude themselves from the Settlement and proceed with any alleged
9 claims they may have against Defendant, or they may object to the Settlement and appear before
10 this Court. To do so they must follow the procedures outlined in the Settlement Agreement and
11 Notice of Class Action Settlement. Failure to follow the procedures outlined in the Settlement
12 Agreement and Notice of Class Action Settlement for making objections shall result in waiver
13 and the objector shall be forever foreclosed from challenging any of the terms of the Settlement.

14 7. The Court approves, as to form and content, the proposed Notice of Class Action
15 Settlement and the Request for Exclusion procedures and objection procedures contained therein.
16 Attached hereto as **EXHIBIT A** is a true and correct copy of the Notice of Class Action
17 Settlement.

18 8. The Court directs the mailing, by First-Class U.S. mail of the Notice Packets to
19 Class Members in accordance with the schedule set forth below and the other procedures
20 described in the Settlement Agreement. The Court finds that the method selected for
21 communicating the preliminary approval of the Settlement Agreement to Class Members is the
22 best notice practicable under the circumstances, constitutes sufficient notice to all persons
23 entitled to notice, and thereby satisfies due process.

24 9. Plaintiff Keith Lacy is a suitable class representative and is appointed Class
25 Representative for the Settlement Class conditionally certified by this Order.

26 10. The Court appoints Justice Law Corporation as Class Counsel. The Court finds
27 that counsel have demonstrable experience litigating, certifying, and settling class actions, and
28 will serve as adequate counsel for the Class conditionally certified by this Order.

1 11. It is further ordered that pending further order of this Court, all proceedings in this
2 matter except those contemplated herein and as part of the Settlement are stayed. All dates and
3 deadlines associated with this action shall be stayed, other than those contemplated herein and in
4 the Settlement Agreement and pertaining to the administration of the Settlement of this action.

5 12. It is further ordered that to facilitate administration of this Settlement, all Class
6 Members, including Plaintiff, are hereby enjoined from filing or prosecuting any claims, cases,
7 suits or administrative proceedings (including without limitation, filing or pursuing claims with
8 the California Division of Labor Standards Enforcement) regarding claims released by the
9 Settlement, unless and until such Class Members have filed valid and timely written requests for
10 exclusion with the Settlement Administrator and the time for submitting claims to the Settlement
11 Administrator has elapsed.

12 13. The Court approves and appoints Phoenix Settlement Administrators as the
13 Settlement Administrator.

14 14. The following dates shall govern for purposes of this Settlement:

Date	Event
November 10, 2017	Last day for Defendant to produce the Class List to the Settlement Administrator.
November 20, 2017	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.
January 19, 2018, or if a Notice Packet is returned as undeliverable, 15 days after the date it is re-mailed.	Last day for Class Members to timely opt-out or submit a written objection to the Settlement unless extended due to re-mailing of the Notice Packet.
February 20, 2018	Last day for Plaintiff to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payment.
February 20, 2018	Last day for Plaintiff to file any responses to objections and for the Settlement Administrator to submit their declaration re Administration Process.
March 16, 2018	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payment.

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The Court expressly reserves the right to continue or adjourn the final approval hearing from time to time without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Winifred Y. Smith
Judge of the California Superior Court

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

*Keith Lacy v. Azuma Foods International, Inc., USA, Alameda County Superior
Court Case No. RG16827402*

NOTICE OF CLASS ACTION SETTLEMENT

**To: ALL CURRENT AND FORMER HOURLY-PAID OR NON-EXEMPT
EMPLOYEES WHO WORKED FOR AZUMA FOODS INTERNATIONAL,
INC., USA DIRECTLY OR THROUGH A STAFFING AGENCY WITHIN
THE STATE OF CALIFORNIA FROM AUGUST 15, 2012 THROUGH
DECEMBER 31, 2016.**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE
AFFECTED.**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED
SETTLEMENT.**

This Notice is Court Approved. This is not a solicitation from an attorney.

PLEASE VERIFY YOUR NAME AND ADDRESS:

«Barcode» Claim #: MIM-«Claim»-«CD» «MailRec»
«First1» «Last1»
«c/o»
«Address1» «Address2»
«City»,«ST» «ZIP» «Country»

Name/Address Corrections (if any):

**Your Anticipated Settlement Payment is:
<< EST. INDIVIDUAL SETTLEMENT PAYMENT (Show Actual Dollars)>>**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

WHY DID I GET THIS NOTICE?

You have received this Notice because we believe that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of the lawsuit: *Lacy v. Azuma Foods International, Inc., USA*, pending in Alameda County Superior Court, Case No. RG16827402 (the "Lawsuit"). A complaint was filed on August 15, 2016. This Notice is being sent to you by the order of the Superior Court of the State of California for the County of Alameda, which preliminarily approved the settlement and conditionally certified the class on [date]. This Notice informs you of the terms of the proposed settlement, describes your rights in connection with the settlement, and explains what steps you may take to object to, or exclude yourself from, the settlement. **If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.**

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT

DO NOTHING AND REMAIN IN THE CLASS	Obtain Settlement benefits and give up your rights to ever sue the Defendant about any of the claims in this case.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Opt out of the class by [date] and get no benefits from the Settlement, and keep your rights to be part of any other lawsuit against the Defendant about any of the claims in this case.
OBJECT	Write to the Settlement Administrator by [date] about why you do not like the Settlement or any of its terms. If you want to object, you will remain in the class and may still receive a settlement payment.
<u>IF YOU ARE A CURRENT EMPLOYEE OF DEFENDANT, STATE AND FEDERAL LAW PROHIBIT RETALIATION AND DISCRIMINATION AGAINST YOU REGARDLESS OF WHICH OF THE ABOVE OPTIONS YOU PURSUE.</u>	

WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by Plaintiff Keith Lacy ("Plaintiff") on behalf of hourly-paid or non-exempt employees who worked for Azuma Foods International, Inc., USA ("Azuma Foods") directly or through a staffing agency during the Class Period in California.

The Lawsuit pleaded class allegations against Azuma Foods for: (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure timely to pay minimum wages; (5) failure to pay all wages due upon separation of employment; (6) failure to issue wage statements in compliance with Labor Code § 226; (7) violation of California Labor Code § 2698 et seq. for civil penalties under the Private Attorneys General Act of 2004; and (8) violation of California

Business & Professions Code § 17200 et seq. based on the alleged failures set forth in (1) through (7). Azuma Foods denies each and all of the claims and contentions alleged by the Plaintiff. The Court has not made any rulings regarding the merits of the cases. Defendant denied and continues to deny all of Plaintiff's allegations.

After engaging in extensive investigation and a full day of mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendant agreed on a class settlement that was preliminarily approved by the Court on [date]. Plaintiff and Class Counsel support the settlement.

The class settlement represents a compromise and settlement of highly disputed claims. Nothing in the settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Lawsuit have merit or that it has any liability to Plaintiff or the Class on those claims.

The parties and their counsel have concluded that the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Keith Lacy is the Class Representative or Named Plaintiff in the Lawsuit, and he asserts claims on behalf of himself and the class. Azuma Foods International, Inc., USA is the Defendant. A class action allows the Court to resolve the claims of all the class members at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All persons who were employed by Azuma Foods directly or through a staffing agency in non-exempt positions in the State of California at any time during August 15, 2012 to December 31, 2016.

The Class or Participating Class Member shall not include any person who submits a timely and valid request for exclusion.

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against it and final disposition of the Lawsuit, Defendant will pay One Million Nine Hundred Thousand Dollars and Zero Cents (\$1,900,000.00) ("Class Settlement Amount"). After attorneys' fees and costs, enhancement payment to the Named Plaintiff, a payment to the California Labor and Workforce Development Agency, and settlement administration costs are deducted from the Class Settlement Amount, the remaining "Net Settlement Amount" will be distributed to Participating Class Members. Subject to Court approval, the Class Settlement Amount will be allocated as follows:

- **Individual Settlement Payment:** All Participating Class Members are eligible to receive money from the Net Settlement Amount. Each estimated payment is the pro rata allocation of the Net Settlement Amount based on the Members' total Workweeks¹ worked during the Class Period.² Your estimated payment is on the first page of this Notice, but the actual amount may vary somewhat based on the actual implementation of the settlement.
- **Class Representatives Enhancement Payment:** Named Plaintiff will request from the Court an award of \$15,000 in recognition of his efforts and risks in assisting with the prosecution of the Lawsuit. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **Class Counsel Award:** Class Counsel will request from the Court not more than thirty-five percent (35%) of the Class Settlement Amount (\$665,000 of \$1,900,000) as attorneys' fees for litigation and resolution of the Lawsuit, as supported by declaration(s). Class Counsel will also request from the Court reimbursement for the advanced litigation costs, which are estimated to be no more than \$35,000. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **PAGA Payment:** \$40,000 from the Class Settlement Amount is allocated for payment under the Private Attorneys General Act of 2004. Upon Court approval, 75% of the allocation (\$30,000) will be paid to the California Labor and Workforce Development Agency, and 25% (\$10,000) of the allocation will be distributed as part of the Net Settlement Amount. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **Settlement Administration:** The cost of settlement administration is approximately \$12,000, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. After that time, any such unclaimed checks will be tendered to Children's Advocacy Centers of California, a 501(c)(3) charity, in accord with the procedures set forth in section 384 of the California Code of Civil Procedure, as amended by Assembly Bill No. 103 (June 27, 2017).

¹ "Workweeks" or "Weeks Worked" means the number of days of employment for each Class Member during the applicable Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek.

² Participating Class Member will receive a share of the Net Settlement Amount with the numerator being the Participating Class Members total number of Workweeks earned during the Class Period as a Class Member and the denominator being all Participating Class Members' total Workweeks worked during the Class Period. The resulting fraction will be multiplied by the Net Settlement Amount to determine the Participating Class Member's individual settlement payment.

If you do not exclude yourself you will give up your Released Claims

The Released Claims means any and all causes of action, wage and hour claims, rights, demands, liabilities, actual damages, statutory damages, penalties, liabilities, liquidated damages, interest, attorneys' fees, litigation costs, expenses, restitution, equitable relief, and losses alleged in the operative complaint or which could reasonably have been alleged in the operative complaint filed in the Action based on the operated facts contained therein, including, but not limited to: (a) any alleged failure by Defendant (1) to pay wages, minimum wages, or overtime; (2) to provide meal or rest periods; (3) to provide accurate wage statements to employees; (4) to timely pay wages during employment; (5) to pay all wages due upon separation of employment; (6) to issue wage statements in compliance with Labor Code § 226; or (7) any alleged failure by Defendant to maintain payroll records; (b) any right or claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 et seq., or any penalties arising under the Labor Code or Wage Order based on the alleged failures set forth in (a)(1) through (a)(7) above; (c) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 et seq. based on the alleged failures set forth in (a)(1) through (a)(7) above; and (d) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(7) above, including, without limitation, violation of Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., or any other state statute, rule and/or regulation (Wage Order), or similar causes of action which any Class Member has or might have, known or unknown, of any kind whatsoever, that was alleged or could reasonably have alleged out of the factual allegations in the complaint.

The release will extend to and cover Azuma Foods International, Inc., USA as well as any of its past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, members, employees, agents, attorneys, auditors, accountants, benefits administrators or third-party administrators, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf.

WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

You do not need to do anything to receive a payment from the Net Settlement Amount.

Azuma Foods's records show that you were employed from [start date] to [end date] and worked a total of [] Workweeks as a Class Member. Your anticipated settlement share as stated on page 1 of this document is calculated using that Workweek information.

If you dispute the information about the amount of Workweeks that Azuma Foods's records show you worked during the Class Period, you must advise the Settlement Administrator to substantiate your dispute.

To dispute the amount of Workweeks you must send in the mail any records (e.g. paystubs, pay checks or other records) supporting your dates of employment with a letter explaining the dispute and be sure to include the last four digits of your social security number by [the Response Deadline]. The date of the post-mark will determine if it was timely mailed.

Your anticipated settlement share will be paid in three separate payments. The first payment will be mailed within twenty-one (21) days of the date the Settlement becomes final. The second payment will be paid within two hundred and one (201) days of the date the Settlement becomes final. The final payment will be paid within three hundred and eighty-six (386) days of the date the Settlement becomes final. *If your address changes before you receive your final payment, please contact the Settlement Administrator to update your address.*

One-third of the settlement share will be characterized as wages and therefore taxes will be withheld prior to payment. IRS Form W-2 will be issued for this one-third allocation. Azuma Foods will pay the employer's share of the payroll taxes on this one-third allocation. Two-thirds of the settlement share will be characterized as penalties and interests. There will be no withholding from this portion. IRS Form 1099-MISC will issue for this two-thirds allocation.

The Settlement Administrator is:

Lacy v. Azuma Foods International, Inc., USA
c/o _____
Street
City, CA Zip Code

WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a written opt-out request to the Settlement Administrator at the following address:

Lacy v. Azuma Foods International, Inc., USA
c/o _____
Street
City, CA Zip Code

To be valid, a written request for exclusion must: (1) state your name, address, telephone number, and last four digits of your social security number; (2) be signed by you; (3) be mailed first-class postage pre-paid by [date] to the Settlement Administrator at the above address; and (4) clearly state that you do not wish to be included in the Settlement. The date of the post-mark will determine if it was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Class Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. Class Counsel will not represent your interests if you request to be excluded.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the settlement and may appear at the hearing where the Court will make a final decision whether or not to approve the settlement (the "Final Approval Hearing"). The Final Approval Hearing is scheduled to take place on [Date], at [Time] in Department 21 of the Superior Court of the State of California for the County of Alameda, located at 1221 Oak Street, Oakland, CA 94612.

To be valid, the written objection must be served on the Settlement Administrator, by [DATE]. The written objection must state: (1) your full name, address and telephone number; (2) a written statement of all grounds for the objection accompanied by any legal support for the objection; (3) a statement as to whether you intend to appear at the final approval hearing; (4) last four digits of your social security number; and (5) the signature of you or your counsel.

You have the right to hire your own attorney, at your own expense, to submit an objection or to appear on your behalf at the Final Approval Hearing. You may, but are not required to appear at the hearing to have your objection considered.

Filing an objection will *not* exclude you from the Settlement Class. You will still have the right to receive an individual settlement payment, unless you have requested to be excluded.

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court and conditioned upon full payment of the Class Settlement Amount will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Individual Settlement Payment. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from hereafter initiating a lawsuit or proceeding regarding the Released Claims. The Settlement Agreement contains additional details about the scope of the release.

DO I HAVE A LAWYER IN THIS CASE?

The Court has ordered that, for purposes of this Settlement, the interests of Plaintiff and the Class Members are represented by:

Douglas Han Shunt Tatavos-Gharajeh	
---------------------------------------	--

Daniel J. Park Justice Law Corporation 411 N. Central Ave., Suite 500 Glendale, California 91203 Telephone: (818) 230-7502 info@justicelawcorp.com	
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(collectively, "Class Counsel"). If you want to be represented by your own lawyer, you may hire one at your own expense.

WHAT IF MY INFORMATION CHANGES?

If, after you receive this notice, you change your postal address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

FURTHER INFORMATION

The foregoing is only a summary of the settlement. To see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Lawsuit), the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, the operative Complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this Settlement, you may view all such files in the following ways: 1) Online at the Settlement Administrators Website [Insert web address]. 2) Online on the Alameda County Superior Court's website, known as 'DomainWeb' at <https://publicrecords.alameda.courts.ca.gov/PRS/> After arriving at the website, click the 'Search By Case Number' link, then enter RG16827402 and click 'SEARCH.' Images of every document filed in the case may be viewed through the "register of Actions" at a minimal charge. 3) You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. Rene C. Davison Courthouse located at 1225 Fallon St., Oakland CA 94612 and Hayward Hall of Justice located at 24405 Amador St., Hayward CA 94544 has these kiosks available.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [redacted] or the Class Counsel listed above. Please refer to the Azuma Foods International, Inc., USA Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.



1 DOUGLAS HAN (State Bar No. 232858)
 2 SHUNT TATAVOS-GHARAJEH (State Bar No. 272164)
 3 DANIEL J. PARK (State Bar No. 274973)
 4 JUSTICE LAW CORPORATION
 5 411 North Central Avenue, Suite 500
 6 Glendale, California 91203
 7 Telephone: (818) 230-7502
 8 Facsimile: (818) 230-7259

FILED
ALAMEDA COUNTY

OCT 04 2017

CLERK OF THE SUPERIOR COURT
 By *Jamie Thomas*
 JAMIE THOMAS, Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

10 KEITH LACY; individually, and on behalf of all
 11 other members of the general public similarly
 12 situated and on behalf of aggrieved employees
 13 pursuant to the Private Attorneys General Act
 ("PAGA"),

Case No.: RG16827402

Assigned for All Purposes to:
 Honorable Winifred Y. Smith
 Department 21

Plaintiff,

PROOF OF SERVICE

v.

15 AZUMA FOODS INTERNATIONAL, INC., a
 16 California Corporation; and DOES 1 through
 17 100, inclusive,

[Notice of Motion and Motion for
 Preliminary Approval of Class Action
 Settlement; Declaration of Proposed Class
 Counsel (Douglas Han); Declaration of
 Toshie Azuma; and [Proposed] Order filed
 concurrently herewith]

Defendants.

[Reservation No.: R-1891672]

Date: October 27, 2017
 Time: 10:00 a.m.
 Place: Dept. 21

Complaint Filed: August 15, 2016
 Trial Date: None Set

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 411 N. Central Avenue, Suite 500, Glendale, California 91203, and my electronic service address is mbarbula@justicelawcorp.com

On October 3, 2017, I served the foregoing document described as

1. **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
2. **DECLARATION OF DOUGLAS HAN IN SUPPORT THEREOF**
3. **DECLARATION OF TOSHIE AZUMA ON BEHALF OF AZUMA FOODS INTERNATIONAL, INC. USA REGARDING FINANCIAL OWNERSHIP, RELATIONSHIP, INTEREST, OR STAKE IN CY PRES RECIPIENT**
4. **[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Tracy Constantino (Tracy.Constantino@lbbslaw.com)
Joseph R. Lordan (Joseph.Lordan@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
Attorneys for Defendant Azuma Foods International, Inc., USA

BY E-MAIL

The above-referenced document(s) was/were transmitted to the addressee(s) at the e-mail addresses listed herein, which are their most recently known e-mail addresses or e-mail addresses of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 3, 2017, at Glendale, California.


Michelle Barbula