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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF SACRAMENTO**

18 MARIA MORONES, as an individual and  
19 on behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 BIMBO BAKERIES USA, INC., a  
23 Delaware corporation; and DOES 1  
24 through 50, inclusive,

25 Defendants.

Case No.: 34-2018-00245481-CU-OE-GDS

(Assigned to the Honorable David I. Brown, Dept.  
53)

**DECLARATION OF NICHOLAS  
ROSENTHAL IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Date: September 13, 2019  
Time: 2:00 P.M.  
Dept.: 53

Complaint Filed: November 28, 2018  
FAC Filed: June 28, 2019



1 hours worked. Moreover, Plaintiff contends that the pay rate for “Sunday Prem.” wages was not  
2 listed on the wage statements.

3 **THE MEDIATION**

4 6. After Plaintiff filed *Morones II*, the parties agreed to attempt to resolve this matter  
5 at private mediation. Defendant also agreed to provide sufficient class data from which  
6 Plaintiff’s counsel could conduct a damage analysis.

7 7. In advance of the mediation, Defendant provided Plaintiff with informal  
8 discovery that allowed my office to perform a detailed damage analysis. Defendant provided an  
9 estimate of the number of non-exempt employees who received shift premium wages during the  
10 period of October 9, 2017 to October 7, 2018 (“Class Period”), as well as the number of wage  
11 statements, which included shift premium wages, issued to such employees during this time  
12 frame.

13 8. On February 21, 2019, the parties participated in private mediation with mediator  
14 Lisa Klerman. As a result of the mediation, and based upon further negotiations between the  
15 parties, a highly experienced and highly regarded mediator with extensive mediation experience  
16 in employment matters, in particular wage and hour class actions. During the mediation, counsel  
17 zealously advocated on behalf of their respective clients. Defense counsel presented compelling  
18 argument in support of its analysis of the potential exposure in the case, including its opinion that  
19 an employee only needed to do simple math to determine his or her total hours worked on wage  
20 statements that showed overtime hours worked; there was no injury because employees could  
21 promptly and easily determine from the wage statements alone the missing information; the  
22 violation was not “knowing and intentional” because Defendant was provided with sample wage  
23 statements by its third-party payroll provider that it asserts were legally compliant; and no  
24 employees were underpaid for any hours worked

25 9. After a full day mediation with Ms. Klerman, a class-wide resolution was reached  
26 in principle. The parties entered into a Memorandum of Understanding and thereafter worked out  
27 a long form agreement over the following weeks.

1 SUMMARY OF THE SETTLEMENT TERMS

2 10. The terms of the class-wide settlement are set forth in the Joint Stipulation of  
3 Class and Representative Action Settlement (the “Settlement” or “Stipulation”). A true and  
4 correct copy of the Stipulation is attached hereto as **Exhibit A**.

5 11. The proposed class consists of: “all current and former non-exempt employees of  
6 Defendant who were employed in California and who received shift premium wages at any time  
7 between October 9, 2017 through October 7, 2018.” Based upon Defendant’s records, there are  
8 approximately 1,322 individuals that comprise this class. *See* Stipulation at § 3.1. Class members  
9 do not need to do anything should they wish to receive their share of the settlement funds. If a  
10 Class Member does not wish to take part in this settlement and be bound by the release, the Class  
11 Member must submit an exclusion request. *See* Stipulation at § 7.2.5.

12 12. The Stipulation provides for the Gross Settlement Amount of One Million One  
13 Hundred Forty-Four Thousand Three Hundred Eighty-Eight Dollars (\$1,144,388). *See* Stip. §  
14 6.1. The settlement payments to each Class Member will depend on the number of wage  
15 statements that included a payment of shift premium wages (“Qualified Wage Statements”)  
16 during the Class Period. *See* Stip. § 6.6.2.

17 13. Additionally, the Stipulation allocated Thirty Thousand Dollars (\$30,000.00) of  
18 the gross settlement amount to PAGA penalties. *See* Stip. § 6.4. Pursuant to the PAGA, 75%—  
19 *i.e.* the sum of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00)—of the PAGA  
20 payment shall be paid to the California Labor and Workforce Development Agency (“LWDA”).  
21 The remaining 25%— *i.e.* the sum of Seven Thousand Five Hundred Dollars (\$7,500.00)— shall  
22 be distributed to Participating Class Members. *See* Stip. § 6.4.

23 14. As part of the Stipulation, Defendant does not object to Plaintiff’s Counsel’s  
24 request for attorney’s fees up to 33 1/3% of the Gross Settlement Amount—*i.e.* the sum of Three  
25 Hundred Eight One Thousand and Four Hundred Sixty-Two Dollars (\$381,462), plus up to  
26 Twenty Thousand Dollars (\$20,000.00) for reimbursement of litigation costs. *See* Stip. § 6.6.1.  
27 Also as part of the Stipulation, Defendant does not object to Plaintiff’s request for an  
28 enhancement of Seven Thousand Five Dollars (\$7,500.00). *See* Stip. 6.2.

1           15.     Finally, the Stipulation provides for the payment of the settlement administrator  
2 for the administration of this current settlement. The Parties have received a quote from Phoenix  
3 Settlement Administrators for a fee of approximately Thirteen Thousand Five Dollars  
4 (\$13,500.00) to administer the settlement. *See* Stip. § 6.5.1.

5                           **POTENTIAL STATUTORY AND CIVIL PENALTIES**

6           16.     I negotiated the settlement sum based on a clear understanding of the maximum  
7 exposure in this case. Based on the number of class members (1,322) and wage statements at  
8 issue (49,756), the maximum potential Labor Code section 226(e) penalties is approximately  
9 \$4,909,500. This exposure assumes that the Court would find that the Class suffered “injury” as  
10 a result of the alleged violations, and also that the violations were “knowing and intentional.” As  
11 explained above, Defendant strongly disputes that Plaintiffs can establish either on a class-wide  
12 basis.

13           17.     The maximum potential PAGA penalties are \$12,439,000. I calculated the PAGA  
14 penalties using the civil penalty set forth in Labor Code section 226.3. *See* Cal. Lab. Code §  
15 226.3 (an employer who violates Labor Code section 226(a) “shall be subject to a civil penalty in  
16 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation”).  
17 However, the trial court has the discretion to reduce PAGA civil penalties “if, based on the facts  
18 and circumstances of the particular case, to do otherwise would result in an award that is unjust,  
19 arbitrary and oppressive, or confiscatory.” *See* Cal. Labor Code § 2699(e)(2). Thus, the  
20 \$12,439,000 figure does not factor in the likelihood that the Court would reduce the amount of  
21 penalties at trial.

22           18.     Under the facts of this case, I appreciate the risk that Defendant could present a  
23 persuasive argument to reduce the amount of PAGA penalties at trial. For example, in *Fleming v.*  
24 *Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff  
25 ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a), *i.e.*,  
26 inaccurate wage statements, the Court assessed only 17% of the maximum penalties— and this  
27 was after finding liability at trial. Similarly, Judge Carville of the Alameda Superior Court in the  
28 matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103,

1 assessed PAGA penalties upon Defendant of approximately 7% of the total maximum  
2 penalties—again, this was only after plaintiff had prevailed at trial. In one recent California  
3 Court of Appeal case, a trial court’s reduction of PAGA penalties by 90% was upheld.  
4 *Carrington v. Starbucks*, 30 Cal. App. 5th 504, 529 (2018).

5 19. Assuming that the Court assessed PAGA penalties of approximately 12% of the  
6 total maximum, a more realistic estimate of the PAGA penalties at issue is \$1,492,680.

7 20. Based on my own independent investigation and evaluation, I am of the opinion  
8 that settlement for the consideration and on the terms set forth in the Joint Stipulation of  
9 Settlement of Class and Representative Action is fair, reasonable, and adequate and is in the best  
10 interests of the Class and Defendant in light of all known facts and circumstances and the  
11 expenses and risks inherent in litigation.

12 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

13 21. From the inception of the case, Class Counsel has zealously represented the  
14 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the  
15 individual Class Representative.

16 22. The Stipulation calls for the Net Settlement Amount (calculated after deduction of  
17 attorneys’ fees, costs, class representative service payment, LWDA payment, and claims  
18 administration costs) to be paid to all Class Members based on dividing the Net Settlement  
19 Amount by the total number of Qualified Wage Statements during the Class Period, resulting  
20 in a dollar value per Qualified Wage Statement, and then multiplying said value to the number  
21 of Qualified Wage Statements each Class Member was issued an itemized wage statement  
22 during the Class Period. Stipulation at § 6.6.2.

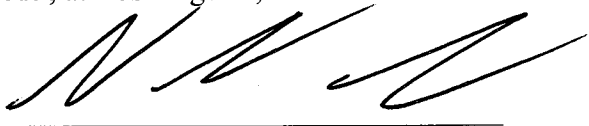
23 23. Based on an estimated Net Settlement Amount of 699,426, Class Members will be  
24 entitled to recover, on average, up to \$529.06 each or \$14.05 per wage statement. The amount  
25 any particular Class Member will be entitled to recover will be greater or lower than this average  
26 depending on the number of Qualified Wage Statements he or she received during the Class  
27 Period, with some entitled to receive more, and others less. This is fair, as it directly allocates  
28 greater recovery to individual Class Members who have allegedly suffered greater harm.



1 Angeles County, Orange County, Alameda County, and Monterey County, the United States  
2 District Court for the Central District of California, and the United States District Court for the  
3 Northern District of California.

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

6 Executed on this 13<sup>th</sup> day of August, 2019, at Los Angeles, California.

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9 Nicholas Rosenthal

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# EXHIBIT A

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15 Attorneys for Plaintiff and the Class

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF SACRAMENTO**

18 MARIA MORONES, as an individual and  
19 on behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 BIMBO BAKERIES USA, INC., a  
23 Delaware corporation; and DOES 1  
24 through 50, inclusive,

25 Defendants.

Case No.: 34-2018-00245481-CU-OE-GDS

(Assigned to the Honorable Gerrit W. Wood, Dept.  
31)

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

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9 Attorneys for Defendant  
10 Bimbo Bakeries USA, Inc.

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1 **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 This Joint Stipulation of Class and Representative Action Settlement is made and entered  
3 into between Plaintiff Maria Morones ("Plaintiff" or "Class Representative"), on behalf of  
4 herself and as a representative of the Settlement Class (as defined below) and Defendant Bimbo  
5 Bakeries USA, Inc. ("Defendant" or "BBUSA") (Plaintiff and Defendant hereinafter are  
6 collectively referred to as the "Parties") who are parties to the above-captioned litigation.

7 **1. THE CONDITIONAL NATURE OF THIS STIPULATION**

8 1.1. This Joint Stipulation of Class and Representative Action Settlement (herein  
9 "Stipulation" or "Settlement"), including all associated exhibits or attachments, is made for the  
10 sole purpose of settling the above-captioned Action. This Stipulation and the settlement it  
11 evidences are made in compromise of disputed claims. Because this Action is being settled as a  
12 class action ("Class Settlement"), this settlement must receive preliminary and final approval by  
13 the Court. *See* Cal. R. Ct. 3.769. The settlement of the representative claim ("PAGA  
14 Settlement") under the Private Attorneys General Act ("PAGA") is also subject to Court  
15 approval. *See* Cal. Lab. Code § 2699(1)(2). Accordingly, the Settling Parties (as defined in  
16 Section 2.33) enter into this Stipulation and associated settlement on a conditional basis. If the  
17 Court does not enter the Order of Final Approval in and of this Action and/or the proposed  
18 Judgment does not become a Final Judgment in this Action for any reason, this Stipulation  
19 (except for the obligations set forth in Section 3.3 and the confidentiality provisions set forth in  
20 Section 7.2) shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever,  
21 it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and  
22 entry of the Stipulation shall remain subject to the provisions of California Evidence Code  
23 sections 1119 and 1152, and any other analogous rules of evidence that are applicable.

24 1.2. Defendant denies all claims as to liability, damages, penalties, interest, fees, and  
25 restitution, and all other forms of relief as well as the class and representative allegations asserted  
26 in the Action, as that term is defined in Section 2.1. Defendant has agreed to resolve the Action  
27 via this Stipulation, but to the extent this Stipulation is deemed void or the Final Judgment does  
28 not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all

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1 such claims and allegations in the Action upon all procedural and factual grounds, as well as  
2 asserting any and all other potential defenses or privileges. Class Representative and Class  
3 Counsel (as defined in Sections 2.9 and 2.5, respectively) agree that Defendant retains and  
4 reserves these rights, and agree not to argue or present any argument, and hereby waive any  
5 argument that, based on this Stipulation, Defendant cannot assert any and all potential defenses  
6 and privileges if the Action were to proceed.

7 **2. DEFINITIONS**

8 The following terms, when used in this Stipulation, shall have the following meanings:

- 9 2.1. "Action" collectively means the "Class Action" and "PAGA Action."
- 10 2.2. "Class Action" means the action, identified as *Maria Morones v. Bimbo Bakeries*  
11 *USA, Inc.*, Case No. 34-2018-00242133-CU-OE-GDS, which was filed in the Superior Court of  
12 the State of California for the County of Sacramento, on October 9, 2018 and subsequently  
13 removed to the United States District Court, Eastern District of California, Case No. 2:18-cv-  
14 03010-MCE-EFB.
- 15 2.3. "PAGA Action" means the above captioned action, identified as *Maria Morones*  
16 *v. Bimbo Bakeries USA, Inc.*, Case No. 34-2018-00245481-CU-OE-GDS, which was filed in the  
17 Superior Court of the State of California for the County of Sacramento, on November 28, 2018
- 18 2.4. "Class" means all current and former non-exempt employees of Defendant who  
19 were employed in California and who received shift premium wages at any time between  
20 October 9, 2017 through October 7, 2018.
- 21 2.5. "Class Counsel" means Diversity Law Group, P.C. and Polaris Law Group LLP.
- 22 2.6. "Class Data" means the following information in Excel spreadsheet format  
23 provided by Defendant to the Settlement Administrator (as defined below): (1) "Class Notice  
24 Data": the names, social security numbers, and last known addresses and telephone numbers of  
25 each Class Member (as defined below); and (2) "Additional Class Data": the number of  
26 Qualified Wage Statements (as defined below) for each Class Member. "Class Data" refers  
27 collectively to both Class Notice Data and Additional Class Data.

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1           2.7. "Class Member" means each person eligible to participate in this Settlement who  
2 is a member of the Class defined above.

3           2.8. "Class Period" or "Settlement Period" mean the time period from October 9, 2017  
4 through October 7, 2018.

5           2.9. "Class Representative" means Plaintiff Maria Morones.

6           2.10. "Class Representative's Released Claims" means all known and unknown claims,  
7 including any Released Claims as well as all other wage and hour claims, claims under  
8 California Business & Professions Code section 17200, claims under the Labor Code, including,  
9 but not limited to, claims under the Private Attorneys General Act ("PAGA"), and all claims for  
10 indemnity or reimbursement of business expenses, overtime compensation, minimum wages,  
11 penalties, liquidated damages, and interest, and all other claims under state, federal, and local  
12 laws, as well as the common law, including laws related to discrimination, harassment, or  
13 retaliation, except for claims currently asserted in the pending Complaint in *Morones v. Bimbo*  
14 *Bakeries USA, Inc.*, Sacramento Superior Court Case No. 34-2018-00241411. Class  
15 Representative further covenants that she will not become a member of any other legal actions  
16 against the Releasees, as that term is defined in Section 2.27, asserting any of Class  
17 Representative's Released Claims, and will opt out of any such actions if necessary.

18           2.11. "Complaint" means the complaint filed in the PAGA Action in the Superior Court  
19 of the State of California for the County of Sacramento on November 28, 2018.

20           2.12. "Court" shall mean the Sacramento County Superior Court.

21           2.13. "Defendant's Counsel" means Morgan, Lewis & Bockius LLP.

22           2.14. "Final Approval Date" means the date on which the Court enters the Order of  
23 Final Approval and Judgment.

24           2.15. "Final Approval Hearing" means a hearing set by the Court for the purpose of:  
25 (i) determining the fairness, adequacy, and reasonableness of the Stipulation terms and  
26 associated Settlement pursuant to class action procedures and requirements; (ii) determining the  
27 amount of the award of attorneys' fees and costs to Class Counsel; (iii) determining the amount  
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1 of the Service Payment to Class Representative; and (iv) entering the Order of Final Approval of  
2 the Settlement and Judgment.

3 2.16. "Final Judgment" means the latest of the following dates: (i) if no Class Member  
4 files an objection to the Settlement, or if a Class Member files an objection to the Settlement  
5 which is subsequently withdrawn by the Class Member, then the date the Court enters an Order  
6 of Final Approval of the Settlement and Judgment; (ii) if a Class Member files an objection to  
7 the Settlement, then after the applicable date for appealing or otherwise seeking appellate review  
8 of the Court's Order of Final Approval of the Settlement has passed, and no appeal or request for  
9 review is filed; and (iii) if an appeal or request for review is filed, the date of final resolution of  
10 that appeal (including any requests for rehearing and/or petitions for writ of certiorari) resulting  
11 in the final judicial approval of the Settlement. Notwithstanding the foregoing, any proceeding,  
12 order, or appeal pertaining solely to the award of attorneys' fees or costs or Service Payment  
13 shall not by itself in any way delay or preclude the Judgment from becoming a Final Judgment.

14 2.17. "First Amended Complaint" or "FAC" means the First Amended Complaint filed  
15 as part of the settlement of the Action and only for the purpose of effectuating this settlement, as  
16 further explained in Paragraph 3.3.

17 2.18. "Funding Date" shall be thirty (30) business days following Final Judgment.

18 2.19. "Gross Settlement Amount" or "GSA" is the sum of One Million One Hundred  
19 Forty-Four Thousand Three Hundred and Eighty-Eight Dollars (\$1,144,388.00), which  
20 represents the total maximum amount payable in this Settlement by Defendant, which includes  
21 attorneys' fees and litigation costs, costs of settlement administration by the Settlement  
22 Administrator, the Service Payment to Class Representative, payment in the total amount of  
23 Thirty Thousand Dollars (\$30,000) for PAGA penalties ("the PAGA Payment") (75% of which  
24 will be paid to the California Labor & Workforce Development Agency ("LWDA"), and 25%  
25 will be included in the amount allocated to the Settlement Class), and the amounts payable to the  
26 Settlement Class.

27 2.20. "Judgment" means the judgment to be executed and filed by the Court pursuant to  
28 this Stipulation along with the Order of Final Approval of the Settlement.

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1           2.21. "Net Settlement Amount" or "NSA" is the portion of the GSA eligible for  
2 distribution of Settlement Payments to Settlement Class Members and shall be the amount  
3 remaining after deduction of Class Counsel's attorneys' fees and litigation costs, the Service  
4 Payment to Class Representative, the Settlement Administrator's costs, and the payment to the  
5 LWDA for PAGA penalties.

6           2.22. "Notice of Settlement" shall mean the document attached hereto as Exhibit A.

7           2.23. "Preliminary Approval Date" means the date the Court approves this Stipulation,  
8 and the exhibits thereto, and enters an Order providing for mailing of the Notice of Settlement to  
9 Class Members, an opportunity to submit timely objections to the Settlement, and setting a  
10 hearing on the fairness of the terms of Settlement, including approval of the Service Payment,  
11 and attorneys' fees and costs.

12           2.24. "Qualified Settlement Fund" or "QSF" mean the fund established by the  
13 Settlement Administrator for the benefit of Settlement Class Members and from which the  
14 Settlement Payments shall be paid.

15           2.25. "Qualified Wage Statements" means the number of wage statements a Class  
16 Member received in which the Class Member was paid shift premium wages in California during  
17 the Class Period.

18           2.26. "Released Claims" shall mean all wage-and-hour claims, demands, rights,  
19 liabilities, and causes of action of every nature and descriptions whatsoever, known or unknown,  
20 arising on or before October 7, 2018, which were or could have been alleged in the Action  
21 related to any claim based on the Releasees' alleged failure to provide accurate wage statements,  
22 including claims for statutory penalties under California Labor Code § 226 and claims for civil  
23 penalties under PAGA, Labor Code § 2698 *et seq.*, including claims for civil penalties under  
24 Labor Code § 226.3 based on alleged violations of Labor Code § 226. The Released Claims  
25 include any claims relating to the provision of wage statements that the Settlement Class  
26 Members do not know or suspect to exist in their favor at the time of this release, which, if  
27 known by them, might have affected their settlement with, and release of, the Released Parties or  
28 might have affected their decision not to object to this Settlement. For the avoidance of any

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1 doubt, this release covers all claims of any nature relating to the provision of wage statements for  
2 Class Members during the period of time from October 9, 2017 through and including October 7,  
3 2018. With respect to only the Released Claims as defined herein, the Settlement Class  
4 Members expressly waive all rights under Section 1542 of the California Civil Code. Said  
5 section reads as follows:

6 **Section 1542. A general release does not extend to claims that the creditor or**  
7 **releasing party does not know or suspect to exist in his or her favor at the**  
8 **time executing the release and that, if known by him or her, would have**  
9 **materially affected his or her settlement with the debtor or released party.**

10 2.27. "Releasees" means Defendant Bimbo Bakeries USA, Inc. and each of its past,  
11 present and/or future, direct and/or indirect, parent companies, subsidiaries, affiliates, divisions,  
12 business units, predecessors, and successors, and BBUSA and each of these entities' respective  
13 past, present, and/or future officers, directors, owners, employees, agents, representatives,  
14 attorneys, insurers, partners, investors, shareholders, trustees, fiduciaries, administrators, and/or  
15 assigns.

16 2.28. "Request for Exclusion" means the document that a Class Member must complete  
17 and timely submit in order to be excluded from the Settlement.

18 2.29. "Service Payment" means the amount approved by the Court, not to exceed  
19 Seven Thousand Five Hundred Dollars (\$7,500), to be paid to Class Representative in  
20 recognition of her efforts and time on behalf of the Class.

21 2.30. "Settlement Administrator" shall be Phoenix Settlement Administrators.

22 2.31. "Settlement Administrator Costs" shall mean the amount approved by the Court  
23 to be paid to the Settlement Administrator as described in Section 6.5.

24 2.32. "Settlement Class" shall mean all Settlement Class Members, all of whom will  
25 become bound by the Judgment including the Released Claims if the Final Judgment occurs.

26 2.33. "Settlement Class End Date" means October 7, 2018.

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1           2.34. "Settlement Class Member" means each person who is a member of the Class  
2 defined above and who does not submit a timely and valid Request for Exclusion (as defined  
3 above).

4           2.35. "Settlement Payment" means the amount due to each Settlement Class Member  
5 under the terms of this Stipulation and as calculated by the Settlement Administrator pursuant to  
6 Sections 6.6 and 7.4. Settlement Payments to Settlement Class Members represent statutory and  
7 civil penalties alone and do not represent any wages.

8           2.36. "Settling Parties" shall mean Plaintiff and Defendant.

9           2.37. "Stipulation" or "Settlement" shall mean this Joint Stipulation of Class and  
10 Representative Action Settlement, signed by the Parties and their respective counsel.

11           2.38. "Total Qualified Wage Statements" means the total aggregate number of  
12 Qualified Wage Statements issued to all Settlement Class Members during the Class Period.

13           **3. DESCRIPTION OF THE LITIGATION**

14           3.1. Plaintiff is a current, non-exempt BBUSA employee who works in Sacramento,  
15 California. On September 10, 2018, Plaintiff sent a letter to the LWDA providing notice under  
16 PAGA of alleged violations of Labor Code § 226 by Defendant based on the contention that  
17 Plaintiff and other aggrieved employees in California were not provided accurate itemized wage  
18 statements. On October 9, 2018, Plaintiff filed a Complaint in the Superior Court for the County  
19 of Sacramento alleging a class claim based on Defendant's alleged violations of Labor Code §  
20 226. The putative class/allegedly aggrieved employees are defined as all current and former  
21 California non-exempt employees of Defendant who were received shift premium wages during  
22 the relevant period. This action was subsequently removed to the United States District Court  
23 for the Eastern District of California. On November 28, 2018, Plaintiff filed a separate  
24 representative action in the Superior Court for the County of Sacramento on behalf of herself and  
25 similarly situated current and former non-exempt employees employed by Defendant in  
26 California for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004,  
27 Cal. Lab. Code §§ 2698 *et seq.* ("PAGA"). Between October 9, 2017 and October 7, 2018,  
28 Defendant had approximately 1,322 current and former non-exempt employees in California who

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1 were paid shift premium wages on wage statement during one or more pay periods, totaling  
2 approximately 49,756 total pay periods.

3 3.2. On February 21, 2019, the Parties participated in private mediation with  
4 third-party neutral Lisa Klerman. At the mediation, the Parties discussed a resolution of  
5 Plaintiff's claims on a class and PAGA representative basis. Following mediation, the Parties  
6 accepted a mediator's proposal that memorialized the GSA and NSA and other material terms of  
7 the Settlement. At all times, the Parties' settlement negotiations have been non-collusive,  
8 adversarial, and at arms' length. The Parties agree that the above-described investigation and  
9 evaluation, as well as informal discovery and information exchanged prior to and during the  
10 settlement negotiations, are more than sufficient to assess the merits of the Parties' respective  
11 positions and to compromise the issues on a fair and equitable basis.

12 3.3. In order to effectuate the settlement of this Action and for purposes of this  
13 settlement only, the Parties will (1) file a stipulated request to stay the Class Action in the United  
14 States District Court for the Eastern District of California; and (2) stipulate to request leave for  
15 Plaintiff to file a First Amended Complaint in the PAGA Action, which adds the class action  
16 claims asserted in the Class Action. Defendant's previously-filed Answer to the Class Action  
17 will apply to the class claims added to the First Amended Complaint, and so Defendant will not  
18 be required to respond to the First Amended Complaint. If the Court does not approve this  
19 Stipulation and/or there is no Final Judgment, (1) Plaintiff will withdraw the First Amended  
20 Complaint and the original PAGA-only Complaint will become operative again; and (2) the  
21 Parties will file a stipulated request to lift the stay of the Class Action. In other words, the Class  
22 Action and the PAGA action will be returned to their procedural status prior to the Settlement.

23 3.4. Contemporaneous with the filing of this Stipulation seeking court approval of the  
24 Settlement, Class Counsel shall notify the LWDA of this Settlement pursuant to Labor Code  
25 section 2699(1)(1), and otherwise comply with the provisions of Labor Code section 2699(1).

26 **4. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY**

27 Defendant denies any and all liability or wrongdoing of any kind with regard to any and  
28 all of the claims alleged, and makes no concessions or admissions of liability of any kind, or that

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1 class or representative action treatment is appropriate, warranted, or manageable. Defendant  
2 maintains that for any purpose other than Settlement, the Action is not appropriate for class or  
3 representative action treatment. Neither this Stipulation, nor any document referred to in it, nor  
4 any actions taken pursuant to this Stipulation, is or should be construed as an admission by  
5 Defendant of any fault, wrongdoing, or liability whatsoever. There has been no determination by  
6 any agency or court as to the merits of the claims asserted by Plaintiff against Defendant.  
7 Nonetheless, Defendant has concluded that further conduct of the Action would be protracted,  
8 and expensive, and that it is desirable that the Action be fully and finally settled in the manner  
9 and upon the terms and conditions set forth in this Stipulation. Defendant has also taken into  
10 account the uncertainty and risks inherent in any litigation. Defendant has therefore determined  
11 that it is desirable and beneficial to it to settle the Action in the manner and upon the terms and  
12 conditions set forth in this Stipulation.

13 **5. BENEFITS OF THE SETTLEMENT TO THE CLASS AND DEFENDANT**

14 5.1. Class Counsel have diligently pursued an investigation of Plaintiff's claims  
15 against Defendant. Based on their own independent investigation and evaluation, Class Counsel  
16 are of the opinion that settlement with Defendant for the consideration and on the terms set forth  
17 in this Settlement is fair, reasonable, and adequate, and is in the best interest of the Class in light  
18 of all known facts and circumstances, including the risk of significant delay and uncertainty  
19 associated with litigation, various factual and legal defenses asserted by Defendant, the risk that  
20 the Class would not be certified if Defendant opposed certification, the risk that a court would  
21 find that a PAGA trial would not be manageable, and the risk that a court would not avoid  
22 penalties or would significantly reduce penalties. In addition to the above, Class Counsel has  
23 weighed the monetary benefit provided by the Settlement to the Class against the expenses and  
24 length of continued proceedings that would be necessary to prosecute the Action against  
25 Defendant through further litigation, trial, and possible appeals. Therefore, Class Counsel has  
26 determined that the settlement set forth in this Stipulation is in the best interests of the Class.

27 5.2. Defendant and Defendant's Counsel also agree that the Settlement is fair and  
28 reasonable given the uncertainty and risks and costs of further litigation because Defendant has

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1 concluded that further conduct of the Action would be protracted, distracting, and expensive, and  
2 that it is desirable that the Action be fully and finally settled in the manner and upon the terms  
3 and conditions set forth in this Stipulation. Defendant has therefore determined that it is  
4 desirable and beneficial to it to settle the Action in the manner and upon the terms and conditions  
5 set forth in this Stipulation.

6 5.3. It is the Parties' intention that this Settlement shall constitute a full and complete  
7 settlement and release of any and all Released Claims against Releasees.

8 **6. OPERATIVE TERMS OF THE SETTLEMENT**

9 The Parties stipulate to the conditional certification of the Class as defined herein for  
10 settlement purposes only. As set forth in Sections 7.3.3 to 7.3.5, this stipulation will be void if  
11 this Settlement is not approved by the Court. The Parties further stipulate that, for settlement  
12 purposes only, Diversity Law Group, P.C. and Polaris Law Group LLP may be appointed Class  
13 Counsel and that Plaintiff may be appointed Class Representative. Defendant's stipulation to  
14 this Settlement class shall not be construed as an admission or acknowledgement of any kind that  
15 any class should be certified or given representative action treatment for any purpose other than  
16 settlement.

17 Additionally, the Parties to the Action agree as follows:

18 6.1. **Gross Settlement Amount**

19 Defendant shall pay the GSA of One Million One Hundred Forty-Four Thousand  
20 Three Hundred and Eighty-Eight Dollars (\$1,144,388.00) to resolve the Action on a class-wide  
21 and representative action basis, as more fully described below. The GSA is non-reversionary.  
22 The GSA includes attorneys' fees and reasonable court costs (not to exceed 33<sup>1</sup>/<sub>3</sub>% of the GSA  
23 for attorneys' fees), costs of settlement administration by the Settlement Administrator, the  
24 Service Payment to the Class Representative (not to exceed \$7,500), payment in the amount of  
25 \$30,000 for the PAGA Payment, and the Settlement Payments to the Settlement Class Members.  
26 Under no circumstances will Defendant be required to pay more than the GSA to satisfy its  
27 obligations under the Settlement.

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1           6.2.   Class Representative's Service Payment

2           Class Representative's Service Payment will, subject to Court approval, be in an  
3 amount not to exceed \$7,500. Because the Service Payment represents payment to Class  
4 Representative for service to the Class Members, taxes will not be withheld from the Service  
5 Payment. The Settlement Administrator will report the Service Payment on an IRS Form 1099,  
6 and any other required tax forms, and will provide said form(s) to Class Representative and to  
7 the pertinent taxing authorities as required by law. Class Representative assumes full  
8 responsibility for paying all taxes, federal and state, if any, due as a result of the Service Payment  
9 and agrees to indemnify Defendant for any such taxes owed by her. Any amount of Class  
10 Representative's Service Payment that is not awarded by the Court shall be added to the NSA.  
11 Class Representative shall also be entitled to recover her proportionate share of the NSA.

12           6.3.   Attorneys' Fees and Costs

13           Class Counsel shall apply to the Court for an award of attorneys' fees (not to  
14 exceed 33<sup>1</sup>/<sub>3</sub>% of the GSA for attorneys' fees), plus reimbursement of reasonable court costs of  
15 up to \$20,000. Defendant will not oppose Class Counsel's request for attorneys' fees and  
16 reasonable court costs in accordance with the terms of this provision. In the event the Court  
17 awards less than the amount of requested fees and/or costs, any unapproved amounts shall be  
18 added to the NSA for distribution to Participating Class Members.

19           6.4.   PAGA Payment

20           \$30,000 of the GSA will be allocated to the PAGA Payment for alleged PAGA  
21 civil penalties. Subject to court approval, the Settlement Administrator will pay 75% of the  
22 PAGA Payment (*i.e.*, \$22,500) to the LWDA for its share of the alleged PAGA penalties and  
23 25% (*i.e.*, \$7,500) will be included in the NSA. If the Court orders that a larger amount be paid  
24 for PAGA penalties, this amount will be paid out of the GSA, thereby reducing the NSA by the  
25 amount of the PAGA Payment ordered to be paid to the LWDA.

26           6.5.   Settlement Administrator

27           6.5.1. The Settlement Administrator shall be Phoenix Settlement Administrators.  
28 The fees and expenses reasonably incurred by the Settlement Administrator as a result of the

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1 procedures and processes required by this Stipulation (the "Settlement Administration Costs")  
2 shall be paid out of the GSA, estimated to be Thirteen Thousand Five Hundred Dollars  
3 (\$13,500). The Settlement Administration Costs shall include: all costs of administering the  
4 Settlement, including, but not limited to, all tax document preparation, custodial fees, and  
5 accounting fees incurred by the Settlement Administrator; all costs and fees associated with  
6 preparing, issuing, and mailing any and all notices and other correspondence to Class Members;  
7 all costs and fees associated with communicating with Class Members, Class Counsel, and  
8 Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and  
9 paying the Settlement Payments, and resolving disputed claims; all costs and fees associated with  
10 determining tax implications, if any, and issuing any required tax forms relating to payments  
11 made under the Settlement; all costs and fees associated with preparing any other notices,  
12 reports, or filings to be prepared in the course of administering Settlement Payments; and any  
13 other costs and fees incurred and/or charged by the Settlement Administrator in connection with  
14 the execution of its duties under this Stipulation. Should the amount charged by the Settlement  
15 Administrator be less than the \$13,500 estimate, the surplus shall be added back to the NSA.

16           6.5.2. The Parties agree that the Settlement Administrator shall establish a  
17 Qualified Settlement Fund ("QSF") that is intended to be pursuant to Section 468B of the Code  
18 and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1 *et seq.*, and will be administered by the  
19 Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall:  
20 (1) open and administer a settlement account in such a manner as to qualify and maintain the  
21 qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the Code and  
22 Treas. Reg. §1.468B-1; (2) satisfy all federal, state, and local income and other tax reporting,  
23 return, and filing requirements, if any, with respect to the QSF; and (4) satisfy out of the QSF all  
24 fees, expenses, and costs incurred in connection with the opening and administration of the QSF  
25 and the performance of its duties and functions as described in this Agreement. The  
26 aforementioned fees, costs, and expenses shall be treated as and included in the costs of  
27 administering the QSF and as Settlement Administration Costs.

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1           6.5.3. The Parties agree that Defendant and Settlement Administrator can confer  
2 regarding the Class Data.

3           6.5.4. The actions of the Settlement Administrator shall be governed by the  
4 terms of this Stipulation and any Orders from the Court.

5           6.5.5. In the event that either Defendant's Counsel or Class Counsel takes the  
6 position that the Settlement Administrator is not acting in accordance with the terms of the  
7 Stipulation, such Party shall meet and confer first with opposing counsel and/or, if necessary  
8 with the Settlement Administrator or the Court to attempt to resolve the issue.

9           6.6.   Calculation of Settlement Payments

10          6.6.1. The NSA will consist of all funds remaining from the GSA after Class  
11 Counsel's fees and costs, administrations fees, the class representative enhancement, and  
12 payment to the LWDA are made. In total, the GSA is \$1,144,388.00. Attorney's fees will be no  
13 more than \$381,462.00, which is 33.3% of the GSA. Class Counsel's costs will be no more than  
14 \$20,000. The Class Administrator's fees will be approximately \$13,500. The Class  
15 Representative Service Payment will be no more than \$7,500. The payment to the LWDA will  
16 be \$22,500. In total, the NSA will be at least \$699,426.00.

17          6.6.2. The Settlement Administrator will calculate pro rata Settlement Payments  
18 to Settlement Class Members from the NSA based on the following formulas for allocating the  
19 Settlement Payments, which the Parties and their Counsel believe are reasonable and are  
20 designed to provide a fair apportionment of the settlement funds to the Class:

21           a.    Defendant will provide the Settlement Administrator with Class Data,  
22 including the number of Qualified Wage Statements issued to each Class Member during the  
23 Class Period, and the Total Qualified Wage Statements issued to all Class Members during the  
24 Class Period;

25           b.    After the Final Judgment, the Settlement Administrator shall divide the  
26 NSA by the Total Qualified Wage Statements, issued to all Settlement Class Members, thereby  
27 determining the individual Qualified Wage Statement Value.

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1 c. The Settlement Administrator will pay each Settlement Class Member the  
2 sum of the number of Qualified Wage Statements received by the Settlement Class Member  
3 times the Qualified Wage Statement Value.

4 6.7. Tax Treatment. For tax purposes, 100% of all payments made to Settlement Class  
5 Members under this Settlement shall be treated as non-wage payments for claimed statutory and  
6 civil penalties that will not be subject to payroll taxes or tax withholding or any employer's share  
7 of federal or state payroll taxes or contributions by BBUSA (an IRS Form 1099 will be issued  
8 for such payment). Neither Bimbo Bakeries, BBUSA's counsel, or Class Counsel, make any  
9 representations, and it is understood and agreed that they have made no representations as to the  
10 taxability to any Class Members of any portions of the Settlement Payments, the payment of any  
11 costs or an award of attorneys' fees, or any payments to Class Representative. The Parties  
12 further understand that Class Representative and any Class Member who receives any Settlement  
13 Payment pursuant to this Stipulation shall be solely responsible for any and all tax obligations  
14 associated with such receipt. Class Representative and any Class Member who receives any  
15 Settlement Payment should consult with their tax advisors concerning the tax consequences of  
16 the Settlement Payments they receive under the Settlement.

17 6.8. Circular 230 Disclaimer. Each Party to this Stipulation (for purposes of this  
18 section, the "acknowledging party" and each Party to this Stipulation other than the  
19 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this  
20 Stipulation, and no written communication or disclosure between or among the Parties or their  
21 attorneys and other advisers, is or was intended to be, nor shall any such communication or  
22 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of  
23 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the  
24 acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and  
25 tax counsel for advice (including tax advice) in connection with this Stipulation, (b) has not  
26 entered into this Stipulation based upon the recommendation of any other Party or any attorney  
27 or advisor to any other Party, and (c) is not entitled to rely upon any communication or  
28 disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be

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1 imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has  
2 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax  
3 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
4 acknowledging party of the tax treatment or tax structure of any transaction, including any  
5 transaction contemplated by this Stipulation.

6 6.9. Benefits Not Affected. BBUSA will not use the Settlement Payments to calculate  
7 any additional benefits including, for example (but without limitation), vacation, holiday pay,  
8 pension, or 401(k) plan contributions. The Settlement Payments are not wages and do not  
9 represent any modification of previously credited hours of service or other eligibility criteria  
10 under any employee pension or employee welfare benefit plan sponsored by BBUSA, and are  
11 not "compensation" for purposes of determining eligibility for, or benefit accrual within, an  
12 employee pension benefit plan, an employee welfare benefit plan, or other plan sponsored by  
13 BBUSA, or its predecessors, subsidiaries, or successors.

14 6.10. Class Members' Released Claims. Upon the Final Judgment, each Settlement  
15 Class Member and any person purporting to act on behalf of the State of California Member as a  
16 representative of any Class shall be deemed to have fully, finally, and forever released all  
17 Released Claims. These releases will take effect whether or not a Class Member receives the  
18 Notice of Settlement or his or her Settlement Payment or cashes or deposits any check for the  
19 Settlement Class Member's Settlement Payment.

20 **7. NOTICE TO CLASS AND SETTLEMENT PROCEDURE**

21 7.1. Preliminary Approval

22 7.1.1. Class Counsel shall submit to the Court this Joint Stipulation, and exhibits  
23 thereto, for preliminary approval by the Court. Class Counsel will prepare and file the  
24 Preliminary Approval motion papers, but will send the Preliminary Approval motion papers to  
25 Defendant's counsel for their review and comment at least one week prior to their filing. The  
26 Court's preliminary approval of this Settlement shall be embodied in a proposed order  
27 preliminarily approving the Settlement, jointly prepared by Class Counsel and Defendant's  
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1 counsel and providing for the Notice of Settlement (*see* Exhibit A) to be mailed to the Class  
2 Members, and which will also set the date for the final approval hearing.

3 7.1.2. If the total number of Qualified Wage Statements at issue in the  
4 Additional Class Data (as defined in Section 2.3) is more than 52,244, there shall be a pro-rata  
5 increase of the GSA using the following formulas: Total Qualified Wage Statements minus  
6 52,244 divided by 52,244 times GSA.

7 7.2. Notice of Settlement

8 7.2.1. Within fifteen (15) business days following the Preliminary Approval  
9 Date, Defendant will send to the Settlement Administrator the Class Notice Data. Upon receipt  
10 of the Class Notice Data, the Settlement Administrator shall check the names of Class Members  
11 with the U.S. Postal Service National Change of Address Database and update any addresses  
12 with any new information found regarding the location of those Class Members. The Settlement  
13 Administrator will update the Class Notice Data with the new contact information found  
14 pursuant to its obligations in this paragraph, or based on information provided by Class Members  
15 during the claims process. Further, within fifteen (15) business days following the Preliminary  
16 Approval Date, Defendant will send to the Settlement Administrator the Additional Class Data.  
17 The Class Data shall be used by the Settlement Administrator solely for the purpose of  
18 administering the Settlement. The Class Data shall be kept confidential by the Settlement  
19 Administrator and none of its contents shall be disclosed, shared with, or communicated to Class  
20 Counsel, except as required under the Settlement.

21 7.2.2. Within fifteen (15) business days of receiving the Class Notice Data from  
22 Defendant, the Settlement Administrator will send via first class mail the Notice of Settlement  
23 approved by the Court to the Class Members using the Class Notice Data Defendant provided to  
24 the Settlement Administrator as updated by the Settlement Administrator as described in Section  
25 7.2.1 above.

26 7.2.3. If any Notices of Settlement are returned to the Settlement Administrator  
27 as undeliverable, the Settlement Administrator shall run a skip-trace in an effort to attempt to  
28 ascertain the current address of the Class Member. If such address is ascertained, the Settlement

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1 Administrator shall re-mail the Notice of Settlement within ten (10) calendar days. If alternative  
2 addresses are obtained for a Class Member, the Settlement Administrator shall send the Notice of  
3 Settlement to up to three (3) alternative addresses.

4           7.2.4. Class Members will have forty-five (45) calendar days from the date of  
5 mailing the Notices of Settlement within which to file a written objection to the Settlement by  
6 sending to the Settlement Administrator a written objection as set forth in the Notice of  
7 Settlement, and provide notice of any intent to appear at the Final Approval Hearing. In  
8 addition, Class Members may also object in person at the Final Approval Hearing without having  
9 previously filed a written objection. Class Counsel agrees that they will not solicit, encourage, or  
10 advise any individual to object to the Settlement. Class Members who submit a timely Request  
11 for Exclusion shall have no standing to file an objection to the Settlement, and any such  
12 objection will be of no force and effect.

13           7.2.5. Class Members will have forty-five (45) calendar days from the date of  
14 mailing the Notices of Settlement within which to opt out of and be excluded from the  
15 Settlement. To opt out, a Class Member must submit a written request to opt out of the  
16 Settlement Administrator ("Request for Exclusion") within this 45-day deadline. Written  
17 Requests for Exclusion that are post-marked after this 45-day deadline will be untimely, and  
18 Class Members submitting untimely Requests for Exclusion shall be bound by the Settlement  
19 and its releases and will be Settlement Class Members for settlement payment purposes unless  
20 this Court orders that the Request for Exclusion is timely.

21           7.3. Final Approval

22           7.3.1. Prior to the Final Approval Hearing, Plaintiff will move the Court for  
23 entry of the Order of Final Approval (and associated entry of Judgment): (a) finally approving  
24 the Class Settlement as fair and adequate; (b) approving the PAGA Settlement; (c) approving  
25 Class Counsel's application for an award of attorneys' fees and costs; (d) approving Class  
26 Representative's application for a Service Payment; (e) approving the payment of reasonable  
27 Settlement Administration Costs; and (f) releasing and barring any Released Claims by  
28 Settlement Class Members. The Parties and their counsel shall make all reasonable efforts to

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1 secure entry of the Order of Final Approval and Judgment. The proposed Order of Final  
2 Approval, and the associated proposed Judgment shall be jointly prepared by the Parties, and the  
3 Motion for Final Approval shall be sent to Defendant's counsel for review and comment at least  
4 five (5) business days before filing with the Court in connection with the Final Approval  
5 Hearing.

6 7.3.2. Prior to the Final Approval Hearing, concurrent with or prior to the filing  
7 of the Motion for Final Approval, Class Counsel shall file a Motion for Approval of Attorneys'  
8 Fees and Costs and seeking the proposed Service Payment to Class Representative as set forth in  
9 the Stipulation. Class Representative and Class Counsel agree that they shall be responsible for  
10 justifying the amount of the Service Payment and attorneys' fees and costs to the Court, and they  
11 agree to submit, as appropriate, the necessary materials to justify these payments. Defendant  
12 will not oppose the amount of the Service Payment and attorneys' fees and costs sought as long  
13 as they are consistent with the Stipulation. If the Court (or any appellate court) awards less than  
14 the amount requested for attorneys' fees and/or costs, or less than the amount requested for the  
15 Service Payment for Class Representative, only the awarded amounts shall be paid and shall  
16 constitute satisfaction of the obligations of Defendant under this Stipulation, and the unawarded  
17 amounts shall be added to the NSA for calculation of Settlement Class Members' total  
18 Settlement Payments.

19 7.3.3. If an order by the Court or in any appellate proceeding results in an order  
20 materially modifying, setting aside, or vacating any portion of the Stipulation, with the exception  
21 of any modification of the amount of attorneys' fees or costs to be paid to Class Counsel, or the  
22 amount of the Service Payment paid to Class Representative, any Party adversely impacted by  
23 the order shall have the right, at its sole discretion, to treat such order as an event voiding the  
24 Settlement and preventing Final Judgment. To exercise this right, the Party must inform the  
25 other Party and the Settlement Administrator, in writing, of the exercise of this right, within ten  
26 (10) business days of receiving notice of any order meeting the conditions set forth above.  
27 Before either Party elects to exercise its right to treat such order as an event permanently  
28 preventing Final Judgment, that Party must meet and confer in good faith with the other party to

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1 determine if an agreement can be reached modifying this Settlement to the mutual satisfaction of  
2 the Parties along with any necessary court approval.

3 7.3.4. Defendant may withdraw from Settlement if any of the following occur:

4 (a) more than 50 Class Members opt out of the Settlement; (b) the Settlement is construed in  
5 such a fashion that Defendant is required to pay more than the GSA; or (c) the Court does not  
6 approve the Released Claims as set forth in the Settlement. If Defendant withdraws from the  
7 Settlement pursuant to subsection (a), then Defendant shall be responsible for all costs of the  
8 Settlement Administrator.

9 7.3.5. If Final Judgment does not occur, or if this Stipulation is terminated or  
10 canceled pursuant to its terms, the Parties to this Stipulation shall be deemed to have reverted to  
11 their respective status as of the date and time immediately prior to the execution of this  
12 Stipulation. In such an event, if the Stipulation is not approved by the Court substantially in the  
13 form agreed to by the Parties, or if the Settlement set forth in the Stipulation is terminated,  
14 cancelled, declared void, or fails to become effective in accordance with its terms, or if the  
15 Judgment does not become a Final Judgment, or if the Final Approval Date does not occur, this  
16 Stipulation (except for those provisions relating to non-admission, denial of liability set forth  
17 above, and the confidentiality agreements entered into by the Parties) shall be deemed null and  
18 void, its terms and provisions shall have no further force and effect with respect to the Parties  
19 and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment  
20 or order entered by the Court in accordance with the terms of the Stipulation shall be treated as  
21 vacated *nunc pro tunc*. Notwithstanding any other provision of this Stipulation, no order of the  
22 Court, modification, or reversal on appeal of any order of the Court, reducing the amount of any  
23 attorneys' fees or costs to be paid by Defendant to Class Counsel, or reducing the amount of the  
24 Service Payment paid to Class Representative, shall constitute grounds for cancellation or  
25 termination of the Stipulation, or grounds for limiting any other provision of the Judgment.

26 7.3.6. Within seven (7) calendar days after Final Judgment, the Parties shall file  
27 in the Eastern District of California a Stipulation of Dismissal with prejudice of the Class Action.  
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1           7.4.   Funding and Distribution of the Settlement

2                   7.4.1. Within seven (7) calendar days after Final Judgment, the Settlement  
3 Administrator shall send Defendant's Counsel electronic wiring instructions for paying the GSA  
4 into the QSF set up, held, and controlled by the Settlement Administrator that qualifies as a  
5 "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 *et seq.*

6                   7.4.2. By the Funding Date, Defendant shall pay the GSA to the Settlement  
7 Administrator and the Settlement Administrator shall fund the QSF.

8                   7.4.3. Within fifteen (15) business days after Defendant funds the QSF, the  
9 Settlement Administrator shall issue and mail Settlement Payments to Settlement Class Members  
10 by checks which shall become null and void if not deposited within 180 calendar days of  
11 mailing. If a Settlement Class Member fails to cash or deposit his/her settlement check within  
12 180 days of mailing, his/her Settlement Payment shall be sent to the Unclaimed Property Fund at  
13 the California State Controller, except if otherwise prescribed by California Code of Civil  
14 Procedure § 384. Settlement Class Members who fail to cash their check within 180 calendar  
15 days of mailing will still be bound by the Settlement including the Released Claims. If a  
16 Settlement Class Member's settlement check is returned undeliverable and a valid mailing  
17 address cannot be ascertained for the Settlement Class Member, his/her Settlement Payment shall  
18 be redistributed pro-rata among the Settlement Class whose notices were not returned  
19 undeliverable.

20                   7.4.4. Within fifteen (15) calendar days after Defendant funds the QSF, the  
21 Settlement Administrator shall pay the Court-approved attorneys' fees and costs to Class  
22 Counsel or a trust account designated by Class Counsel. Class Counsel shall provide to the  
23 Settlement Administrator, with a copy to Defendant, the pertinent taxpayer identification number  
24 and IRS Form W-9 within seven (7) calendar days after the Funding Date. Notwithstanding, if  
25 as of the Funding Date, there is any ongoing proceeding or appeal pertaining solely to the award  
26 of Court-approved attorneys' fees and costs to Class Counsel, then such payment will be delayed  
27 until fourteen (14) calendar days after the entry of a final non-appealable ruling and/or judgment  
28 concerning Court-approved attorneys' fees and costs to Class Counsel.

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1                   7.4.5. Within fifteen (15) calendar days after Defendant funds the QSF, the  
2 Settlement Administrator shall send a check by mail for the court-approved Service Payment to  
3 Class Representative, care of Class Counsel. Notwithstanding, if as of the Funding Date, there is  
4 any ongoing proceeding or appeal pertaining solely to Court-approved Service Payment to Class  
5 Representative, then such payment will be delayed until fourteen (14) calendar days after the  
6 entry of a final non-appealable ruling and/or judgment concerning the Court-approved Service  
7 Payment to Class Representative.

8                   7.4.6. Within fifteen (15) calendar days after Defendant funds the QSF, the  
9 Settlement Administrator shall remit 75% of the amount allocated as PAGA penalties (*i.e.*,  
10 \$22,500) to the LWDA for its share of the alleged PAGA penalties.

11       **8. MISCELLANEOUS PROVISIONS**

12           8.1. Neither the acceptance nor the performance by Defendant of the terms of this  
13 Stipulation, nor any of the related negotiations or proceedings, is or shall be claimed to be,  
14 construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in  
15 the Complaint, the appropriateness of class or representative action treatment, the validity of any  
16 of the claims that were or could have been asserted by Plaintiff and/or any Class Members in the  
17 Action, or of any liability or guilt of Defendant in the Action. Nothing in this Stipulation shall  
18 be construed to be or deemed an admission by Defendant of any liability, culpability, negligence,  
19 or wrongdoing toward Plaintiff, the Class Members, or any other person, and Defendant  
20 specifically disclaims any liability, culpability, negligence, or wrongdoing toward each and all of  
21 them. Each of the Parties has entered into this Stipulation with the intention to avoid further  
22 disputes and litigation with the attendant inconvenience, expenses, and contingencies.

23           8.2. The Parties agree to cooperate fully with one another to accomplish and  
24 implement the terms of this Settlement. Such cooperation shall include, but not be limited to,  
25 execution of such other documents and the taking of such other action as may reasonably be  
26 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise  
27 reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that  
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1 may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms  
2 set forth herein.

3 8.3. Unless otherwise specifically provided herein, all notices, demands, or other  
4 communications given hereunder shall be in writing and shall be deemed to have been duly  
5 given as of the date of receipt by email or first class mail, addressed as follows:

6 To the Class:

7 Larry W. Lee (State Bar No. 228175)  
8 Kristen M. Agnew (State Bar No. 247656)  
9 Nicholas Rosenthal (State Bar No. 268297)  
10 Diversity Law Group, P.C.  
11 515 South Figueroa Street, Suite 1250  
12 Los Angeles, CA 90071  
13 (213) 488-6555  
14 (213) 488-6554 facsimile

15 William L. Marder (State Bar No. 170131)  
16 Polaris Law Group LLP  
17 501 San Benito St., Suite 200  
18 Hollister, California 95023  
19 (831) 531-4214  
20 (831) 634-0333 facsimile

21 To Defendant:

22 John S. Battenfeld (State Bar No. 119513)  
23 Morgan, Lewis & Bockius LLP  
24 300 South Grand Avenue  
25 Twenty-Second Floor  
26 Los Angeles, CA 90071-3132  
27 (213) 612-2500  
28 (213) 612-2501

Ashley A. Baltazar (State Bar No. 284921)  
Morgan, Lewis & Bockius LLP  
One Market  
Spear Street Tower  
San Francisco, CA 94105-1596  
(415) 442-1000  
(415) 442-1001

8.4. Plaintiff and Class Counsel agree not to disclose the terms of this Settlement,  
including as set forth in the accepted mediator's proposal, until this Stipulation is filed in court.  
At any time, Plaintiff and Class Counsel shall not issue a press release, hold a press conference,  
publish information about the Settlement, this Stipulation, the Parties' mediator's proposal, on  
any website or other public medium or forum, or otherwise publicize the Parties' mediator's

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1 proposal, or this Stipulation (except for filing this Stipulation in Court and filing papers to obtain  
2 court approval of the Settlement). At any time, Plaintiff and Class Counsel agree not to respond  
3 to any press inquiries, except that the Parties have agreed to settle the matter (or are seeking  
4 approval of settlement) and refer the inquirer to the filed Stipulation. Class Counsel can discuss  
5 the Settlement with Class Members who contact Class Counsel's office about the Settlement, but  
6 Class Counsel will not encourage Class Members who contact them to publicize the Settlement.  
7 Nothing shall prevent Class Counsel from responding to media inquiries related to objectors or  
8 intervenors to the proposed Settlement, but such responses shall not disparage Defendant.

9 8.5. Neither Class Counsel nor any other attorneys acting for, or purporting to act for,  
10 the Class, any individual Class Members, or Plaintiff, may recover or seek to recover any  
11 amounts for attorneys' fees, costs, or disbursements from the Releasees or the GSA except as  
12 expressly provided herein.

13 8.6. Plaintiff represents that she has not participated in or encouraged the bringing of  
14 any claims against Defendant by any of Defendant's current or former employees that are not  
15 covered by Class Members' Released Claims. Class Counsel represents that they do not  
16 currently represent any person or persons who have filed any other pending claims, complaints,  
17 or grievances against Defendant and/or the Releasees, or who are considering filing any claims,  
18 complaints, or grievances against Defendant and/or the Releasees. Class Counsel also  
19 represents that Class Counsel has not used any information obtained from the Settlement to  
20 solicit or assist any other persons or attorneys to commence a claim or proceeding against  
21 Defendant.

22 8.7. This Agreement upon its full execution constitutes the entire settlement agreement  
23 between the Parties hereto and no representations, warranties, or inducements have been made to  
24 any Party concerning the Stipulation or its exhibits other than the representations, warranties, and  
25 covenants contained and memorialized in such documents. Except as otherwise provided herein,  
26 each Party shall bear his or its own costs. Defendant's complete obligations are detailed herein,  
27 and the Parties agree and understand that there shall be no injunctive relief included as part of  
28 any term of the Settlement.

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1           8.8. This Stipulation may not be changed, altered, or modified, except in writing  
2 signed by the Parties hereto and approved by the Court. This Stipulation may not be discharged  
3 except by performance in accordance with its terms or by a writing used by the Parties hereto.

4           8.9. If any provision of this Stipulation or the application thereof is held invalid, such  
5 invalidation shall not affect other provisions or applications of this Stipulation (except as  
6 otherwise expressly provided herein) and to this end the provisions of this Stipulation are  
7 declared to be severable (except as otherwise provided).

8           8.10. This Stipulation shall be binding upon and inure to the benefit of the Parties  
9 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

10           8.11. Because the members of the Class are so numerous, the Parties agree that it is  
11 impossible or impractical to have each Class Member sign this Stipulation. It is agreed that, for  
12 purposes of seeking approval of this class action Settlement, this Stipulation may be executed on  
13 behalf of Class Members by Class Counsel.

14           8.12. This Stipulation shall become binding upon its execution by all of the  
15 undersigned, subject to Court approval as provided herein. The Parties may execute this  
16 Stipulation in counterparts, and execution of counterparts shall have the same force and effect as  
17 if all Parties had signed the same instrument.

18           8.13. The rights and obligations of the Parties hereunder shall be construed and  
19 enforced in accordance with, and shall be governed by, the laws of the State of California,  
20 without regard to principles of conflict of laws.

21           8.14. The Court shall retain jurisdiction with respect to the implementation and  
22 enforcement of the terms of the Stipulation, pursuant to California Code of Civil Procedure  
23 § 664.6 and the California Rules of Court, and all Parties hereto submit to the jurisdiction of the  
24 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.  
25 Any action to enforce this Stipulation shall be commenced and maintained only in the Court. To  
26 the extent any Party seeks to enforce the terms of this Settlement or this Stipulation in Court, the  
27 prevailing party to any such action shall be entitled to recover reasonable attorneys' fees and  
28 costs associated with any such enforcement action.

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1 8.15. Paragraph titles or captions contained in the Stipulation are inserted as a matter of  
2 convenience and for reference, and in no way define, limit, extend, or describe the scope of this  
3 Stipulation, or any provision thereof.

4 8.16. This Stipulation shall be construed and interpreted as if all of its language were  
5 prepared jointly by the Parties. No language in this Stipulation shall be construed against a Party  
6 on the ground that such Party drafted or proposed that language.

7 8.17. Each attorney signing below represents that he or she has been authorized to  
8 execute this Stipulation on behalf of the attorney's respective client(s). Class Counsel, on behalf  
9 of the Settlement Class, represents that, after consultation with and approval by Class  
10 Representative, Class Counsel is expressly authorized by Class Representative to take all  
11 appropriate action required or permitted to be taken by the Settlement Class pursuant to the  
12 Stipulation to effect its terms, and also is expressly authorized to enter into any modifications or  
13 amendments to the Stipulation on behalf of the Settlement Class, which Class Counsel deems  
14 appropriate. Similarly, Defendant's counsel represents that it is expressly authorized to take all  
15 appropriate action required or permitted to be taken by Defendant pursuant to the Stipulation to  
16 effect its terms, and also is expressly authorized to enter into any modifications or amendments  
17 to the Stipulation on behalf of Defendant which it deems appropriate.

18 IN WITNESS WHEREOF, this Joint Stipulation of Class Action Settlement is executed  
19 by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

20 IT IS SO STIPULATED.

21 DATED: June 15, 2019

MARIA MORONES  
By Maria Morones  
Maria Morones, Plaintiff

24 DATED: June 17, 2019

DIVERSITY LAW GROUP, P.C.  
By Larry W Lee  
Larry W. Lee  
Attorneys for Plaintiff Maria Morones and the  
Proposed Class

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DATED: June 17, 2019

POLARIS LAW GROUP LLP  
By William M. Marder  
William M. Marder  
Attorneys for Plaintiff Maria Morones and the  
Proposed Class

DATED: June 14, 2019

By Shelly W. Seligman  
SHELLY W. SELIGMAN  
Its Vice President  
For Defendant Bimbo Bakeries USA, Inc.

DATED: June 14, 2019

MORGAN, LEWIS & BOCKIUS LLP  
By John S. Battenfeld  
John S. Battenfeld  
Ashley A. Baltazar  
  
Attorneys for Defendant Bimbo Bakeries USA,  
Inc.