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 LUIS ORLANDO ORELLANA GARCIA
 13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **FOR THE COUNTY OF KINGS**

16 LUIS ORLANDO ORELLANA GARCIA, on
 behalf of himself and all others similarly aggrieved
 17 employees,

18 Plaintiff,

19 v.

20 PHILLIP VERWEY DBA PHILIP VERWEY
 21 FARMS, a California Limited Liability Company;
 PHILIP VERWEY, an individual; SHELLEY
 22 VERWEY DBA PHILIP VERWEY DAIRY, a
 California Limited Liability Company; SHELLEY
 23 VERWEY, an individual; PHILIP VERWEY
 DAIRY INC., a California Limited Liability
 24 Company; and DOES 1 - 50, Inclusive,

25 Defendants.
 26
 27
 28

Case No.: 21C-0411

CLASS ACTION

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

*[Assigned for All Purposes to the Hon.
 Melissa D'Morias; Dept. 7]*

Complaint Filed: December 23, 2021
 FAC Filed: March 9, 2023
 Trial: Not Yet Set

1 This *Amended* Joint Stipulation of Class Action Settlement and Release of Claims
2 (“Settlement” or “Agreement”) is made and entered into by and between Plaintiff LUIS ORLANDO
3 ORELLANA GARCIA (“Plaintiff” or “Class Representative”), individually and on behalf of all
4 putative class members, and Defendants PHILIP VERWEY FARMS and PHILIP VERWEY DAIRY,
5 INC. (“Defendants”). Plaintiff and Defendants are collectively referred to herein as “the Parties.”

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined
8 elsewhere in this Settlement:

9 1. “Action” shall mean the operative Complaint of the civil action initially commenced
10 on December 23, 2021, filed and maintained by Plaintiff against Defendants in the Superior Court of
11 California, County of Kings, Case No. 21C-0411.

12 2. “Class” shall mean all hourly-paid, non-exempt employees who, during either the
13 Class Period, have previously been or currently are employed in California by Defendants, as an
14 hourly-paid, non-exempt employee. “Class Member” shall mean an individual who is a member of
15 the Class (or if any such person is incompetent, deceased, or unavailable due to military service, the
16 person’s legal representative or successor in interest evidenced by reasonable verification).

17 3. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Justin
18 Lo, Esq. of Work Lawyers PC.

19 4. “Class Counsel Fees Payment” shall mean 33.3% of the Maximum Settlement Amount
20 (currently estimated to be Two Hundred and Eight Thousand, Three Hundred and Thirty-Three
21 Dollars and Thirty-Three Cents (\$208,333.33)) subject to approval by the Superior Court as Class
22 Counsel’s attorneys’ fees incurred in connection with the Action, including fees incurred in pre-filing
23 investigation, filing of the Action, and all related litigation activities, this Settlement, and all post-
24 Settlement compliance procedures.

25 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
26 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court incurred
27 in connection with the Action, including pre-filing investigation, filing of the Action, and all related
28 litigation activities, this Settlement, and all post-Settlement compliance procedures. Class Counsel’s

1 expenses are not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00).

2 6. "Class Notice" shall mean the Notice of Proposed Settlement, Preliminary Approval
3 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
4 Exhibit "A". The Class Notice shall further contain (i) a Class Member's first and last name, (ii) last
5 known address, (iii) the Class Member's Individual Workweeks, (iv) the PAGA Group Member's
6 Individual Pay Periods, if applicable; (v) the Class Member's estimated amount of the Settlement
7 Share; and (vi) the PAGA Group Member's estimated PAGA Payment Share, if applicable. The
8 Class Notice shall also provide the Class Members with instructions on how to opt-out of and/or
9 object to the Settlement.

10 7. "Class Period" shall mean the period of time from December 23, 2018, through
11 February 11, 2023.

12 8. "Class Representative Payment" shall mean the special payment made to Plaintiff in
13 his capacity as Class Representative to compensate him for prosecuting the Action, and performing
14 work in support of the Action, in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00),
15 subject to approval by the Superior Court.

16 9. "Defense Counsel" shall mean the attorneys representing Defendants in the Action,
17 Matthew C. Sgnilek, Esq. and Andrea Rosenkranz, Esq. of O'Hagan Meyer.

18 10. "Effective Date" shall mean the first business day following the last of the following
19 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
20 and/or timely motion to vacate the judgment, then sixty (60) days following the date the Court enters
21 an order granting Final Approval of the Settlement; (ii) if a Class Member both objects and either
22 files a timely motion to intervene or timely motion to vacate the judgment, then sixty-one (61) days
23 following the date the Court enters an order granting final approval, assuming no appeal is filed; or
24 (iii) if a Class Member both objects and also files a timely motion to intervene or files a motion to
25 vacate the Judgment and also files a timely appeal, then the date of final resolution of that appeal
26 (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete
27 judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being
28 possible. The occurrence of the Effective Date is a prerequisite to any obligation of Defendants to

1 pay any funds into the Settlement Account.

2 11. “Employer’s Payroll Taxes” shall mean Defendants’ share of all payroll taxes payable
3 to any and all government agencies incurred for any payments of Settlement Shares to Participating
4 Class Members pursuant to this Settlement. Defendants’ payment of the normal employer’s share of
5 payroll taxes will be made separately and shall not come from the Maximum Settlement Amount.

6 12. “Final Approval Hearing” shall mean the hearing to be conducted by the Superior
7 Court to determine whether to finally approve and implement the terms of this Settlement.

8 13. “Individual Pay Periods” shall mean the number of Pay Periods for an individual
9 PAGA Group Member.

10 14. “Individual Workweeks” shall mean the number of Workweeks for an individual Class
11 Member.

12 15. “Judgment” shall mean the Order of Final Judgment entered by the Superior Court that
13 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this
14 Action.

15 16. “LWDA Payment” shall mean the payment to the California Labor and Workforce
16 Development Agency (“LWDA”) constituting seventy-five percent (75%) of the value assigned to
17 the claim for penalties under the California Labor Code Private Attorneys General Act, California
18 Labor Code Section 2698, *et seq.* (“PAGA”). Specifically, Thirty-Seven Thousand, Five Hundred
19 Dollars and Zero Cents (\$37,500.00), which shall constitute the LWDA’s seventy-five percent (75%)
20 share of Fifty Thousand Dollars and Zero Cents (\$50,000.00) in civil penalties paid under this
21 Settlement. The remaining Twelve Thousand, Five Hundred Dollars and Zero Cents (\$12,500.00)
22 in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay periods worked
23 by each PAGA Group Member (“PAGA Payment”).

24 17. “Maximum Settlement Amount” shall mean the maximum settlement amount of Six
25 Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$625,000.00) payable by Defendants
26 as provided by this Agreement, unless that amount is increased pursuant to Paragraph 18 below,
27 exclusive of the normal employer’s share of any payroll taxes attributable to the Settlement Share
28 payments allocated to wages. Defendants’ payment of the normal employer’s share of payroll taxes

1 will be made separately, according to each Defendants' agreed upon proportionate share of the
2 Maximum Settlement Amount, and shall not come from the Maximum Settlement Amount.

3 18. Defendants represents that as of December 6, 2022, the number of workweeks
4 worked by Settlement Class Members during the Class Period is approximately 27,268. If it is
5 determined that the workweeks through February 11, 2023, exceeds 29,995 (27,268 plus 10% of
6 27,268), then Defendants shall have the option of either (i) increasing the Maximum Settlement
7 Amount by an amount determined by the following formula: $([\text{Actual Number of Workweeks} -$
8 $29,995] \div 29,995) \times \text{Maximum Settlement Amount}$; or (ii) changing the end date of the Class
9 Period (and PAGA Period) to a date for which there are no more than 29,995 workweeks.

10 19. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the
11 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
12 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
13 the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA Payment
14 approved by the Superior Court; (vi) the Settlement Administrator Payment approved by the Superior
15 Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment and Class Counsel
16 Litigation Expenses Payment) incurred in implementing the terms and conditions of this Agreement
17 as approved by the Superior Court.

18 20. "Non-Participating Class Member" shall mean a Class Member who submits a
19 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
20 provided in the Class Notice.

21 21. "PAGA Group" mean all hourly-paid, non-exempt employees who, during the PAGA
22 Period, have previously been or currently are employed in California by Defendants. "PAGA Group
23 Member" shall mean an individual who is a member of the PAGA Group (or if any such person is
24 incompetent, deceased, or unavailable due to military service, the person's legal representative or
25 successor in interest evidenced by reasonable verification).

26 22. "PAGA Payment Share" shall mean the value of each PAGA Group Member's share
27 of the PAGA Payment as provided by this Agreement.

28 23. "PAGA Period" shall mean the period of time from December 23, 2020, through

1 February 11, 2023.

2 24. "Participating Class Member" shall mean all Class Members who have not submitted
3 a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
4 provided in the Class Notice.

5 25. "Pay Period" shall mean any pay period in which a Class Member actually received
6 payment from Defendants as an hourly-paid, non-exempt employee.

7 26. "Preliminary Approval" shall mean the Superior Court's preliminary approval of the
8 Settlement without material change that the Parties anticipate will be made following submission of
9 this Agreement to the Court.

10 27. "Settlement Administrator" shall mean Phoenix Settlement Administrators proposed
11 by the Parties and appointed by the Superior Court to administer the Settlement.

12 28. "Settlement Administrator Payment" shall mean the payment to the Settlement
13 Administrator for its fees and expenses in administering this Settlement.

14 29. "Settlement Share" shall mean the value of each Participating Class Member's share
15 of the Net Settlement Amount as provided by this Agreement.

16 30. "Superior Court" shall mean the Superior Court of California for the County of Kings.

17 31. "Workweek" shall mean any week in which a Class Member actually performed paid
18 work for Defendants during the Class Period as an hourly-paid, non-exempt employee.

19 **II. RECITALS**

20 32. On October 8, 2021, Class Counsel, on behalf of Plaintiff and the PAGA Group, gave
21 written notice to the Labor Workforce and Development Agency ("LWDA") of the Labor Code
22 violations Defendants are alleged to have violated ("LWDA Exhaustion Letter").

23 33. On December 23, 2021, Plaintiff filed a PAGA Representative Action Complaint
24 against Defendants in the Kings County Superior Court, Case No. 21C-0411. In his Complaint,
25 Plaintiff pled a cause of action for Civil Penalties pursuant to the Private Attorneys' General Act of
26 2004 ("PAGA") (Lab. Code §§ 2699, *et seq.*).

27 34. On March 9, 2023, Plaintiff amended his Complaint to add causes of action for: (1)
28 Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal

1 Periods or Pay Meal Period Premiums; (4) Failure to Provide Rest Breaks or Pay Rest Break
2 Premiums; (5) Failure to Indemnify Necessary Business Expenses; (6) Failure to Timely Pay Final
3 Wages; (7) Failure to Provide Accurate Itemized Wage Statements; and (8) Unlawful Competition.

4 35. Defendants deny and continue to deny all of Plaintiff's material allegations.
5 Specifically, Defendants contend (1) they did not fail to pay the Class the minimum, straight time,
6 regular rate, and/or overtime wages; (2) they paid the Class for all hours worked; (3) they provided
7 the Class with all meal periods according to law; (4) they provided the Class with all rest periods
8 according to law; (5) they did not fail to timely pay the Class wages due and owing during
9 employment and/or upon separation; (6) they provided the Class with accurate itemized wage
10 statements, consistent with Labor Code Section 226; (7) they properly maintained all payroll records;
11 (8) they reimbursed employees for all necessary business expenses; (9) they did not violate Business
12 & Professions Code Section 17200, *et seq.*; (10) the PAGA Group is not entitled to penalties under
13 PAGA; and (11) Defendants is not liable for damages, including unpaid wages, liquidated damages,
14 statutory penalties, attorneys' fees, or costs of litigation to the Class.

15 36. In connection with the Action, and in order to work toward a mediated resolution
16 without the time and expense of formal discovery, the Parties produced voluminous documents and
17 data (including, by Defendants, human resources documents and policies, time records, and payroll
18 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

19 37. On December 13, 2022, the Parties in Action participated in a full day of mediation
20 before an experienced employment and class action mediator, Marc Feder, Esq. (the "Mediation")
21 and the Parties reached a settlement at the Maximum Settlement Amount.

22 38. The Settlement described in this Agreement represents a compromise and settlement
23 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission
24 by Defendants that Plaintiff's claims in the Action have any merit or that they have any liability to
25 Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by Plaintiff that
26 Defendants' defenses in Action have any merit. This Settlement is intended to fully, finally, and
27 forever compromise, release, resolve, discharge, and settle the released claims subject to the terms
28 and conditions set forth in this Settlement.

1 39. Based on its own thorough, independent investigation and evaluation of this case,
2 Class Counsel is of the opinion that the Settlement of this Action with Defendants for the
3 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best
4 interest of the Class in light of all known facts and circumstances, including the risk of significant
5 costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendants
6 including the risks of adverse determinations on the merits and numerous potential appellate issues.
7 Although Defendants contend that they have no liability in the Action, Defense Counsel shares Class
8 Counsel’s belief that the Settlement represents a fair and adequate settlement given the respective
9 risks associated with the case.

10 40. Based on the foregoing Recitals, the Parties agree as follows:

11 **III. PROCEDURE FOR APPROVING SETTLEMENT**

12 41. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff
13 will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting a
14 date for the Final Approval Hearing no earlier than 120 days from the date of the order granting
15 Preliminary Approval of the Settlement, and approving the Class Notice (attached as Exhibit “A” to
16 this Stipulation) (“Motion for Preliminary Approval”). Any unresolved disagreement among the
17 Parties concerning the Class Notice or other documents necessary to implement the Settlement will
18 be referred first to Marc Feder, Esq., and if no resolution is reached, then to the Superior Court.

19 42. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they
20 will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an order
21 granting Preliminary Approval, granting approval of the Class Notice, and setting a date for the Final
22 Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval.

23 43. Should the Superior Court require any amendments to this Agreement or the Motion
24 for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure the
25 Superior Court’s Preliminary Approval.

26 44. Should the Superior Court decline to preliminarily approve any material aspects of the
27 Settlement, the Settlement will be null and void and the Parties will have no further obligations under
28 they. In such event, the Parties shall be returned to their respective positions as of the date and time

1 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
2 if this Agreement had not been executed.

3 45. **Class Notice.** After the Superior Court enters its order granting Preliminary Approval,
4 every Class Member will be provided with the Class Notice (in English and Spanish) which will
5 include the Class Notice completed to reflect the order granting Preliminary Approval of the
6 Settlement and the Class Member's information as follows:

7 (a) Within twenty-one (21) days after the Motion for Preliminary Approval is
8 granted, Defendants will provide to the Settlement Administrator the "Class Members' Data," which
9 shall consist of an electronic database containing (i) each Class Member's first and last name, (ii) last
10 known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the Class
11 Member's total number of Individual Workweeks, and (v) the Class/PAGA Group Members' total
12 number of Individual Pay Periods, if applicable. If any or all of the Class Members' Data are
13 unavailable to Defendants, Defendants will so inform Class Counsel prior to the date on which
14 Defendants are required to submit the Class Members' Data to the Settlement Administrator and the
15 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data
16 prior to when they must be submitted to the Settlement Administrator. If the Parties are unable to
17 agree, the dispute will be resolved by the Settlement Administrator as provided in Paragraph 48. This
18 information will otherwise remain confidential and will not be disclosed to anyone, except as required
19 to applicable taxing authorities, as required to carry out the reasonable efforts to identify Class
20 Member information as described in Paragraph 45(c), pursuant to Defendants' express written
21 authorization, or by order of the Superior Court.

22 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
23 thereafter as they is able to do so, the Settlement Administrator will mail the Class Notice to all
24 identified Class Members via first-class U.S. Mail using the mailing address information provided by
25 Defendants, unless modified by any updated address information that the Settlement Administrator
26 obtains in the course of administration of the Settlement.

27 (c) If a Class Notice is returned by the U.S. Postal Service because of an incorrect
28 address, the Settlement Administrator will promptly, and not later than five (5) days from receipt of

1 the returned packet, search for a more current address for the Class Member and re-mail the Class
2 Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and
3 otherwise work with Defense Counsel or utilize its own resources such as skip traces to find a more
4 current address. The Settlement Administrator will be responsible for taking reasonable steps,
5 consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of
6 any Class Member for whom a Class Notice is returned by the U.S. Postal Service. These reasonable
7 steps shall include the tracking of all undelivered mail; performing address searches for all mail
8 returned without a forwarding address; and promptly re-mailing to Class Members for whom new
9 addresses are found. Any such Class Members who failed to receive a Class Notice, or who were
10 subject to a re-mailing of the Class Notice as described herein shall be given an additional fourteen
11 (14) days to opt out or object to the Settlement.

12 (d) The Settlement Administrator will inform Class Counsel and Defense Counsel
13 of the number of returned Class Notices it receives and Class Notices re-mailed in a weekly status
14 report.

15 (e) Not later than sixteen (16) court days prior to the Final Approval Hearing, the
16 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
17 compliance with its obligations under this Settlement. The declaration will be filed with the papers
18 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
19 Administrator will supplement its declaration of due diligence if any material changes occur from the
20 date of the filing of its prior declaration.

21 **46. Participating Class Members; Requests for Exclusion from Class Settlement; and**
22 **Objections to Settlement.** Class Members may submit requests to be excluded from the effect of
23 the Settlement; or objections to the Settlement, pursuant to the following procedures:

24 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
25 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
26 from the effect of the Settlement as provided below. All Participating Class Members shall be bound
27 by the provisions and releases contained in this Settlement.

28 (b) **Request for Exclusion from Settlement.** Class Members who wish to

1 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
2 Administrator, **not later than forty-five (45) days after the date that the Settlement Administrator first**
3 **mails the Class Notices**, an Exclusion Request (“the Exclusion Period”). Exclusion Requests may be
4 submitted to the Settlement Administrator via U.S. Mail only. Class Members must complete, sign,
5 date, and timely return an Exclusion Request to the Settlement Administrator to exclude themselves
6 from the Settlement, setting forth their (i) name, (ii) address, and (iii) the following statement or a
7 similar statement: “I wish to exclude myself from the settlement reached in the matter of *Garcia v.*
8 *Philip Verwey Farms, et al.* I understand that by excluding myself, I will not receive any money from
9 the Class settlement reached in this matter.” A Class Member who does not complete and submit a
10 valid and timely Exclusion Request in the manner and by the conclusion of the Exclusion Period will
11 remain a Participating Class Member and, if the Court approves the Settlement, will be bound by all
12 terms and conditions of the Settlement and by the Judgment. A Class Member who timely submits a
13 valid Exclusion Request will not participate in, or be bound by, the Settlement of the Judgment and
14 will not receive any payment pursuant to the Settlement except for a payment from the portion of the
15 PAGA Payment to the PAGA Group if the Class Member is a PAGA Group Member, and will not
16 be bound by the terms of the Settlement, except for the release of the PAGA Group Released Claims
17 if the Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
18 comment thereon. To be valid, Exclusion Requests must be completed in full, signed, and returned
19 to the Settlement Administrator before the expiration of the Exclusion Period. Non-Participating
20 Class Members will not be permitted to file objections to the Settlement and/or appear at the Final
21 Approval Hearing to voice any objections to the Settlement. Members of the PAGA Group cannot
22 seek to exclude themselves from the Settlement of the PAGA claim, but retain all rights to exclude
23 themselves from the Class Settlement as delineated herein. The Settlement Administrator will
24 provide Class Counsel, Defense Counsel, and the Superior Court with only the names of the Non-
25 Participating Class Members.

26 (c) **Objections to Settlement.** The Class Notice will provide that any Class
27 Member who does not request exclusion from the Settlement and who wishes to object to the
28 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the

1 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement which
2 sets forth the grounds for the objection and the other information required by Paragraph 46(d). The
3 objection must be served as follows:

4 *Garcia v. Philip Verwey Farms, et al.*

5 c/o _____

6 _____

7 _____

8
9 (d) The written objection must state the Class Member’s (i) name, (ii) address, and
10 (iii) the dates of the Class Member’s employment with Defendants. The written objection must state
11 the basis for each objection in clear and concise terms. The written objection shall also state whether
12 the Class Member intends to appear and object at the Final Approval Hearing. A Class Member who
13 does not serve a written objection in the manner and by the deadline specified may appear at the Final
14 Approval Hearing to state their objection to the Settlement. If a Class Member fails to submit a
15 written objection or to appear at the Final Approval hearing to make an oral objection, the Class
16 Member will be deemed to have waived all objections and will be foreclosed from making any
17 objections – whether by appeal or otherwise – to the Settlement.

18 (e) If a Class Member submits both a Request for Exclusion and a written
19 objection, the Settlement Administrator shall attempt to contact and determine whether the Class
20 Member would like to withdraw either the Request for Exclusion or the objection. If the Class
21 Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot
22 contact a Class Member who submits both a Request for Exclusion and an objection, the Request for
23 Exclusion shall be valid and they shall be presumed that the Class Member does not wish to participate
24 in the Settlement.

25 (f) If the Superior Court rejects the Class Member’s objection, or if the Superior
26 Court approves the settlement despite any objections, the Class Member will be deemed to be a
27 Participating Class Member and will be bound by the terms of this Settlement.

28 (g) A Class Member who timely submits a valid Exclusion Request will not

1 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment
2 pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the PAGA
3 Group if the Class Member is a PAGA Group Member, and will not be bound by the terms of the
4 Settlement and Judgment, except for the release of the PAGA Group Released Claims if the Class
5 Member is a PAGA Group Member, and will not have any right to object, appeal, or comment
6 thereon.

7 **47. Report.** Not later than seven (7) days after the deadline for submission of requests to
8 be excluded and/or objections, the Settlement Administrator will provide Defendants with a complete
9 and accurate list of names for all Participating Class Members, all Non-Participating Class Members,
10 all PAGA Group Members, and all Class Members who objected to the settlement. The report shall
11 also be accompanied by an itemized calculation of the Settlement Shares for each Participating Class
12 Member. The Settlement Administrator shall also provide both Parties with a report identifying the
13 number of Participating Class Members, the number of Non-Participating Class Members, the number
14 of PAGA Group Members, and the number of Class Members who submitted a valid, timely, and
15 complete objection. Class Counsel shall also receive a list of Class Members who object to the
16 Settlement.

17 **48. Resolution of Class Member and PAGA Group Member Disputes.** If a Class
18 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
19 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
20 Member must, within forty-five (45) days after the Settlement Administrator initially mails the Class
21 Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice with a
22 statement of the number of Workweeks and/or Pay Periods that he or she contends were worked and
23 include any documentation the Class Member and/or PAGA Group Member has to support their
24 contention. The Settlement Administrator shall notify Defendants of the dispute and provide them
25 with a copy of the Class Notice and any documentation received in support of the dispute within three
26 (3) court days of receipt thereof. Defendants shall review their payroll and personnel records and
27 verify the correct number of Workweeks and/or Pay Periods within five (5) court days of the
28 Settlement Administrator's notification. Defendants' records will have a rebuttable presumption of

1 accuracy. After consultation with Class Counsel, Defense Counsel, and the applicable Class Member
2 and/or PAGA Group Member, the Settlement Administrator will, within three (3) court days of
3 Defendants' verification, make a determination of the Class Member's and/or PAGA Group
4 Member's number of Workweeks and/or Pay Periods and that determination will be final, binding on
5 the Parties and the Class Member and/or PAGA Group Member, and is not appealable.

6 **49. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their respective
7 counsel, will directly or indirectly solicit or otherwise encourage any Class Member to exclude him
8 or herself from the Settlement, object to the Settlement, and/or appeal from the Judgment. If ten
9 percent (10%) or more of the Class Members submit a complete, valid, and timely request to be
10 excluded from the Settlement and are deemed to be Non-Participating Class Members, then
11 Defendants shall have the unilateral right to void this Settlement. Defendants may do so by giving
12 notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen (14) days
13 after the Settlement Administrator issues its report identifying the number of Participating Class
14 Members, the number of Non-Participating Class Members, and the number of Class Members who
15 objected to the settlement as described in Paragraph 46(c). Notwithstanding any other provisions in
16 this Settlement, no sums shall be payable by Defendants in the event that this Settlement is voided as
17 provided for herein.

18 **50. Additional Briefing and Final Approval.**

19 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
20 Plaintiff will prepare and file with the Superior Court a Motion for Final Approval of the Settlement,
21 including payment of the Settlement Administrator's Payment, and a memorandum in support of their
22 motion ("Motion for Final Approval"). Not later than sixteen (16) court days before the Final
23 Approval Hearing, Plaintiff and Class Counsel will serve on Defendants and file with the Superior
24 Court a Motion for Awards of the Class Representative Payments, Class Counsel Fees Payment, and
25 the Class Counsel Litigation Expenses Payment, pursuant to this Settlement, and memoranda in
26 support of its motion. Absent the escalator provisions outlined in Paragraph 18, if applicable, Plaintiff
27 will not seek additional fees from Defendants or an increase in the Maximum Settlement Amount as
28 part of the Motion for awards of the Class Representative Payments, Class Counsel Fees Payment,

1 and the Class Counsel Litigation Expenses Payment.

2 (b) Not later than five (5) court days before the Final Approval Hearing, the Parties
3 shall be entitled to file and serve a response to any Class Member’s objection to the Settlement and/or
4 reply in support of their Motion for Final Approval, to the extent that any opposition to said Motion
5 is filed. Plaintiff and Class Counsel may file a reply in support of their Motion for Awards of the
6 Class Representative Payments, Class Counsel Fees Payment, and the Class Counsel Litigation
7 Expenses Payment, to the extent that any opposition to said Motion is filed.

8 (c) If the Superior Court ultimately does not grant final approval of the Settlement
9 or grants final approval conditioned on any material change to the Settlement that is not agreed to by
10 one of the Parties, then any Party will have the right to void the Settlement. If the Settlement is voided
11 in this manner, the Parties will have no further obligations under the Settlement, including any
12 obligation by Defendants to pay any amounts that otherwise would have been payable under this
13 Settlement, except that the voiding Party will pay the Settlement Administrator’s reasonable fees and
14 expenses incurred as of the date that the Party exercises the right to void the Settlement under this
15 Paragraph. An award by the Superior Court of a lesser amount than that sought by Plaintiff and Class
16 Counsel for the Class Representative Payments, the Class Counsel Fees Payment, and/or the Class
17 Counsel Litigation Expenses Payment, will not constitute a material change to the Settlement within
18 the meaning of this Paragraph.

19 (d) Upon final approval of the Settlement by the Superior Court at or after the Final
20 Approval Hearing, the Parties will present for the Superior Court’s approval and entry a Proposed
21 Final Order and Judgment. The entry of the Final Order, Judgment, and complete funding of the
22 Settlement shall permanently bar all Participating Class Members from prosecuting against
23 Defendants any claims or causes of action of any kind up through the date of Final Approval, which
24 were or could have been brought in this Action, whether known or unknown, as well as all claims as
25 set forth in the Release contained in Section V of this Agreement.

26 (e) After entry of the Judgment, the Superior Court will have continuing
27 jurisdiction over the Action under Code of Civil Procedure Section 664.6 and the Settlement solely
28 for purposes of (i) enforcing this Settlement, (ii) addressing settlement administration matters, and

1 (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable
2 law.

3 **51. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
4 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendants, and their
5 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
6 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
7 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary
8 writ, and the Judgment therefore will become non-appealable by them at the time they is entered. The
9 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings,
10 or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation
11 of the Settlement (including making payments under the Settlement) will be suspended until such
12 time as the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement,
13 becomes Final.

14 **52. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.**
15 If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion,
16 petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such
17 that there is a material modification to the Settlement, and that court's decision is not completely
18 reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will
19 have the right to void the Settlement, which the Party must do by giving written notice to the other
20 Parties, the reviewing court, and the Superior Court, not later than fourteen (14) days after the
21 reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final.
22 A vacation, reversal, or modification of the Superior Court's award of the Class Representative
23 Payments, the Class Counsel Fees Payment, and/or Class Counsel Litigation Expenses Payment will
24 not constitute a vacation, reversal, or material modification of the Judgment within the meaning of
25 this Paragraph.

26 **53. Establishment of Settlement Account.** The Settlement Administrator shall establish
27 a Settlement Account within ten (10) days of the Effective Date and notify the Parties when the
28 Settlement Account has been established. The Settlement Administrator shall also provide

1 Defendants with an itemized statement for the total amount to be deposited into the Settlement
2 Account, which shall equal the Maximum Settlement Amount (“Settlement Account Deposit”).
3 Within ten (10) days after receiving notification of the Settlement Account and statement for the
4 Settlement Account Deposit, Defendants shall pay into the Settlement Account an amount equal to
5 the Settlement Account Deposit. Defendants shall have no obligation to pay any additional funds into
6 the Settlement Account.

7 **54. Payment of Settlement Shares.** The Settlement Administrator shall pay to each
8 Participating Class Member his or her Settlement Share from the Settlement Account. The Settlement
9 Administrator shall pay each Settlement Share by sending a check in the appropriate amount after
10 withholdings to the Participating Class Member at the address indicated in the Class Member’s Data.
11 Such payment shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days
12 of its receipt of the Settlement Account Deposit from Defendants.

13 **55. Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to each
14 PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The Settlement
15 Administrator shall pay each PAGA Payment Share by sending a check in the appropriate amount to
16 the PAGA Group Member at the address indicated in the PAGA Group Member’s Data. Such
17 payment shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days of its
18 receipt of the Settlement Account Deposit from Defendants.

19 **56. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks paid
20 to Participating Class Members and/or PAGA Group Members shall be negotiable for one hundred
21 and eighty (180) calendar days from the date of their issuance. A Participating Class Member must
22 cash his or her Settlement Share check within one hundred and eighty (180) calendar days after they
23 is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment Share check
24 within one hundred and eighty (180) calendar days after they is mailed to him or her. If a check
25 remains uncashed after one hundred and eighty (180) calendar days from the initial mailing, or if a
26 check is returned to the Settlement Administrator as undeliverable during the one hundred eighty-day
27 period, the Settlement Administrator shall take all reasonable efforts to identify the Participating Class
28 Member’s and/or PAGA Group Member’s correct address, including the performance of a “skip-

1 trace.” If an updated address can be identified, the Settlement Administrator shall issue another check
2 to the Participating Class Member and/or PAGA Group Member and mail they to the Participating
3 Class Member and/or PAGA Group Member at his or her updated address. If an updated address for
4 the Participating Class Member and/or PAGA Group Member cannot be identified, if a reissued check
5 is once again returned to the Settlement Administrator as undeliverable, or if the reissued check
6 remains uncashed after one hundred eighty (180) calendar days, the Settlement Administrator will
7 keep an accounting of such funds and shall give notice to the Parties of the total balance of uncashed
8 Settlement Shares and/or PAGA Payment Shares. A Participating Class Member who fails to
9 negotiate or receive their Settlement Share check despite the procedures described above shall
10 nevertheless remain bound by the Settlement and the releases contained herein. A PAGA Group
11 Member who fails to negotiate or receive their PAGA Payment Share check despite the procedures
12 described above shall nevertheless remain bound by the Settlement and the releases contained herein.

13 57. The funds represented by Settlement Share and/or PAGA Payment Share checks
14 remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall be
15 voided and then shall be transmitted to the Controller of the State of California to be held pursuant to
16 the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names of those
17 Participating Class Members and/or PAGA Group Members who did not cash their checks until such
18 time they claim their property. The Parties agree that this disposition results in no “unpaid residue”
19 under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out
20 to Participating Class Members, whether or not they all cash their settlement checks.

21 58. **Final Report by Settlement Administrator to Superior Court.** Within ten (10) days
22 after final disbursement of all funds from the Settlement Account, the Settlement Administrator will
23 serve on the Parties and file with the Superior Court a declaration providing a final summary report
24 on the disbursements of all funds from the Settlement Account. Within ten (10) days after
25 transmission of any remaining unclaimed funds to Controller of the State of California the Settlement
26 Administrator will serve on the Parties and file with the Superior Court a declaration providing a final
27 summary report on the transmission of any remaining unclaimed funds to Controller of the State of
28 California as outlined Paragraph 57.

1 **IV. SETTLEMENT TERMS AND CONDITIONS**

2 59. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
3 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
4 conditional certification of the following Settlement Class: “all hourly-paid, non-exempt employees
5 who, during either the Class Period, have previously been or currently are employed in California by
6 Defendants, as an hourly-paid, non-exempt employee.” The Parties agree that if for any reason the
7 Settlement is not preliminarily and/or finally approved, the conditional certification of the Settlement
8 Class will be of no force or effect, does not constitute an admission by Defendants that class
9 certification is proper, and will not be deemed admissible in this or any other proceeding, and that the
10 Parties will litigate the issue of class certification.

11 60. **Settlement Shares.** Subject to the terms and conditions of this Settlement, the
12 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten (10)
13 days after Defendants provide the Settlement Administrator with the Class Members’ Data. The
14 Settlement Share for each Class Member will be calculated as follows, understanding that the
15 formulas below do not constitute an admission by either Party, and are intended only to provide a
16 practical means to simplify and administer the claims process:

17 (a) **Number of Class Members and Workweeks.** Defendants shall determine
18 the total number of Class Members and the aggregate number of Workweeks for those Class Members
19 as of the time of Preliminary Approval. This information shall be provided to the Settlement
20 Administrator along with the Class Members’ Data as described in Paragraph 45(a) above.

21 (b) **Calculation of the Workweek Value.** The Settlement Administrator shall
22 determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and
23 dividing them by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

24 (c) **Calculation of Settlement Shares.** The Settlement Administrator shall assign
25 to each Participating Class Member a Settlement Share which shall be equal to the Workweek Value
26 multiplied by each Participating Class Member’s Individual Workweeks. Upon calculation of the
27 Participating Class Members’ Settlement Shares, the Settlement Administrator shall furnish to Class
28 Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for

1 the Class Members with their corresponding Individual Workweeks and Settlement Shares.

2 61. **PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
3 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
4 within ten (10) days after Defendants provide the Settlement Administrator with the PAGA Group
5 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
6 follows, understanding that the formulas below do not constitute an admission by either Party, and
7 are intended only to provide a practical means to simplify and administer the claims process:

8 (a) **Number of PAGA Group Members and Pay Periods.** Defendants shall
9 determine the total number of PAGA Group Members and the aggregate number of Pay Periods for
10 those PAGA Group Members as of the time of Preliminary Approval. This information shall be
11 provided to the Settlement Administrator along with the Class Members' Data as described in
12 Paragraph 45(a) above.

13 (b) **Calculation of the Pay Period Value.** The Settlement Administrator shall
14 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount and
15 dividing them by the sum of all PAGA Group Members' Pay Periods.

16 (c) **Calculation of PAGA Payment Shares.** The Settlement Administrator shall
17 assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay Period
18 Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation of the
19 PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish to Class
20 Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for
21 the PAGA Group Members with their corresponding Individual Pay Periods and PAGA Payment
22 Shares.

23 62. **Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
24 Members' claims for unpaid wages and penalties. Accordingly, ten percent (10%) of each Settlement
25 Share shall represent unpaid wages and the remaining ninety percent (90%) of each Settlement Share
26 shall represent penalties and interest. The portion of the Settlement Share representing unpaid wages
27 shall be paid to each Participating Class Member subject to any applicable employee-side tax
28 withholdings and deductions, and the Settlement Administrator shall issue an IRS Form W-2 to each

1 Participating Class Member for that amount. The portion of the Settlement Share representing
2 penalties shall be paid to the Participating Class Member in full without deductions or withholdings,
3 and the Settlement Administrator shall issue an IRS Form 1099 to each Participating Class Member
4 for that amount. Each Participating Class Member shall be individually responsible for their own
5 share of applicable income tax withholdings and deductions from the Settlement Share attributable to
6 the portion of the settlement for which an IRS Form 1099 will be issued. Defendants' payment of the
7 Employer Payroll Tax attributable to the Settlement Share payments constituting wages will be made
8 separately, according to each Defendants' agreed upon proportionate share of the Maximum
9 Settlement Amount, and shall not come from the Maximum Settlement Amount. The Parties agree
10 and understand that Defendants have not made any representations regarding the tax obligations or
11 consequences, if any, related to this Settlement. The Parties agree that Defendants and each
12 Participating Class Member are solely responsible for determining the tax consequences of payments
13 made pursuant to this Settlement and for paying taxes, if any, which are determined to be owed by
14 each of them on such payments (including penalties and interest related thereto) by any taxing
15 authority, whether state, local, or federal.

16 63. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
17 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
18 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
19 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
20 1099 to each PAGA Group Member for that amount, to the extent the PAGA Group Member's PAGA
21 Payment Share is Six Hundred Dollars and Zero Cents (\$600.00) or more. Each PAGA Group
22 Member shall be individually responsible for their own share of applicable income tax withholdings
23 and deductions for his or her PAGA Payment Share.

24 64. **Total Payment Amount.** In no event will Defendants be required to pay more than
25 the Maximum Settlement Amount (unless that amount is increased pursuant to Paragraph 18 above)
26 for distribution to the Plaintiff, Class Counsel, Participating Class Members, PAGA Group Members,
27 LWDA, Settlement Administrator, or for any other costs or expenses not otherwise enumerated.
28 However, Defendants' payment of the Employer Payroll Tax attributable to the Settlement Share

1 payments constituting wages will be made separately, according to each Defendants' agreed upon
2 proportionate share of the Maximum Settlement Amount, and shall not come from the Maximum
3 Settlement Amount.

4 **65. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
5 conditions of this Settlement, the Settlement Administrator will make the following payments out of
6 the Maximum Settlement Amount as follows:

7 **(a) To Plaintiff:** In addition to his Settlement Share, Plaintiff will apply to the
8 Superior Court for a Class Representative Payment in an amount not to exceed Ten Thousand Dollars
9 and Zero Cents (\$10,000.00). Defendants will not oppose this Class Representative Payment. The
10 Settlement Administrator will pay the Class Representative Payment approved by the Superior Court
11 out of the Maximum Settlement Amount. Payroll tax withholding and deductions will not be taken
12 from the Class Representative Payment and an IRS Form 1099 will be issued to Plaintiff for this
13 payment.

14 **(b) To Class Counsel:** Class Counsel will apply to the Superior Court for the
15 Class Counsel Fees Payment in an amount not to exceed one-third (1/3) of the Maximum Settlement
16 Amount (currently estimated to be Two Hundred and Eight Thousand, Three Hundred and Thirty-
17 Three Dollars and Thirty-Three Cents (\$208,333.33)). Class Counsel will also submit to the Superior
18 Court a memorandum of costs for the Class Counsel Litigation Expenses Payment in an amount not
19 to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) as request reasonable costs of suit
20 to be paid from the Maximum Settlement Amount. Defendants will not oppose these requests. The
21 Settlement Administrator will pay the amounts approved by the Superior Court out of the Maximum
22 Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees
23 Payment or Class Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be
24 issued to Class Counsel with respect to those payments.

25 **(c) To the LWDA:** As part of its Motions for Preliminary and Final Approval,
26 the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the amount of
27 Thirty-Seven Thousand, Five Hundred Dollars and Zero Cents (\$37,500.00), which shall constitute
28 the LWDA's seventy-five percent (75%) share of Fifty Thousand Dollars and Zero Cents

1 (\$50,000.00) in civil penalties paid under this Settlement. The remaining Twelve Thousand, Five
2 Hundred Dollars and Zero Cents (\$12,500.00) in civil penalties shall be distributed on a *pro rata*
3 basis based upon the number of pay periods worked by each PAGA Group Member (“PAGA
4 Payment”).

5 (d) **To the Settlement Administrator:** The Settlement Administrator will be paid
6 from the Maximum Settlement Amount its reasonable fees and expenses as approved by the Superior
7 Court, which are estimated not to exceed Nine Thousand Dollars and Zero Cents (\$9,000.00).

8 66. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court
9 to appoint Phoenix Class Action Administrators, a qualified and experienced administrator based in
10 California where the Action is venued, to serve as the Settlement Administrator, which, as a condition
11 of appointment, will agree to be bound by this Agreement with respect to the performance of its duties
12 and its compensation. The Settlement Administrator’s duties will include (i) calculating Settlement
13 Shares and PAGA Payment Shares; (ii) preparing, printing, and mailing the Class Notice to all Class
14 Members; (iii) using reasonable measures to contact all Class Members, including conducting a
15 National Change of Address search on all Class Members before mailing the Class Notice to each
16 Class Member’s address; (iv) re-mailing the Class Notice to the Class Member’s new address for
17 those Class Members whose address had changed; (v) setting up a toll-free telephone number to
18 receive calls from Class Members; (vi) receiving requests for exclusion and objections to the
19 Settlement; (vii) providing the Parties with weekly status reports about the delivery of Class Notices
20 and any requests for exclusion and objections; (viii) issuing the checks to effectuate the payments due
21 under the Settlement; (ix) using reasonable measures to deliver issued checks to Participating Class
22 Members, including use of a “skip-trace” for undeliverable checks; and (x) otherwise administering
23 the Settlement pursuant to this Agreement including paying and reporting the employer’s share of the
24 payroll taxes to the appropriate taxing agency. The Settlement Administrator will have the final
25 authority to resolve all disputes concerning the calculation of a Participating Class Member’s
26 Settlement Share and/or PAGA Group Member’s PAGA Payment Share, subject to the terms set forth
27 in this Agreement. The Settlement Administrator’s reasonable fees and expenses are estimated to not
28 exceed Nine Thousand Dollars and Zero Cents (\$9,000.00) and will be paid out of the Maximum

1 Settlement Amount, as set forth herein, subject to Court approval.

2 **V. RELEASE OF CLAIMS**

3 67. **Plaintiff's Released Claims.** Plaintiff, individually and on behalf of Plaintiff's heirs,
4 executors, administrators, representatives, attorneys, successors and assigns knowingly and
5 voluntarily releases and forever discharges Defendants, including any and all parent corporation,
6 affiliates, subsidiaries, managers, divisions, predecessors, insurers, franchisors, successors and
7 assigns, including but not limited to each of their current and former employees, attorneys, officers,
8 directors and agents thereof, both individually and in their business capacities, and their employee
9 benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and
10 programs (collectively, "Plaintiff's Released Parties"), to the fullest extent permitted by law, of and
11 from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may
12 have against the Plaintiff's Released Parties as of the date of execution of this Settlement Agreement.
13 Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff's own vested accrued employee
14 benefits under the Defendants' health, welfare or retirement benefits plans, if any, as of the date of
15 execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under applicable
16 workers' compensation (except as to claims under Labor Code §§ 132a and 4553 which are expressly
17 released herein) or unemployment insurance or indemnification statutes; (iii) pursue claims which by
18 law cannot be waived by signing this Settlement Agreement; and (iv) enforce this Settlement
19 Agreement.

20 68. To affect a full and complete general release as described above, Plaintiff expressly
21 waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California
22 and does so understanding and acknowledging the significance and consequence of specifically
23 waiving § 1542. Thus, notwithstanding the provisions of § 1542, and to implement a full and
24 complete release and discharge of all parties, Plaintiff expressly acknowledges this Settlement
25 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know
26 or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this
27 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants
28 Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code § 1542,

1 and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
2 choosing about this Settlement Agreement and specifically about the waiver of § 1542, and that
3 Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and
4 knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
5 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
6 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees
7 that the releases and agreements contained in this Settlement Agreement shall remain effective in all
8 respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly
9 assume any and all risk of any mistake in connection with the true facts involved in the matters,
10 disputes or controversies released or described in this Settlement Agreement or with regard to any
11 facts now unknown to Plaintiff relating thereto.

12 **69. Participating Class Members Released Claims.** As of the date of the Judgment,
13 each Participating Class Member, and without the need to manually sign a release document, shall
14 release the Released Parties from all causes of action and claims that were alleged in the Action or
15 reasonably could have been alleged based on the facts and legal theories contained in the Action,
16 including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages
17 and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to
18 provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest
19 breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204
20 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to
21 pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (vii) failure to
22 indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (viii) unfair business
23 practices that could have been premised on the claims, causes of action or legal theories of relief
24 described above or any of the claims, causes of action or legal theories of relief pleaded in the
25 operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for costs and attorneys'
26 fees and expenses; and (x) any claim arising from the claims described above under applicable federal,
27 state, local or territorial law as well as applicable regulations and Wage Orders (collectively, the
28 "Released Claims"). Participating Class Members who cash their checks are deemed to have waived

1 all Released Claims inclusive of claims under the Fair Labor Standards Act. Participating Class
2 Members who do not cash their checks shall be deemed to waive all Released Claims except for a
3 claim under the Fair Labor Standards Act. Released Claims for Class Members who worked for
4 Defendants in California during the Class Period shall have their claims released during the Class
5 Period.

6 **70. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
7 Member, and without the need to manually sign a release document, shall release the Released Parties
8 and the State of California for claims for civil penalties pursuant to PAGA based upon all causes of
9 action and claims that were alleged in the Action or reasonably could have been alleged based on the
10 facts and legal theories contained in the Action, and/or the LWDA Exhaustion Letter including all of
11 the following claims for relief: (i) failure to pay all regular wages, minimum wages and overtime
12 wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide
13 compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks
14 (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210);
15 (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to maintain
16 accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii) failure to pay wages
17 timely at time of termination or resignation (Lab. Code §§ 201-203); (viii) failure to indemnify all
18 necessary business expenses (Lab. Code §§ 2800, *et seq.*); (ix) all claims under the California Labor
19 Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of
20 action or legal theories described above or any of the claims, causes of action or legal theories of
21 relief pleaded in the Action; (x) any claim for costs and attorneys' fees and expenses; and (xi) any
22 claim arising from the claims described above under applicable federal, state, local or territorial law
23 as well as applicable regulations and Wage Orders (collectively, the "PAGA Released Claims").
24 PAGA Released Claims for PAGA Group Members who worked for Defendants in California during
25 the PAGA Period shall have their claims released during the PAGA Period.

26 **71.** Released Parties includes Defendants and their past, present and/or future, direct
27 and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,
28 including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders,

1 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns,
2 and joint venturers.

3 72. In light of the binding nature of a PAGA judgment on non-party employees pursuant
4 to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.*
5 (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member who
6 exclude themselves from the Settlement shall nonetheless receive a payment for the amount of each
7 such individual's estimated share of the PAGA Payment and shall have released PAGA claims, as
8 outlined in Paragraph 70.

9 73. The Released Claims and PAGA Released Claims described in Paragraphs 69 and 70
10 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member for
11 vested benefits, wrongful termination, unemployment insurance, disability, social security, workers'
12 compensation, claims while classified as exempt, and claims outside of the Class Period and/or PAGA
13 Period.

14 74. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this
15 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
16 to costs and attorneys' fees and expenses against Defendants or the Released Parties arising from or
17 related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil
18 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any other
19 contract, statute or law ("Class Counsel Released Claims").

20 75. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
21 Payment Shares will not result in any additional employee benefit payments (such as 401(k), vacation,
22 or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.

23 **VI. DUTIES OF THE PARTIES**

24 76. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
25 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
26 limited to, execution of such other documents and the taking of such other actions as may reasonably
27 be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement with
28 prejudice. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation

1 and any other efforts that may become necessary by court order or otherwise, to effectuate this
2 Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation,
3 Class Counsel, with the cooperation of Defendants and Defense Counsel, shall take all necessary and
4 reasonable steps to secure the Court's approval of this Stipulation. The Parties will work together to
5 make any non-material modifications of the Settlement requested by the Court to obtain approval of
6 the Parties' Settlement.

7 **77. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
8 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best
9 efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

10 **78. Duties Prior to Court Approval.** Class Counsel shall promptly submit this
11 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
12 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
13 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of whether
14 the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class
15 Members, approving as to form and content the proposed Class Notice attached hereto as Exhibit
16 "A", respectively, and directing the mailing of the Class Notice to Settlement Class Members.

17 **79. Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendants
18 denies any liability of any kind associated with the claims alleged in the Lawsuit, denies any liability
19 or intentional wrongdoing, Defendants revised and updated their wage and hour policies and
20 practices, including but not limited to their timekeeping and meal period and rest break policies and
21 procedures.

22 **VII. MISCELLANEOUS TERMS**

23 **80. No Admission of Liability.** Defendants denies that they has engaged in any unlawful
24 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
25 claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising
26 highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission
27 of liability or wrongdoing by Defendants, an admission by Plaintiff that any of his claims were non-
28 meritorious, or any defense asserted by Defendants was meritorious. This Settlement and the fact

1 that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not
2 be admissible in connection with, any litigation (other than solely in connection with the Settlement).

3 81. The Parties also agree that this release constitutes a resolution of a good faith dispute
4 concerning wages and complies with Labor Code Section 206.5, which reads in part:

5
6 “Execution of release of claim or right on account of wages due. No
7 employer shall require the execution of any release of any claim or
8 right on account of wages due, or to become due, or made, or made
9 as an advance on wages to be earned, unless payment of those wages
10 has been made.”

11
12 82. Whether or not the Judgment becomes Final, neither the Settlement, any document,
13 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
14 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
15 evidence for any purpose adverse to Defendants or any of the Released Parties, including, but not
16 limited to, evidence of a presumption, concession, indication or admission by any of the Released
17 Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred
18 to or offered in evidence against any of the Released Parties, or any other civil, criminal or
19 administrative action or proceeding except for purposes of effectuating this Settlement.

20 83. Notwithstanding Paragraph 82 of this Settlement, any and all provisions of this
21 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce any
22 or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

23 84. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful,
24 malicious, disparaging or defamatory statements, allegations, comments or communications,
25 regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or
26 otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to encourage
27 authorize or permit any such statements, allegations, comments or communications to be made by
28 others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any negative

1 comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff and/or Class
2 Counsel agree to request that these comments be removed and to provide a copy of such request to
3 Defense Counsel within 30 days of the execution of this Agreement.

4 **85. Waiver of Reemployment.** Plaintiff acknowledges that he has no intent to apply for
5 employment and/or re-employment with Defendants. Plaintiff further acknowledges that Defendants
6 or any related, successor, parent, or subsidiary companies has the right to refuse rehire Plaintiff for
7 non-discriminatory and non-retaliatory reasons and Plaintiff acknowledge that Defendants' position
8 is that such legitimate non-discriminatory and non-retaliatory reasons exist.

9 **86. Integrated Agreement.** After this Settlement is signed and delivered by all Parties
10 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
11 Parties relating to the Settlement, and they will then be deemed that no oral representations,
12 warranties, covenants, or inducements have been made to any Party concerning this Settlement or its
13 exhibits other than the representations, warranties, covenants, and inducements expressly stated in
14 this Settlement and its exhibits.

15 **87. Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
16 that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action
17 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
18 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
19 and their counsel will cooperate with each other and use their best efforts to affect the implementation
20 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
21 any document needed to implement the Settlement, or on any supplemental provisions that may
22 become necessary to effectuate the terms of this Settlement, the Parties will seek the assistance of
23 mediator Marc Feder, Esq., and if no resolution is reached the Superior Court, and in all cases all such
24 documents, supplemental provisions and assistance of the court will be consistent with this
25 Settlement.

26 **88. Modification of Agreement.** This Agreement, and any and all parts of they, may be
27 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
28 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

1 Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

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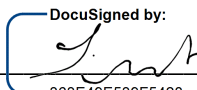
DATED: 5/22/2023

LUIS ORLANDO ORELLANA GARCIA

DocuSigned by:
Luis Orlando Orellana Garcia
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DATED: 5/23/2023

PHILIP VERWEY FARMS AND PHILIP VERWEY DAIRY, INC.

By: 
363E49E539F5428...
Its: Manager

DATED: 5/22/2023

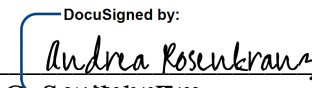
WORK LAWYERS, PC

By: 
851114C5405E4A4...
Justin Lo, Esq.

Attorneys for Plaintiff
LUIS ORLANDO ORELLANA GARCIA

DATED: 5/22/2023

O'HAGAN MEYER

By: 
2011CF812497B482...
Matthew C. Simek, Esq.
Andrea Rosenkranz, Esq.

Attorneys for Defendants
PHILIP VERWEY FARMS AND PHILIP VERWEY DAIRY, INC.