

# CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Cruz Soto and Monica Nanelly Garcia (“Plaintiffs”) and defendant Espinoza Brothers Food Distribution, Inc. and defendant Espinoza Brothers Enterprises, LLC (collectively “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

## 1. DEFINITIONS.

1.1 “Actions” means the Plaintiff Cruz Soto’s Class Action for wage and hour violations against the Defendants, captioned *Cruz Soto v. Espinoza Brothers Food Distribution, Inc. and Espinoza Brothers Enterprises, LLC, et al.*, Case No. 23CECG03830, initiated on November 30, 2023 and pending in Superior Court of the State of California, County of Fresno (the “Class action”), together with Plaintiffs Cruz Soto and Monica Nanelly Garcia lawsuit for civil penalties under the Private Attorney General Act (“PAGA”), Labor Code sections 2688, *et seq.* captioned *Cruz Sota and Monica Nanelly Garcia v. Espinoza Brothers Food Distribution, Inc. and Espinoza Brothers Enterprises, LLC, et al.*, Case No. 23CECG03630, initiated on September 5, 2023 and pending in Superior Court of the State of California, County of Fresno (the “PAGA action”) (the two lawsuits combined are the “Actions”)(the two Complaints combined are the “Operative Complaints”).

1.2 “Administrator” means IYLM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4 “Aggrieved Employee” means a person employed by Defendants as a California non-exempt employee who worked during the PAGA Period.

1.5 “Class” means all current and former hourly-paid, non-exempt employees directly employed by Defendants in the State of California, from June 5, 2018 through March 9, 2024 (i.e., 60 days after January 9, 2024).

1.6 “Class Counsel” means John G. Yslas, Samantha A. Smith, Diego Aviles and Harry Erganyan of Wilshire Law Firm.

1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action to be paid from the Gross Settlement Amount.

1.8 “Class Data” means Class Member identifying information in Defendants’ possession including each Class Member’s name, last-known mailing address, Social Security number, and hire and termination dates for the purpose of calculating the number of Class Period Workweeks and PAGA Pay Periods.

1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 “Class Period” means the period from June 5, 2018 through March 9, 2024.

1.13 “Class Representatives” means the named Plaintiffs in the Operative Complaints in the Actions seeking Court approval to serve as a Class Representative.

1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Actions and providing services in support of the Action which will be paid from the Gross Settlement Amount.

1.15 “Court” means the Superior Court of California, County of Fresno.

1.16 “Defendants” means named Defendant Espinoza Brothers Food Distribution, Inc. and Defendant Espinoza Brothers Enterprises LLC.

1.17 “Defense Counsel” means Howard A. Sagaser and Ian B. Wieland, of Sagaser, Watkins & Wieland PC, 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters Final Judgment approving the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22 “Gross Settlement Amount” means \$190,000.00 (one hundred and ninety thousand dollars and zero cents) which is the total amount Defendants agrees to pay under the Settlement except as provided in Paragraph 8 below should Defendants elect to exercise the option provided therein. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment.

1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).

1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).

1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30 “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for the Defendants for at least one day during the PAGA Period.

1.31 “PAGA Period” means the period from February 2, 2022 to March 9, 2024.

1.32 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).

1.33 “PAGA Notice” means Plaintiffs’ February 2, 2023 letter, which Plaintiffs allege was provided to both Defendants and the LWDA, providing notice pursuant to Labor Code section 2699.3, subdivision (a).

1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the 75% to LWDA (\$7,500.00) in settlement of PAGA claims.

1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36 “Plaintiffs” means Cruz Soto and Monica Nanelly Garcia, the named plaintiffs in the Action.

1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41 “Released Parties” means Espinoza Brothers Food Distribution, Inc. and Espinoza Brothers Enterprises, LLC, and any of the foregoing’s owners, officers, directors, partners, accountants, receivers, advisors, consultants, partners, partnerships, parents, divisions, subsidiaries, affiliates, heirs, joint venturers, trustees, investors, fiduciaries, franchisees or franchisors, shareholders and agents, and any other successors, assigns, or legal representatives.

1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43 “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44 “Settlement” means the disposition of the Actions effected by this Agreement and the Judgment.

1.45 “Workweek” means any week during which a Class Member worked for the Defendants for at least one day, during the Class Period.

## **2. RECITALS.**

2.1 On November 30, 2022, Plaintiff Cruz Soto commenced these Actions by filing a complaint alleging causes of action against the Defendants for: (1) failure to pay minimum and

straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices. On September 5, 2023, Plaintiffs Cruz Soto and Monica Nanelly Garcia separately filed a complaint for civil penalties under California's Labor Code Private Attorneys General Act of 2004 with a single PAGA cause of action with the above-listed underlying claims. (Collectively "Operative Complaints"). Plaintiffs intend to file an amended complaint effectively consolidating the PAGA Action with the Class Action for settlement purposes.

2.2 Defendants deny the allegations in the Operative Complaints, deny any failure to comply with the laws identified in the Operative Complaints and deny any and all liability for the causes of action alleged.

2.3 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs allege they gave timely written notice to the Defendants and the LWDA by sending the PAGA Notice.

2.4 On January 9, 2024, the Parties participated in an all-day mediation presided over by Howard R. Broadman (Ret.) which led to this Agreement to settle the Action.

2.5 Prior to mediation, Plaintiffs obtained, through informal discovery, Plaintiffs' personnel file and wage statements, the Defendants' written policies via their Employee Handbook (with all updates), Defendants' meal period waiver (1<sup>st</sup> and 2<sup>nd</sup> meal period) and meal period determination form templates, time and payroll records for the entire putative class; and relevant text message communications with Plaintiffs. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 ("*Dunk/Kullar*").

2.6 The Court has not granted class certification.

2.7 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 (should Defendants elect to exercise the option provided therein) below, Defendants promise to pay \$190,000.00 (One Hundred and Ninety Thousand Dollars and Zero Cents) and no more as the Gross Settlement Amount Defendants shall separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. However, if the Settlement is not finally approved by the Court despite the Parties' best efforts to achieve final approval, any amounts deposited shall revert back, without interest, to Defendants.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court in the Final Approval:

3.2.1 To Plaintiffs: Class Representative Service Payment to the Class Representatives of not more than \$7,500.00 (Seven Thousand Five Hundred Dollars and Zero Cents) each, (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which is currently estimated to be \$66,500 (Sixty-Six Thousand Five Hundred and Fifty Dollars and Zero Cents), as the same may be escalated pursuant to this Settlement Agreement, and a Class Litigation Expense Payment in an amount equal to actual litigation costs (up to \$18,790.76). Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from attorneys' fees or costs, aside from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, which shall be paid from the Gross Settlement Amount. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$7,750.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,750.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1.Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions of the Individual Class Payments are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions of the Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment.

3.2.4.2.Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000.00 (Ten Thousand Dollars and Zero Cents) to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments.

3.2.5.1.The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2.Tax Allocation of Individual PAGA Payments. 100% of each Aggrieved Employees' Individual PAGA Payment will be allocated to settlement of claims for penalties and are not subject to wage withholdings and will be reported on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.3.If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.5.4.Effect of Non-Participating Class Members on Calculation of Individual PAGA Payments. Non-Participating Class Members will receive an Individual PAGA Payment to the extent they also qualify as an Aggrieved Employee. A Class Member's status as a Non-Participating Class Member shall, therefore, have no effect on his/her entitlement to Individual PAGA Payment nor shall such status change the Administrator's calculation of Individual PAGA Payments.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of the Defendants' records to date, Defendants estimates there are 106 Class Members who

collectively worked a total of 5,136 workweeks, and 70 Aggrieved Employees who worked a total of 1,318 PAGA Pay Periods.

4.2 Class Data. Not later than 20 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendants shall fund the Gross Settlement Amount, and also fund the amounts necessary to pay Defendants' share of payroll taxes on the Wage Portions of the Individual Class Payments as calculated by the Administrator by transmitting the Gross Settlement Amount and amounts necessary to fund Defendants' share of payroll taxes to the Administrator, or as otherwise directed by the Administrator, no later than 30 days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments and Individual PAGA Payments to all Participating Class Members and Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members and Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must

re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Valley Children's Hospital ("Cy Pres Recipient") thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

**5. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective representatives, agents, attorneys, heirs, administrators, successors assigns, assignors, grantees, devisees, trustees, or any other entities in which they may have an interest ("Plaintiffs and Plaintiffs' Releasers"), expressly agree to release and discharge generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice. Defendants and Released Parties from all liabilities, causes of actions, charges, complaints, suits, claims, obligations, costs, losses, damages, liquidated damages, punitive damages, equitable relief, restitution, declaratory relief, interest, rights, judgments, attorneys' fees and costs, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, including but not limited to those arising from any acts or omissions occurring prior to the Effective Date of this Agreement by Defendants and Released Parties, including those arising under any theory of law, whether common, contractual, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether known or unknown, whether in law or in equity, which Plaintiffs had or may claim to have against any of them by reason of any and all matters from the beginning of time to the present including, but not limited to, those arising out of their past employment with, compensation during, and/or separation from their employment with Defendants. Plaintiffs' Release does not extend to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless,

that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. ("Plaintiffs' Release.")

5.1.1 Plaintiffs and Plaintiffs' Releasers specifically release claims under all applicable federal, state, and local laws including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Family Medical Leave Act, the Employee Retirement Income Security Act, the Consolidated Omnibus Reconciliation Act of 1986, the Equal Pay Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code including, but not limited to, sections 200, et seq., 970, 1102.5, 6310, and 132a, applicable California Wage Order provisions, the California Government Code including, but not limited to, sections 12940 et seq. and 12945, Title 2 of the California Code of Regulations § 11039, the California Civil Code, the California Business and Professions Code including, but not limited to, sections 17200 et seq., the California Constitution, the United States Constitution, or any laws pertaining to wrongful termination in violation of public policy, defamation, breach of contract, contractual obligations generally, discrimination based upon race, sex, disability, or any other protected status, retaliation, harassment, failure to prevent discrimination, harassment, or retaliation, failure to provide a reasonable accommodation or engage in the interactive process, and wage and hour claims (including compensation for work, overtime, PTO, vacation, or any other form of compensation or reimbursement). In sum, this release shall apply to all possible claims Plaintiffs or Plaintiffs' Releasers could bring against Defendants and Released Parties, whether arising in statute, regulation, common law, tort, contract, or any other body of law arising before the effective date of this agreement, whether known or unknown, and including, but not limited to, those pertaining to the employment relationship between Plaintiffs and Defendants.

5.1.2 This release is not intended to operate as, nor shall be construed as, a release or waiver of any rights and/or claims that cannot be released or waived, including worker's compensation benefits or vested employee benefits, as a matter of law. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.3 Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, assignors, grantees, devisees, trustees, or any other

entities in which they may have an interest, release Defendants and Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Class Action, PAGA Action and PAGA Notice, and ascertained in the course of the Action including failure to pay minimum and straight time wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, and unfair business practices. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period, or claims that cannot be released by matter of law.

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, , assignors, grantees, devisees, trustees, or any other entities in which they may have an interest, are deemed to release Defendants and the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts asserted in the PAGA Action, and the PAGA Notice.

5.4 The Parties, and each of them, waive any and all claims for fees, costs, indemnity or contribution against Plaintiff, any Class Member, Plaintiff's Counsel in the Action, Defendants, or Defendants' Counsel in the Action other than as provided herein.

5.5 Defendants shall have the right to enforce the releases set forth in this Agreement as to Plaintiffs, Participating Class Members, and Aggrieved Employees, and the LWDA, as applicable, without regard to their receipt of an Individual Settlement Payment, or Individual PAGA Payment, or the LWDA PAGA Payment, and prior to fully funding the Gross Settlement Amount, so long as Defendants have complied with the procedures set forth in this Agreement relating to the funding of the Gross Settlement Amount as of the time it seeks to enforce a release and the Court has provided Final Approval of the Class Settlement.

5.6 The Parties intend that the releases detailed herein be construed as broadly as is permissible by law.

**6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiffs shall prepare and file a motion for preliminary approval ("Motion for Preliminary Approval"). Defendants shall not oppose the motion, to the extent consistent with this Agreement.

6.1 Defendants' Declaration in Support of Preliminary Approval. Within 15 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the

notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator and/or the proposed Cy Pres; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement submitted to the court at the same time as the LWDA (Lab. Code, § 2699, subd. (l)(2)); and (vii) and intent to submit the Final Judgment (Lab. Code § 2699, subd. (s)(3))). In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Further Responsibilities of Class Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

## **7. SETTLEMENT ADMINISTRATION.**

7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. (“ILYM”) to serve as the Administrator and verified that, as a condition of appointment, PSA agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice with Spanish translation, if applicable, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Notice Packet requiring them to exercise options under this Agreement within the timeframes applicable to Class Members whose Notice Packet is re-mailed by the Administrator.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice, an Individual Class Payment or PAGA Payment, objects to the Settlement, or disputes the workweeks or pay periods set forth in the Class Notice.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.

7.5.5 All Aggrieved Employees are entitled to all benefits and bound by all terms and conditions of the Settlement as they pertain to PAGA claims, including the Aggrieved Employees' releases under Section 5.3 of this Agreement, regardless of whether the Aggrieved Employee actually receives the Notice Packet, an Individual PAGA Payment, objects to the Settlement, or disputes the pay periods set forth in the Class Notice.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly

provide copies of all challenges to calculation of Workweeks and/or Pay Periods and the Administrator's determination as to such challenges to Defense Counsel and Class Counsel, except that any information provided to Class Counsel in relation to pay period disputes shall not contain any personal identifying information (e.g., names and contact information) of the Class Members.

#### 7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid). Upon request, the Administrator may provide summary information regarding the information described in this section to Class Counsel, but shall not provide any personal identifying information (e.g., names and contact information) to Class Counsel.

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number

of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received, except that any information provided to Class Counsel shall not contain any personal identifying information (e.g., names and contact information) of the Class Members.

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges regarding the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid) and, the number of written objections received. The Administrator shall provide along with such declaration the Exclusion List with all personal identifying information (e.g., names and contact information) redacted. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements. All personal identifying information (e.g., names and contact information) shall be redacted from the report. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.

**8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on Defendants’ records, Defendants estimates that, as of the date of this Settlement Agreement, (1) there are 106 Class Members and 5,136 Total Workweeks during the Class period and (2) Defendants estimates there are 70 Aggrieved Employees who worked a total of 1,318 PAGA Pay Periods. If there is a greater than ten percent (10%) increase in the number of 5,136 reported class workweeks, such increase shall trigger an escalation of the GFV in the amount equivalent to one percent (1%) for every one percent (1%) increase in workweeks over the ten percent (10%) threshold. Defendants shall include Defendants’ share of taxes owed on the wages portion of the settlement, which shall be determined by the Settlement Administrator chosen by the parties. If the Settlement is not finally approved by the Court despite the Parties’ best efforts to achieve final approval, any amounts deposited shall revert back, without interest, to Defendants. If the Pro Rata Increase Threshold is

triggered, Defendants shall have the exclusive right to choose an earlier date than March 9, 2024 as the end of the Class Period to avoid triggering any pro rata increase.

**9. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

**10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members, changes the Gross Settlement Amount)), the Parties will expeditiously work together in good faith to address the Court's concerns and endeavor to revise the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this section. No party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Class and PAGA Actions, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective

counsel and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals.

10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing appellate court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members or the Gross Settlement Amount.), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged. However, no party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the reviewing appellate court.

**11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

## **12. ADDITIONAL PROVISIONS.**

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission by Defendants that any of the allegations in the Operative Complaints have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Actions have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Actions will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality. Plaintiffs and their counsel will keep the operative complaint(s), PAGA letters, and this settlement confidential through preliminary approval. Thereafter, Plaintiffs and their counsel will further agree to keep this settlement, operative complaint(s), and the PAGA letters confidential, including without limitation no disclosures to current or former employees of the Defendants, to the media, or on any websites, blogs, social media, and/or online platforms. Exceptions to the obligation of confidentiality in this section are: (i) disclosures necessary to

comply with the law, judicial process, or for financial planning or tax preparation purposes; (ii) to obtain, seek, and maintain approval of this settlement in court and as is necessary to provide settlement information to Class Members, and (iii) if any party seeks to enforce any term or condition of this Agreement against any other party. Nothing herein shall prevent Plaintiffs' counsel from disclosing this settlement for purposes of describing their qualifications as counsel in other cases or as required by a court, nor shall any terms herein preclude Class Counsel from communicating with and fulfilling its obligations to Class Members or Aggrieved Employees.

12.3 No Solicitation. The Parties agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict the Parties or their respective counsel's ability to communicate with Class Members for purposes of informing them about this Settlement and its procedures.

12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.

12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of their mediator and/or the Court for resolution. Nothing in this section shall be construed as obligating the Parties to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court or the reviewing appellate court.

12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.

12.8 No Tax Advice. Plaintiffs, Class Counsel, Defendants and Defense Counsel are not providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties and their representatives and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during the Actions and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the Effective Date, Class Counsel shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Effective Date, Defendants make a written request to Class Counsel for the return, rather than the destruction, of Class Data.

12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only.

12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal holiday, such date or deadline shall be on the first business day thereafter.

12.17 Notice. All written notices, demands or other communications between the Parties in connection with this Agreement shall be addressed as follows:

To Plaintiffs:

John G. Yslas  
Samantha A. Smith  
Diego Aviles  
WILSHIRE LAW FIRM  
3055 Wilshire Blvd., 12<sup>th</sup> Floor  
Los Angeles, CA 90010  
jyslas@wilshirelawfirm.com  
daviles@wilshirelawfirm.com

To Defendants:

Howard A. Sagaser  
Ian Wieland  
SAGASER, WATKINS & WIELAND

daviles@wilshirelawfirm.com

To Defendants:

Howard A. Sagaser  
Ian Wieland  
SAGASER, WATKINS & WIELAND  
5260 North Palm Avenue, Suite 400  
Fresno, CA 93704  
Telephone: 559-473-1483  
has@sw2law.com  
ian@sw2law.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed (including both the Class and PAGA Action), except to effectuate the terms of this Agreement.

*SIGNATURES ON FOLLOWING PAGE*

**For Plaintiff Garcia** \_\_\_\_\_

Signed by:   
Signature: \_\_\_\_\_  
DEB3CD397B04420...

Date: 11/12/2024

**For Defendant Espinoza Brothers Food Distribution, Inc.**

Signature:  \_\_\_\_\_

By: Robert C. Espinoza

(TITLE): CEO

Date: 11/07/2024

**For Plaintiff Soto** \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**For Defendant Espinoza Brothers Enterprises, LLC**

Signature:  \_\_\_\_\_

By: Robert C. Espinoza

(TITLE): CEO

Date: 11/07/2024

**APPROVED AS TO FORM AND CONTENT**

Dated: 11/12/2024

WILSHIRE LAW FIRM

By:   
\_\_\_\_\_  
John G. Yslas  
Diego Aviles  
*Attorney for Plaintiffs*

Dated: 11/7/2024

Sagaser, Watkins & Wieland PC

By:   
\_\_\_\_\_  
Howard A. Sagaser  
Ian B. Wieland  
*Attorney for Defendants*

5260 North Palm Avenue, Suite 400  
Fresno, CA 93704  
Telephone: 559-473-1483  
has@sw2law.com  
ian@sw2law.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed (including both the Class and PAGA Action), except to effectuate the terms of this Agreement.

*SIGNATURES ON FOLLOWING PAGE*

**For Plaintiff Garcia** \_\_\_\_\_

**For Defendant Espinoza Brothers Food Distribution, Inc.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

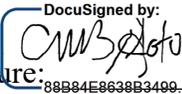
By: \_\_\_\_\_

(TITLE): \_\_\_\_\_

Date: \_\_\_\_\_

**For Plaintiff Soto** \_\_\_\_\_

**For Defendant Espinoza Brothers Enterprises, LLC**

DocuSigned by:  
  
Signature: \_\_\_\_\_  
88884E8638B3499...

Signature: \_\_\_\_\_

Date: 11/13/2024 \_\_\_\_\_

By: \_\_\_\_\_

(TITLE): \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT A**

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND  
HEARING DATE FOR FINAL COURT APPROVAL**  
*Cruz Soto v. Espinoza Brothers Food Distribution, Inc., et al.*, Fresno County Superior Court  
Case No. 23CECG03830

***The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement or solicitation by a lawyer. You are not being sued.***

**You may be eligible to receive money** from an employee Private Attorney General Act and Class Action lawsuits (collectively “Actions”) against Espinoza Brothers Food Distribution, Inc. and Espinoza Brothers Enterprises LLC (collectively, the “Defendants” or the “Companies”) for alleged wage and hour violations. The Actions were filed by Cruz Soto and Monica Nanelly Garcia (collectively “Plaintiffs”), former employees of the Companies. In this Action, Plaintiffs seek payment of (1) minimum wages, overtime, meal and rest break premium wage payments, unreimbursed business expenses and statutory penalties for a class of hourly non-exempt employees (“Class Members”) who worked for the Companies during the Class Period (June 5, 2018 to January 9, 2024); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly non-exempt employees who worked for the Companies during the PAGA Period (February 2, 2022 to January 9, 2024) (“Aggrieved Employees”).

While Defendants deny all allegations alleged in Plaintiffs’ operative Complaints, and no decision has been made regarding the merits of Plaintiff’ allegations, the Parties have agreed to resolve Plaintiffs’ class and PAGA allegations.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$\_\_\_\_\_ (less withholding) and your Individual PAGA Payment is estimated to be \$\_\_\_\_\_.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked \_\_\_\_\_ workweeks** during the Class Period and **you worked \_\_\_\_\_ pay periods** during the PAGA Period. If you believe that you worked more workweeks/pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to

finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against the Companies.

If you worked for the Companies during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against the Companies.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against the Companies, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

**Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.**

## SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p><b>You Don’t Have to Do Anything to Participate in the Settlement</b></p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against the Companies that are covered by this Settlement (Released Claims).</p>
<p><b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b></p> <p><b>The Opt-out Deadline is _____</b></p>	<p>If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
<p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b></p> <p><b>Written Objections Must be Submitted by</b></p>	<p>All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Actions on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduce the overall amount paid to Participating Class Members. You can</p>

_____	object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
<b>You Can Participate in the Final Approval Hearing</b>	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
<b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b> <b>Written Challenges Must be Submitted by</b>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to the Companies' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

## 1. WHAT ARE THE ACTIONS ABOUT?

Plaintiffs are former employees of the Companies. The Actions accuses the Companies of the following violations: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) unfair business practices; and (9) civil penalties under California's Private Attorneys General Act. Plaintiffs are represented by attorneys in the Actions: John G. Yslas and Diego Aviles of Wilshire Law Firm ("Class Counsel.")

Defendants deny all allegations alleged in Plaintiffs' Operative Complaints, deny any failure to comply with the laws identified in the Operative Complaints and denies any and all liability for the causes of action alleged. Defendants contend that it complied with all applicable laws and that no wages or penalties are owed.

## 2. WHAT DOES IT MEAN THAT THE ACTIONS HAVE SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits.

In the meantime, Plaintiffs and Defendants hired an experienced, neutral mediator in an effort to resolve the Actions by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to ask the Court to enter a judgment ending the Actions and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims. Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best

interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

### **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. Defendants Will Pay \$190,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
  - A. Up to \$66,500 (35% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$18,790.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Actions without payment.
  - B. Up to \$7,500 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payment and any Individual PAGA Payment.
  - C. Up to \$7,750.00 to the Administrator for services administering the Settlement.
  - D. Up to \$10,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages

(“Wage Portion”) and 90% to interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than \_\_\_\_\_, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the \_\_\_\_\_ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against the Companies.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against the Companies based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims.
8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue or be part of any other lawsuit against the Companies or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Actions and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including, e.g., (a) any and all claims involving any alleged failure to pay minimum and straight time wages; (b) any and all claims involving any alleged failure to pay overtime wages; (c) any and all claims involving any alleged failure to provide meal periods; (d) any and all claims involving any alleged failure to authorize and permit rest breaks; (e) any and all claims involving any alleged failure to timely pay final wages at termination; (f) any and all claims involving any alleged failure to provide accurate itemized wage statements; and (g) any and all claims involving any alleged failure to indemnify employees for expenditures. The released claims include all claims based on the Class Period facts stated in the Operative Complaint arising under the California Labor Code (including sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198, and 2802); the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 *et seq.* Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against the Companies, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against the Companies or their related entities based on the PAGA Period facts alleged in the Actions and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees (regardless of whether they are Participating Class Members or Non-Participating Class Members) are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Actions including, e.g., (a) any and all claims involving any alleged failure to pay minimum and straight time wages; (b) any and all claims involving any alleged failure to pay overtime wages; (c) any and all claims involving any alleged failure to provide meal periods; (d) any and all claims involving any alleged failure to authorize and permit rest breaks; (e) any and all claims involving any alleged failure to timely pay final wages at termination; (f) any and all claims involving any alleged failure to provide accurate itemized wage statements; and (g) any and all claims involving any alleged failure to indemnify employees for expenditures. The released claims include all claims based on the Class Period facts stated in the Operative Complaint arising under the California Labor Code (including sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198, and 2802); the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 *et seq.*

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in the Companies' records, are stated in the first page of this Notice. You have until \_\_\_\_\_ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on the Companies' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's

decision is final. You can't appeal or otherwise challenge its final decision.

## 5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Actions as *Cruz Soto v. Espinoza Brothers Food Distribution, et al*, Fresno County Superior Court Case No. 22CECG03830, and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by \_\_\_\_, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## 7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a request for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website \_\_\_\_\_ (url) \_\_\_\_\_ or the Court's website (<https://www.fresno.courts.ca.gov/online-services/case-information>).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or request for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written**

**objections to the Administrator is \_\_\_\_\_.** Be sure to tell the Administrator what you object to, why you object and any facts that support your objection. Make sure you identify the Action as *Cruz Soto v. Espinoza Brothers Food Distribution, et al*, Fresno County Superior Court Case No. 22CECG03830 and include your name, current address, telephone number and approximate dates of employment for the Companies and sign the objection. Section 9 of this Notice has the Administrator’s contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

### **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don’t have to, attend the Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_\_ (time) in \_\_\_\_\_ of the Fresno Superior Court, located at 1100 Van Ness Avenue, Fresno, CA 93724. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court’s website for the most current information.

It’s possible the Court will reschedule the Final Approval Hearing. You should check the Administrator’s website \_\_\_\_\_ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

### **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to \_\_\_\_\_ website at \_\_\_\_\_ (url) \_\_\_\_\_. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to ([http://www. https://www.fresno.courts.ca.gov/divisions/civil/remote-appearance-information](http://www.https://www.fresno.courts.ca.gov/divisions/civil/remote-appearance-information)) You can also make an appointment to personally review court documents in the Clerk’s Office at the Courthouse by calling (559) 457-2000.

### **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

Class Counsel:

Name of Attorney: John G. Yslas and Diego Aviles  
Email Address: [jyslas@wilshirelawfirm.com](mailto:jyslas@wilshirelawfirm.com) and [daviles@wilshirelawfirm.com](mailto:daviles@wilshirelawfirm.com);  
Name of Firm: Wilshire Law Firm  
Mailing Address: 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, CA 90010  
Telephone: (213) 381-9988

Counsel for Defendants:

Name of Attorney: Howard Sagaser and Ian Wieland  
Email Address: has@sw2law.com and ian@sw2law.com  
Name of Firm: Sagaser, Watkins & Wieland  
Mailing Address: 5260 North Palm Avenue, Suite 400  
Fresno, CA 93704  
Telephone: (559) 421-7000

Settlement Administrator:

Name of Company: ILYM Group, Inc.  
Email Address: claims@ilymgroup.com  
Mailing Address: P.O. Box 2031, Tustin, CA 92781  
Telephone: (888) 250-6810  
Fax Number: (888) 845-6185

**10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you will have no way to recover the money.

**11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.