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INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

ADRIANA GARCIA individually and on behalf
of other individuals similarly situated,

Plaintiff,

v.

MARQUEZ BROTHERS, INC. a California
corporation; and DOES 1 through 10,
Defendant.

Case No: 34-2021-00311495
*Assigned to Hon. Jill H. Talley Dept. 25
for All Purposes*

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF CLASS
ACTION CLAIMS**

Trial Date: N/A
Complaint Filed: November 22, 2021

1 **SUBJECT TO COURT APPROVAL, IT IS HEREBY STIPULATED**, by and among
2 Plaintiff ADRIANA GARCIA (“Plaintiff” or “Named Plaintiff”), individually and on behalf of the
3 proposed Class and all similarly-situated current and former employees of Defendant MARQUEZ
4 BROTHERS FOODS, INC. (“Defendant”)(collectively referred to as “the Parties”), that this
5 putative class action is hereby settled pursuant to the terms and conditions set forth below in this
6 Joint Stipulation and Settlement Agreement of Class Action Claims (“Stipulation” or “Settlement
7 Agreement”):

8 **DEFINED TERMS AND CONDITIONS**

9 1. “Action” means the proceedings and legal matter filed in the Superior Court of the
10 State of California, County of Sacramento, entitled *Adriana Garcia v. Marquez Brothers Foods,*
11 *Inc.*, Case No. 34-2021-00311495, originally filed on November 22, 2021 and later amended on
12 January 28, 2022.

13 2. “Administrator” means ILYM Group, Inc., or another the neutral entity the Parties
14 have agreed to appoint to administer the Settlement.

15 3. “Administration Expenses Payment” and or “Administration Costs” means the
16 actual and direct costs reasonably charged by the Administrator for its services in administering the
17 Settlement not to exceed Four Thousand One Hundred Fifty Dollars and Zero Cents (\$4,150).

18 4. “Aggrieved Employee” and/or “PAGA Member” means all current and former
19 hourly nonexempt employees of Defendant in the State of California any time during the PAGA
20 Period. For purposes of this Settlement, no Aggrieved Employee/PAGA Member may “opt out” of
21 the PAGA portion of the Settlement.

22 5. “Class Members” or “Class” means all current and former hourly nonexempt
23 employees of Defendant in the State of California any time during the Class Period.

24 6. “Class Counsel” means Bradley/Grombacher, LLP.

25 7. “Class Counsel Attorneys’ Fee Award” or “Class Counsel Fees Payment” means
26 such award of fees not to exceed Thirty-Three Percent (33.33%) of the total Gross Settlement
27 Amount, or the amount of \$14,193.00 that the Court may authorize to be paid to Class Counsel for
28 the services they have rendered to Plaintiff and the Class in the Action.

1 8. “Class Counsel Costs Award” and/or “Class Counsel Litigation Expenses Payment
2 “means an amount up to Ten Thousand Dollars and Zero Cents (\$10,000.00) allocated to Class
3 Counsel for reimbursement expenses incurred to prosecute the Action.

4 9. “Class List” and/or “Class Data” means Class Member identifying information in
5 Defendant’s possession including the Class Member’s name, last-known mailing address, Social
6 Security number, and dates of employment.

7 10. “Settlement Class Member” means a member of the Class as either a Participating
8 Class Member; or an Aggrieved Employee/PAGA Member in the PAGA Portion of the Settlement.

9 11. “Class Period” means the period from November 22, 2017, through the date the
10 Court grants Preliminary Approval of the Settlement or to 60 days from the date of the final
11 settlement agreement is fully executed, whichever occurs first.

12 12. “Class Representative” means the named Plaintiff Adriana Garcia.

13 13. “Class Representative Service Payment” means the payment not to exceed Three
14 Thousand Dollars and Zero Cents (\$3,000.00) to the Class Representative for initiating the Action
15 and providing services in support of the Action.

16 14. “Court” means the Sacramento County Superior Court and the Judicial Officer
17 presiding over this matter.

18 15. “Defendant” means Marquez Brothers Foods, Inc.

19 16. “Employer’s Payroll Taxes” means Defendant’s share of any applicable employer
20 payroll taxes on the wage-portion of the Individual Class Payments to be paid in connection with
21 the Settlement, which they shall pay in addition to, and separate from, the Gross Settlement
22 Amount.

23 17. “Effective Date” means the date by when both of the following have occurred: (a)
24 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
25 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
26 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one
27 or more Participating Class Members objects to the Settlement, the day after the deadline for filing
28 a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after

1 the appellate court affirms the Judgment and issues a remittitur.

2 18. "Final Approval Order" means the Court's order granting final approval of the
3 Settlement and entering judgment.

4 19. "Final Approval Hearing" means the Court's hearing on the Motion for Final
5 Approval of the Settlement.

6 20. "Final Judgment" means the latest of: (a) the date of final affirmance on an appeal
7 of the Final Approval Order and Judgment; (b) the date of final dismissal with prejudice of the last
8 pending appeal from the Final Approval Order and Judgment; or (c) if no appeal is filed, the
9 expiration date of the time for the filing or noticing of any form of valid appeal from the Final
10 Approval Order and Judgment.

11 21. "Gross Settlement Amount" means Forty Two Thousand Five Hundred Eighty
12 Dollars and Zero Cents (\$42,580.00), which, subject to the amount payable separately by Defendant
13 as the Employer's Payroll Taxes, shall be the total amount Defendant agrees to pay under the
14 Settlement which shall be used as a common settlement fund to pay Individual Class Payments,
15 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
16 Expenses, Class Representative Service Payment, and the Administrator's Expenses.

17 22. "Gross Settlement Amount 10% Escalation Clause" refers to a contingent provision
18 that provides: if the total number of Covered Class Workweeks within the Class Period exceeds
19 6,000 workweeks by ten percent (10%) (i.e., if the Covered Class Workweeks within Class Period
20 includes more than 600 additional Covered Class Workweeks), then the Class Period will be
21 shortened so that there is no increase in the Gross Settlement Amount.

22 23. "Individual Class Payment" means a Participating Class Member's pro rata share of
23 the Net Settlement Amount calculated according to the number of each Participating Class
24 Member's Covered Class Workweeks in relation to the total Covered Class Workweeks during the
25 Class Period. Individual Class Payments to Participating Class Members shall be characterized as
26 ten percent (10%) wages, reported on an IRS Form W-2, and ninety percent (90%) non-wages (i.e.,
27 penalties, interest, reimbursements), reported on an IRS Form 1099, and shall be paid in
28 consideration of Participating Class Members' releases of the Released Class Claims. It is expressly

1 understood and agreed that the receipt of such individual settlement awards will not entitle any
2 Class Member or PAGA Member to additional compensation or benefits under any company bonus,
3 contest or other compensation or benefit plan or agreement in place during the period covered by
4 the Agreement, nor will it entitle any Class Member or PAGA Member to any increased retirement,
5 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this
6 Settlement that the individual settlement awards provided for in this Settlement are the sole
7 payments to be made by Defendant to the Class Members and PAGA Members, and that the Class
8 Members and PAGA Members are not entitled to any new or additional compensation or benefits
9 as a result of having received the individual settlement awards (notwithstanding any contrary
10 language or agreement in any benefit or compensation plan document that might have been in effect
11 during the period covered by this Settlement).

12 24. "Individual PAGA Payment" means an Aggrieved Employee's pro rata share of
13 twenty-five percent (25%) of the PAGA Penalties calculated according to the number of each
14 Aggrieved Employee's Covered PAGA Pay Periods in relation to the total Covered PAGA Pay
15 Periods during the PAGA Period. Individual PAGA Payments to Aggrieved Employees shall be
16 characterized as non-wage payments (e.g., penalties), reported on an IRS Form 1099, and will not
17 be subject to any Requests for Exclusion.

18 25. "LWDA" means the California Labor and Workforce Development Agency, as
19 defined under Labor Code section 2699, subd. (i).

20 26. "LWDA PAGA Payment" means seventy-five percent (75%) of the PAGA
21 Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

22 27. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less the
23 following amounts: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative
24 Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and
25 the Administration Expenses Payment. The remainder shall be paid to Participating Class Members
26 as Individual Class Payments. Any amounts the Court finally approves as deductions from such
27 amounts, shall be added to the Net Settlement Amount.

28 28. "Non-Participating Class Member" means any Class Member who opts out of the

1 non-PAGA portion of the Settlement by sending the Administrator a valid and timely Request for
2 Exclusion.

3 29. "Covered PAGA Pay Period" means any pay period within the PAGA Period in
4 which a PAGA Member worked for Defendant as a non-exempt employee.

5 30. "PAGA Period" means the period from November 19, 2020 through the date the
6 Court grants Preliminary Approval of the Settlement or to 60 days after the Settlement Agreement
7 is fully executed, whichever date occurs first.

8 31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698 et seq.).

9 32. "PAGA Notice" means Plaintiff's November 19, 2021 notice letter to Defendant
10 and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a) in LWDA Case
11 No. LWDA-CM-853034-21.

12 33. "PAGA Penalties" means the Three Thousand Dollars and Zero Cents (\$3,000.00),
13 the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount.

14 34. PAGA Penalties shall be allocated as: Seven Hundred Fifty Dollars and Zero Cents
15 (\$750) for the twenty-five percent (25%) due to the Aggrieved Employees for the Individual PAGA
16 Payment and Two Thousand Two Hundred Fifty Dollars and Zero Cents (\$2,250) for the seventy-
17 five percent (75%) to the LWDA for the LWDA PAGA Payment in settlement of the Released
18 PAGA Claims

19 35. "Participating Class Member" means a Class Member who does not submit a valid
20 and timely Request for Exclusion from the non-PAGA portion of the Settlement.

21 36. "Plaintiff" means Adriana Garcia, the named plaintiff in the Action.

22 37. "Plaintiff's Further Released Claims" means the claims and causes of action that
23 Plaintiff, on behalf of Plaintiff individually, and in addition to Plaintiff's release of the Released
24 Class Claims and Released PAGA Claims, expressly and further releases against the Released
25 Parties including by waiver of all rights, protections and benefits under California Civil Code
26 section 1542, which includes claims related to Plaintiff's employment with Defendant, claims
27 alleged in the Action, any additional claims Plaintiff may have against Defendant, and all claims
28 known and unknown, except as may be prohibited by law, which may have existed at the time

1 Plaintiff signs this Settlement Agreement. Plaintiff's Further Released Claims excludes claims for
2 unemployment insurance, disability, social security, workers' compensation (except for claims
3 pursuant to Labor Code sections 132a and 4553), and any claims or causes of action arising out of
4 any event or controversy occurring after the time Plaintiff signs this Settlement Agreement
5 including for any obligation arising out of this Settlement Agreement.

6 38. "Preliminary Approval" or "Preliminary Approval Order" means the Court's Order
7 Granting Preliminary Approval of the Settlement.

8 39. "Released Class Claims" means all claims, rights, demands, liabilities and causes of
9 action arising from the alleged (1) Failure to Pay for All Hours Worked (Cal. Lab. Code §§ 1118,
10 1197); (2) Failure to Pay Overtime Wages (Cal. Lab. Code § 510); (3) Failure to Provide Compliant
11 Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Provide Compliant Rest Periods (Cal.
12 Lab. Code §§ 226.7, 512); (5) Failure to Provide COVID-19 Supplemental Paid Sick Leave (Cal.
13 Lab. Code § 248.2); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code
14 § 226(a)); (7) Failure to Provide Adequate Seating; and (8) Unfair Business Practices (Cal. Bus. &
15 Prof. Code §§ 17200, et seq.); and all other claims, rights, demands, liabilities and causes of action
16 that were asserted or that could have been asserted based on the facts or claims alleged in the
17 operative complaint in the Action, and any amendments thereto.

18 40. "Released PAGA Claims" means all claims, rights, demands, liabilities and causes
19 of action arising from the PAGA (Labor Code §§ 2689, et seq.) that were asserted or that could
20 have been asserted based on the facts or claims alleged in the operative complaint in the Action and
21 Plaintiff's PAGA Notice, and any amendments thereto.

22 41. "Released Parties" means Defendant together with their present and former parents,
23 subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors,
24 trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives,
25 heirs, executors, administrators, successors, and assigns who may be held liable for any of the
26 Released Class Claims or the Released PAGA Claims.

27 42. "Request for Exclusion" and/or "Opt-Out Request" mean a Class Member's
28 submission of a written request to be excluded from the non-PAGA portion of the Settlement that

1 is signed by the Class Member.

2 43. "Response Deadline" means 45 days after the Administrator mails Notice to Class
3 Members and Aggrieved Employees and shall be the last date on which Class Members may: (a)
4 fax, email, or mail Requests for Exclusion from the non-PAGA portion of the Settlement, or (b)
5 fax, email, or mail his or her Objection to the non-PAGA portion of the Settlement. Class Members
6 to whom Class Notices are resent after having been returned undeliverable to the Administrator
7 shall have an additional 15 calendar days beyond the Response Deadline has expired.

8 44. "Settlement" means the disposition of the Action effected by this Agreement and
9 the Final Judgment.

10 45. "Unclaimed Property Fund" means the California Controller's Unclaimed Property
11 Fund (Cal. Code Civ. Proc. § 1314).

12 46. "Covered Class Workweek" means any workweek during the Class Period in which
13 a Class Member worked for Defendant.

14 **PROCEDURAL HISTORY**

15 47. On November 22, 2021, Plaintiff filed the Action in the Superior Court of the State
16 of California, County of Sacramento. In this Action, Plaintiff sought recovery on behalf of herself
17 and all other current or former hourly-paid or non-exempt employees of Defendant in California
18 for alleged violations of the California Labor Code. In the initial Complaint, Plaintiff alleged eight
19 causes of action, as follows: (1) Failure to Pay All Wages and Minimum Wages in Violation of
20 Labor Code Sections 221, 223, 1182, 1194, 1197, 1198; ; (2) Failure to Pay Overtime Wages in
21 Violation of Labor Code sections 510 and 1198; (3) Failure to Provide Compliant Meal Breaks in
22 Violation of Labor Code Section 226.7, 512; (4) Failure to Provide Compliant Rest Breaks in
23 Violation of Labor Code Section 226.7; (5) Failure to Provide COVID-19 Supplemental Sick Pay
24 in Violation of Labor Code Section 248.2; (6) Failure to Timely Furnish Accurate Itemized Wage
25 Statements in Violation of Labor Code Section 226(a); (7) Failure to Provide Adequate Seating;
26 and (8) Violations of Business & Professions Code Section 17200 et seq.

27 48. On January 28, 2022, Plaintiff filed a First Amended Complaint adding a ninth cause
28 of action for Civil Penalties Pursuant to PAGA Labor Code section 2698 et seq.

1 49. The Parties reached this Settlement only after informal discovery, investigation, and
2 arm's length negotiations with the assistance of a skilled mediator, Scott Markus, Esq. Specifically,
3 Class Counsel represents it has conducted a thorough investigation into the facts and law during
4 the prosecution of this Action. Counsels for the Parties also represent they have investigated the
5 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff, potential
6 defenses thereto, and the damages claimed by Plaintiff.

7 50. Since reaching a Settlement via mediation, the Parties have been working to finalize
8 the terms of this Settlement Agreement and corresponding documentation.

9 **STIPULATION FOR CLASS CERTIFICATION**

10 51. The Parties stipulate and agree to the conditional certification of the Class for
11 purposes of Settlement only. Should, for whatever reason, the Settlement not become final, the
12 Parties' stipulation to class certification as part of the Settlement shall become null and *void ab*
13 *initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of
14 whether or not certification would be appropriate in a non-settlement context. Defendant expressly
15 reserves its rights and declares that it intends to oppose class certification should this Settlement
16 not become final.

17 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

18 52. Whether or not the Settlement is finally approved, neither the Settlement, nor any
19 of its terms, nor any document, statement, proceeding, or conduct related to this Agreement, nor
20 any reports or accounts thereof, shall in any event be:

- 21 a. Construed as, offered, or admitted in evidence as, received as, or deemed to be evidence
22 for any purpose adverse to the Released Parties, including, but not limited to, evidence
23 of a presumption, concession, indication or admission by any of the Released Parties of
24 any liability, fault, wrongdoing, omission, concession, or damage except for purposes
25 of settling this Action or enforcing the Settled Claims contained herein pursuant to the
26 terms of this Settlement Agreement;
- 27 b. Disclosed, referred to or offered or received in evidence against any of the Released
28 Parties in any further proceeding in the Action or any other civil, criminal, or

1 administrative action or proceeding, except for purposes of settling this Action or
2 enforcing the terms of this Settlement Agreement, whether in this proceeding or in any
3 future proceeding; or

- 4 c. Used in any other way or for any other purpose except for: (i) purposes of settling this
5 action or enforcing the terms of this Settlement Agreement; or (ii) as evidence of relative
6 value of claims in mediation, preliminary approval and/or final approval when settling
7 matters against parties other than the Released Parties, in which case only public
8 information may be provided.

9 **INVESTIGATION OF THE CLAIMS**

10 53. Plaintiff conducted significant investigation of the facts and law both before and
11 after the Action was filed. Such opportunity to engage in and review informal discovery and
12 investigations has included company information, meetings and conferences, and employee payroll
13 and time records. Counsels for the Parties have further investigated the applicable law as applied
14 to the facts discovered regarding the Plaintiff's claims, the defenses thereto and the damages
15 claimed by Plaintiff. Plaintiff's investigation was sufficient to satisfy the criteria for court approval
16 set forth in Dunk v. Foot Locker Retail, Inc. (1996) 48 Cal.App.4th 1794, 1801 and Kullar v. Foot
17 Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130. The Parties further represent that they
18 have had the opportunity to review, analyze and utilize the services of experts of their choosing and
19 to review documents and information.

20 **BENEFITS OF SETTLEMENT TO CLASS MEMBERS**

21 54. Plaintiff has considered the expense and length of continued proceedings necessary
22 to continue the Action against Defendant through trial and any possible appeals. Plaintiff has also
23 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
24 and delays inherent in such litigation, including those involved in class certification. Plaintiff is
25 also aware of the burdens of proof necessary to establish liability for the claims asserted in the
26 Action, Defendant's defenses thereto, and the difficulties in establishing Plaintiff's damages.
27 Plaintiff has also considered the settlement negotiations conducted by the Parties and the
28 recommendations of the mediator, who is highly experienced in wage and hour and employment

1 litigation. Based on the foregoing, Plaintiff has determined that the Settlement set forth in this
2 Settlement Agreement is fair, adequate, and reasonable, and is in the best interest of the Settlement
3 Class.

4 **PLAINTIFF'S CLAIMS**

5 55. Plaintiff has claimed and continues to claim that the Settled Claims have merit and
6 give rise to Defendant's liability. Should this Settlement not be finally approved by the Court,
7 neither this Settlement Agreement nor any documents referred to herein, nor any action taken to
8 carry out this Settlement is, or may be construed as or may be used as, an admission by or against
9 the Plaintiff as to the merits or lack thereof of the claims asserted by Plaintiff.

10 **DEFENDANT'S DENIALS OF WRONGDOING**

11 56. Defendant contends that all of its employees have been compensated in compliance
12 with the law, and that its conduct was not willful with respect to any allegations, including
13 violations of the California Labor Code or the California Business and Professions Code. Defendant
14 has denied and continues to deny each of the claims and contentions alleged by Plaintiff in the
15 Action. Defendant denies any wrongdoing or legal liability arising out of any of the facts or conduct
16 alleged in the Action and believes that it has valid defenses to Plaintiff's claims. Neither this
17 Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out
18 this Agreement may be construed as, or may be used as an admission, concession, or indication by
19 or against Defendant of any fault, wrongdoing or liability whatsoever, including any concession
20 that certification of a class other than for purposes of this Settlement would be appropriate in this
21 or any other case.

22 **RELEASE OF ALL SETTLED CLAIMS BY ALL SETTLEMENT CLASS MEMBERS**

23 57. Plaintiff and all Settlement Class Members stipulate and agree that, upon the Final
24 Approval Date, they shall be deemed to have, and by operation of the Settlement Order and
25 Judgment shall have, expressly fully, finally, and forever released, settled, compromised,
26 relinquished and discharged any and all Released Parties of and from the Settled Claims during the
27 period of November 22, 2017 through the date of Preliminary Approval or to 60 days from the date
28 of this Settlement Agreement, whichever date occurs first, and shall be barred by operation of the

1 judgment from reasserting the Released Class Claims or PAGA Claims in any manner. Even if
2 Plaintiff and/or the Settlement Class Members may hereafter discover facts in addition to or
3 different from those which they now know or believe to be true with respect to the subject matter
4 of the Released Class or PAGA Claims, Plaintiff and each Settlement Class Member, upon the
5 entry of the Final Approval Order, shall be deemed to have and by operation of the Final Judgment
6 shall have, fully, finally, and forever settled and released any and all of the Settled Claims.

7 58. The Parties agree for settlement purposes only, because the Class Members are so
8 numerous, it is impossible or impracticable to have each Class Member execute this Agreement.
9 Accordingly, the Class Notice will advise all Class Members of the binding nature of the release
10 and such notice shall have the same force and effect as if the Agreement were executed by each
11 Settlement Class Member. The Parties shall agree upon the form and content of the Class Notice,
12 which shall summarize and provide Class Members with information about their rights to be heard.

13 59. Named Plaintiff and Class Counsel represent, covenant, and warrant that they have
14 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
16 or rights herein released and discharged, except as set forth herein.

17 **THE SETTLEMENT COMPONENTS**

18 60. Gross Settlement Amount and Net Settlement Amount. The Gross Settlement
19 Amount, which shall constitute the total maximum settlement amount Defendant will pay under
20 this Settlement, [other than employer-side payroll taxes] is Forty-Two Thousand Five Hundred
21 Eighty Dollars and Zero Cents (\$42,580.00). The Net Settlement Amount will be calculated by
22 deducting the following payments from the Gross Settlement amount, in the amounts specified by
23 the Court in Final Approval:

- 24 a. Class Representative Service Payment. Plaintiff shall receive a Class Representative
25 Service Payment in the amount of no more than Three Thousand Dollars (\$3,000.00).
26 b. Class Counsel Attorneys' Fee and Expense Award. Attorneys' fees of one third of the
27 Gross Settlement Amount, which is equal to Fourteen Thousand One Hundred Ninety
28 Three Dollars (\$14,193.00) and costs not to exceed Ten Thousand Dollars (\$10,000.00),

to the law firm of Bradley/Grombacher (“Class Counsel”), which shall be the sole payments for attorneys’ fees and costs, including any post-settlement efforts and costs, including but not limited to defending against objectors, appeals, collateral attacks, etc., and, otherwise, the Parties and Settlement Class Members and their counsel shall bear their own fees and costs in connection with the litigation.

c. Administration Costs. The costs needed to pay for the services of the Administrator as set forth herein are estimated at \$4,150.00.

d. Reduction by the Court. In the event that the Court reduces the Class Representative Service Payment, the Administration Costs, Class Counsel Attorneys’ Fee Award, or Class Counsel Costs Award, the remainder shall revert to the Net Settlement Amount to be paid as part of the individual Settlement Awards. Any reduction in such amounts can be reflected in this Settlement Agreement by amendment through stipulation of Parties’ counsel.

PRO-RATA SETTLEMENT AWARD PAYMENTS

61. The Net Settlement Amount shall be divided by the total Covered Class Workweeks worked by a Participating Class Member, calculated according to the number of each Participating Class Member’s Covered Class Workweeks in relation to the total Covered Class Workweeks during the Class Period. Individual Class Payments to Participating Class Members portion shall be characterized as ten percent (10%) wages, reported on an IRS Form W-2, and ninety percent (90%) non-wages (i.e., penalties, interest, reimbursements), reported on an IRS Form 1099, and shall be paid in consideration of Participating Class Members’ releases of the Released Class Claims. All Class Members except for those who timely and validly opt out of the Settlement shall be bound by the release described more fully herein. Each Class Member will be sent a Notice of Settlement that includes information on how he/she may opt out or object to the Settlement. The Class Notice will provide all information required to satisfy existing standards, will include the scope of release language from the Joint Stipulation and Settlement Agreement of Class Action Claims and will include information describing how the Class Member’s estimated Individual Class Payment and Individual PAGA Payment (“Settlement Award”), as applicable, were calculated. The

challenge procedure will be established for the Class Member to dispute information on which his/her Settlement Award amount is based. The Administrator will determine all such disputes after consulting with the Parties regarding number of Covered Class Work Weeks, Covered PAGA Pay Periods, or other specific issues raised by Class Members, but subject to Court approval and input.

ESCALATOR CLAUSE

62. For purposes of mediation, Defendant estimated there are 6000 Covered Class Workweeks during the Class Period: if the total number of Covered Class Workweeks within the Class Period exceeds 6,000 workweeks by ten percent (10%) (i.e., if the Covered Class Workweeks within Class Period includes more than 600 additional Covered Class Workweeks), then the Class Period will be shortened so that there is no increase in the Gross Settlement Amount.

NOTICE/APPROVAL OF SETTLEMENT AND SETTLEMENT IMPLEMENTATION

63. As part of this Settlement, the Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the Class, and notifying Class Members:

- a. Preliminary Settlement Hearing. Class Counsel shall request a hearing before the Court to seek Preliminary Approval of the Settlement once the Agreement is signed by all Parties. In conjunction with such hearing, Class Counsel shall submit this Settlement Agreement, together with the exhibits attached hereto, and any other documents necessary to implement the Settlement.
- b. Certification of Class. Simultaneous with the filing of the Settlement Agreement and solely for purposes of this Settlement, Class Counsel shall request the Court to enter a Preliminary Approval order, substantially in the form of **Exhibit 1** attached hereto, preliminarily approving the proposed Settlement, certifying the Class and approving the Class Period for settlement purposes only, and setting a date for the Final Approval Hearing. The Preliminary Approval Order shall provide for notice of the Settlement and related matters to be sent to the Class Members as specified herein.
- c. Information Regarding Class. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Administrator with the following information with respect to each Class Member: name, most current mailing

1 address indicated in Defendant's records, and dates of employment of Class Members
2 in Defendant's records for the Administrator to determine the total Covered Class Work
3 Weeks. Defendant will also provide the Administrator with each Class Member's social
4 security number contained in Defendant's personnel records. The Administrator (along
5 with any of its agents) shall represent and warrant that it will: (a) provide reasonable
6 and appropriate administrative, physical and technical safeguards for any personally
7 identifiable information ("PII") which it receives from Defendant; (b) not disclose the
8 PII to anyone, including agents or subcontractors, without Defendant's consent; (c) not
9 disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d)
10 promptly provide Defendant with notice if PII is subject to unauthorized access, use,
11 disclosure, modification, or destruction; and (e) return or destroy the PII and cause any
12 distributed information to be returned or destroyed upon termination of its services.
13 Prior to mailing, the Administrator shall perform a search based on the National Change
14 of Address database to update and correct any known or identifiable address changes.

15 d. Notice to Class Members. Within ten (10) calendar days following receipt of the Class
16 List, the Administrator shall mail the Class Notice to all persons who are shown by
17 Defendant's records to be members of the Class.

18 e. Administrator. The Administrator shall be responsible for (i) printing and mailing the
19 Class Notices attached hereto as **Exhibit 2** as directed by the Court; (ii) receiving and
20 reviewing the Request(s) for Exclusion submitted by Class Members to determine
21 eligibility for a Settlement Award of Settlement Class Members; (iii) consulting
22 Defendant concerning the time worked by Class Members, making other calculations
23 of Covered Class Work Weeks if requested by Defendant, and amounts of any
24 Settlement Awards to be paid to Settlement Class Members; (iv) keeping track of opt
25 outs; (v) distributing such Settlement Awards, Class Representative Service Payment,
26 and the Class Counsel Attorneys' Fee and Class Counsel Costs Award, as may be
27 ordered and/or approved by the Court; (vi) reporting all Settlement Awards, Class
28 Representative Service Payment, and the Class Counsel Attorneys' Fee and Expense

Award paid to Class Counsel on IRS forms W-2 and 1099 (as applicable), or other appropriate tax reporting forms, and providing such forms to the respective Settlement Class Members, Named Plaintiff, Class Counsel, and applicable government authorities; (vii) paying any tax imposed on the QSF pursuant to Treasury Regulation § 1.468B-2(a) and other applicable provisions of federal, state or local law imposing tax on the QSF; and (viii) furnishing to Defendant all copies of all Forms W-2, 1099, or other tax reporting forms provided to any Settlement Class Members, Plaintiff, and Class Counsel within the time frame required by law, together with such other tasks as the Parties mutually agree or the Court orders the Administrator to perform. The Parties all represent they do not have any financial interest in the Administrator or otherwise have a relationship with the Administrator that could create a conflict of interest.

f. Any Notices returned to the Administrator with a forwarding address shall be re-mailed by the Administrator within five (5) calendar days following receipt of the returned mail. For any Notices returned to the Administrator without a forwarding address, the Administrator shall conduct one address search using a credit database or other appropriate skip-tracing methods and shall promptly re-mail the Notices to the newly-found addresses. In the event that an intended recipient of a Class Notice does not receive the Class Notice, the intended recipient shall nevertheless remain a Settlement Class Member unless he or she timely files a Request for Exclusion as provided in this Settlement Agreement.

g. The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely returned his or her Request for Exclusion on or before the Response Deadline. Except as otherwise provided in this Agreement or agreed to by the Parties, Requests for Exclusion that are not timely mailed or received shall be disregarded.

h. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 21 days after the

Effective Date and being provided with the calculations for the amount of Defendant's share of payroll taxes by the Administrator.

PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION FROM THE SETTLEMENT OR DISPUTING WORK WEEK INFORMATION

64. Class Members who wish to object to the class action portion of the Settlement or to be excluded from the Settlement Class shall submit objections and/or request for exclusion from the Settlement Class, using the following procedures:

a. Procedure for Objecting. The Class Notice shall provide that only Settlement Class Members may object to the Settlement and that Settlement Class Members who wish to object to the Settlement must send written objections to the Administrator by mail. In the alternative, Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Settlement Class Member who elects to send a written objection to the Administrator must do so not later than the Objection Deadline. Class Members who opt out of the Settlement have no right to object to the Settlement.

b. Procedure for Requesting Exclusion. The Class Notice shall provide that Class Members who wish to exclude themselves from the Class must submit to the Administrator a Request for Exclusion requesting exclusion from the Class (also referred to herein as "opt out") no later than the Response Deadline. Such written Request for Exclusion must contain the name, address, and telephone number of the person requesting exclusion, must be returned to the Administrator at a specified address and must be postmarked on or before the Response Deadline. Any Class Member who properly opts out of the Class using this procedure will not be entitled to any payment from the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline date shall be bound by all terms of the Settlement and any Judgment entered in this Action if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely request

1 exclusion from the Settlement.

2 c. No later than fourteen (14) calendar days after the Response Deadline, the Administrator
3 will provide a complete list of all Class Members who have timely requested exclusion
4 from the Class to Class Counsel and Defendant's counsel.

5 d. Challenges to Calculation of Work Weeks and Pay Periods. Each Class Member shall
6 have 45 days after the Administrator mails the Notice to challenge the number of
7 Covered Class Work Weeks or Covered PAGA Pay Periods alloca

8 e. ted to the Class Member or PAGA Member, respectively in the Class Notice. The Class
9 Member may challenge the allocation by communicating with the Administrator via
10 mail. The Administrator must encourage the challenging Class Member to submit
11 supporting documentation. In the absence of any contrary documentation, the
12 Administrator is entitled to presume that the Covered Class Work Weeks or Covered
13 PAGA Pay Periods contained in the Class Notice are correct so long as they are
14 consistent with the Class Data. The Administrator's determination of each Class
15 Member's allocation of Covered Class Work Weeks or Covered PAGA Pay Periods
16 shall be final and not appealable or otherwise susceptible to challenge. The
17 Administrator shall promptly provide copies of all challenges to calculation of Covered
18 Class Work Weeks or Covered PAGA Pay Periods to Defense Counsel and Class
19 Counsel, as well as copies of the Administrator's determination as to each of the
20 challenges.

21 **NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS**

22 65. The Parties agree to use their best efforts to carry out the terms of this Settlement.
23 At no time shall any of the Parties or their counsel or agents (or the Administrator) encourage Class
24 Members to request exclusion or object to this Settlement or encourage Class Members to appeal
25 from the Court's Final Judgment.

26 **REASONABLE ALLOCATION OF THE SETTLEMENT AWARDS**

27 66. The Administrator shall calculate the amounts of Settlement Awards in accordance
28 with the methodology set forth in this Settlement Agreement and orders of the Court. The Parties

1 recognize and agree that the claims for compensation and reimbursement in this litigation are
2 difficult to determine with any certainty for any given year, or at all, and are subject to myriad
3 differing calculations and formulas. The Parties agree that the formula for allocating the Settlement
4 Awards provided herein is reasonable and fair to all Class Members and that the payments provided
5 herein are designed to provide a fair settlement to such persons, in light of the uncertainties of the
6 compensation and reimbursement alleged to be owed to the Settlement Class and the calculation of
7 such amounts. The Parties acknowledge and agree that the formula used to calculate Covered Class
8 Work Weeks and Covered PAGA Pay Periods and individual Settlement Awards does not imply
9 that all of the elements of damages covered by the release are not being taken into account. The
10 formula was devised as a practical and logistical tool to simplify the claims process.

11 **CALCULATION OF SETTLEMENT AWARDS**

12 67. In order to determine the amount of the Settlement Award to which each Settlement
13 Class Member is entitled, the Administrator shall use the information provided by Defendant. The
14 Administrator shall first divide the estimated NSA by the total Covered Class Work Weeks of all
15 Settlement Class Members to determine the estimated Workweek Rate which, when multiplied by
16 the Covered Class Work Weeks for a Settlement Class Member, yields the estimated Settlement
17 Award to be provided in the Class Notice for a Settlement Class Member (plus any Individual
18 PAGA Payment, as applicable). The Settlement Award shall be paid to Settlement Class Members
19 30 days after the Effective Date.

20 68. The Settlement is non-reversionary. Defendant will pay no less than one hundred
21 percent (100%) of the Gross Settlement Amount into the QSF, and all Parties shall pay their own
22 fees and costs unless expressly listed herein. The Net Settlement Amount shall be fully distributed
23 to Settlement Class Members as provided herein.

24 **TAXES**

25 69. The Parties agree that, for purposes of this Settlement, ten percent of each Settlement
26 Class Member's Settlement Award shall be deemed wages, and payroll deductions will be made
27 from such Settlement Class Member's Settlement Award for state and federal withholding taxes or
28 any other applicable payroll deductions. The Parties further agree that the remaining ninety percent

1 of each such Settlement Award represents penalties and interest.

2 70. Each Settlement Class Member will be responsible for paying all applicable state,
3 local and federal income taxes on all amounts the Settlement Class Member receives pursuant to
4 this Settlement Agreement. Each Settlement Class Member shall cooperate with Defendant and
5 provide documentation as requested to demonstrate such payment should any taxing authority
6 challenge the allocation of Settlement Awards. Defendant neither makes nor offers any tax advice
7 regarding this Settlement.

8 71. All reasonable and directed expenses and costs incurred by, or at the direction of,
9 the Administrator in connection with the operation and implementation of this Settlement
10 Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing
11 and distribution costs and expenses relating to filing or failing to file the information and other tax
12 returns described above) shall be treated as, and considered to be, a cost of administration of the
13 Settlement and part of the Administration Costs.

14 **EMPLOYER'S SHARE OF STATUTORY FICA, FUTA AND CALIFORNIA**
15 **WITHHOLDINGS**

16 72. Defendant's share of statutory payroll withholdings including, but not limited to,
17 FICA, FUTA and California withholdings, are excluded from the Gross Settlement Amount.

18 **CLASS COUNSEL ATTORNEYS' FEE AND EXPENSE AWARD**

19 73. Class Counsel intends to request that the Court award attorneys' fees in an amount
20 not to exceed one third (33.33%) of the Gross Settlement Amount, Fourteen Thousand One
21 Hundred Ninety-Three Dollars (\$14,193.00), plus Class Counsel's costs of actual reasonable
22 litigation costs and expenses not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00).
23 The amounts paid in fees shall be for all claims for attorneys' fees past, present and future incurred
24 in the Action, without limitation any fees and costs needed to defend the Settlement in the future,
25 including on appeal. Any reduction in the amount of fees or costs by the Court will not result in a
26 nullification of the Settlement. Defendant will not object to Class Counsel's request set forth in this
27 paragraph.

28 74. The Class Counsel Attorneys' Fees Award and Class Counsel Costs Award will be

1 paid within thirty (30) calendar days after the Effective Date. Payment of the Class Counsel
2 Attorneys' Fee and Expense Award to Class Counsel shall constitute full satisfaction of any
3 obligation to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses or
4 costs in the Action incurred by any attorney on behalf of Plaintiff or the Settlement Class, and shall
5 relieve Defendant and Defendant's Counsel of any other claims or liability to any other attorney or
6 law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be
7 entitled on behalf of Plaintiff and/or the Class.

8 **CLASS REPRESENTATIVE SERVICE PAYMENT**

9 75. Class Counsel intends to request that the Court approve a Class Representative
10 Service Payment of Three Thousand Dollars and Zero Cents (\$3,000.00) to Plaintiff Adriana
11 Garcia. The Class Representative Service Payment paid pursuant to this Settlement Agreement
12 shall be reported on an IRS Form 1099 by the Administrator and provided to Plaintiff and applicable
13 governmental authorities. Plaintiff may not appeal any reduction in the amount of the Class
14 Representative Service Payment by the Court; nor will a reduction by the Court result in a
15 nullification of the Settlement. Defendant will not object to Class Counsel's request set forth in this
16 paragraph.

17 76. The Class Representative Service Payment shall be paid within 30 days of the
18 Effective Date.

19 77. The Class Representative Service Payment is paid in exchange for a release from
20 Plaintiff against all Released Parties for all claims, demands, rights, liabilities, and causes of action,
21 including without limitation the Settled Claims, whether for economic damages, non-economic
22 damages, punitive damages, restitution, tort, contract, penalties, injunctive or declaratory relief,
23 attorneys' fees, costs, or other monies or remedies arising out of, relating to, or in connection with
24 any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or
25 failures to act, which are or could be the basis of any claims that Defendant acted in any manner
26 that was unlawful. This release includes all federal and state statutory claims, and federal and state
27 common law claims (including but not limited to those for contract, tort, and equity), including,
28 without limitation, the Americans with Disabilities Act, the Age Discrimination in Employment

1 Act of 1967 (“ADEA”), Title VII of the Civil Rights Act of 1964 (as amended), the Civil Rights
2 Act of 1866, the Civil Rights Act of 1991, 42 U.S.C. §1981, 42 U.S.C. §1983, the Family and
3 Medical Leave Act, the California Family Rights Act, the National Labor Relations Act (except as
4 to any rights Employee may have under Section 7 of the NLRA or similar state law to engage in
5 protected, concerted activity with other employees, including discussing Employee’s compensation
6 or other terms and conditions of employment unless the information was entrusted to the employee
7 in confidence by the Company as part of the employee’s job duties), the Worker Adjustment and
8 Retraining Notification Act, the Employee Retirement Security Income Act of 1974, the California
9 Constitution, the California Fair Employment and Housing Act, the California Unfair Competition
10 Act (California Business and Professions Code §§17200 *et seq.*), the California Labor Code,
11 including §132a claims, and claims made for additional compensation, the California Civil,
12 Business and Professions, and Government Codes and any amendments to such laws. Plaintiff
13 acknowledges that the release in this Settlement includes his claims under the ADEA as amended
14 by the Older Workers Benefit Protection Act (“OWBPA”). Plaintiff acknowledges that Plaintiff
15 has carefully read and fully understands all of the provisions of this Agreement and knowingly and
16 voluntarily agrees to and intends to be legally bound by all of the terms set forth in this Agreement.
17 Plaintiff was advised and is hereby advised in writing to consider the terms of this Settlement and
18 consult with an attorney of Plaintiff’s choice prior to execution of this Agreement, and Plaintiff
19 acknowledges and agrees she has done so to the extent she desires. Plaintiff further acknowledges
20 that Plaintiff understands she has no less than twenty-one (21) days during which to consider the
21 provisions of this Settlement, although Plaintiff may sign and return it sooner. Plaintiff agrees with
22 Defendant that changes, whether material or immaterial, do not toll or restart the running of the
23 consideration period. Plaintiff understands he has a period of seven (7) calendar days after the date
24 she signs this Settlement (“Revocation Period”) to revoke this Settlement by delivering a written
25 notification of revocation to Defendant’s Counsel, and Plaintiff has been and hereby is advised in
26 writing that this Settlement as it relates to her claims under the ADEA shall not become effective
27 or enforceable until the Revocation Period has expired without a revocation by Plaintiff. Plaintiff
28 understands her rights or claims under the ADEA that may arise after the date this Settlement is

signed are not waived. As of Final Approval, Plaintiff hereby expressly waives and relinquishes, to the fullest extent permitted by law, the benefits of § 1542 of the California Civil Code, which states:

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.

This release, if not revoked by Plaintiff, shall be effective upon the Final Approval date. Plaintiff understands and agrees that Plaintiff waives any right she may have to reinstatement and/or reemployment by Defendant.

QUESTIONS AND DISPUTES

78. If a Class Member asks Defendant any questions relating to the Settlement, or if a Class Member inquires of Defendant for advice in opting out, Defendant shall instruct the Class Member to contact Class Counsel or the Administrator for assistance.

79. In the event that questions or disputes arise regarding the number of Covered Class Work Weeks worked by Plaintiff or any Class Member under this Settlement Agreement, Defendant shall provide to Class Counsel and the Administrator reasonably available information reasonably necessary in order to resolve that issue. Such information shall be provided in hard copy, as the Administrator may reasonably request. The Administrator shall be responsible for resolving any such disputes regarding Covered Class Work Weeks. The Administrator's determination of eligibility for any Settlement Awards under the terms of this Settlement Agreement shall be conclusive, final and binding on all Parties and all Settlement Class Members.

DEFENDANT'S LEGAL FEES

80. All of Defendant's own legal fees, costs and expenses incurred in the Action shall be borne by Defendant.

PROCEDURE FOR PAYMENT OF SETTLEMENT AWARDS

81. Within thirty (30) days after the Effective Date, the Settlement Awards shall be paid from the QSF as described above and solely for purposes of this Settlement Agreement. All payments shall be distributed in accordance with the following eligibility requirements:

1 a. Class Members who submit valid and timely requests for exclusion pursuant to the Class
2 Notice are not entitled to any Settlement Award and will not be bound by this Settlement
3 or any order or judgment entered by the Court approving this Settlement.

4 b. Class Members who do not exclude themselves from the Class shall be deemed to be
5 Settlement Class Members, and shall receive a Settlement Award, and will be bound by
6 the Settlement.

7 82. For purposes of this Settlement, a returned Request for Exclusion shall be deemed
8 valid only if the Settlement Class Member has dated and signed the form and it is timely returned
9 with a timely postmark by U.S. Mail. If the Settlement Class Member's Request for Exclusion is
10 defective, the Request for Exclusion shall be rejected by the Administrator.

11 83. The Administrator shall mail the checks with the Settlement Awards to each
12 Settlement Class Member within thirty (30) days after the Effective Date.

13 84. Any checks paid to Settlement Class Members shall remain valid and negotiable for
14 one hundred eighty (180) calendar days from the date of their issuance and may thereafter
15 automatically be voided if not cashed by the Settlement Class Members within that time. If any
16 Settlement Class Member does not cash his/her settlement check within one hundred eighty (180)
17 calendar days after the Administrator mails the Settlement Award payment to the Settlement Class
18 Member, the unclaimed funds shall be distributed to the California State Controller's Office's
19 Unclaimed Property Fund in the name of the Settlement Class Member.

20 85. Upon completion of administration of the Settlement, the Administrator shall
21 provide written certification of such completion to the Court, Class Counsel and Defendant's
22 counsel.

23 86. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
24 the Settlement Class, Class Counsel, or the Administrator based on mailings, distributions, and/or
25 payments made in accordance with this Settlement Agreement.

26 **ADMINISTRATION COSTS**

27 87. The Parties agree to cooperate in the Settlement administration process and to make
28 all reasonable efforts to control and minimize the costs and expenses incurred in administration of

1 the Settlement. All Administration Costs payable to the Administrator shall be paid out of the Gross
2 Settlement Amount.

3 **WITHDRAWAL PROVISION**

4 88. If more than five percent (5%) of the Class Members timely opt out of the
5 Settlement, Defendant shall have the sole and absolute discretion and right to withdraw from this
6 Agreement after expiration of the Response Deadline and written notice from the Administrator of
7 the final opt out rate. Defendant shall provide written notice of such withdrawal to Class Counsel
8 no less than 14 days in advance of exercising any rights within this Paragraph and shall agree to
9 meet and confer with the other Parties about its decision in good faith during the 14-day period. In
10 the event that Defendant elects to so withdraw, the withdrawal shall have the same effect as a
11 termination of this Agreement for failure to satisfy a condition of Settlement, and the Agreement
12 shall become null and void and have no further force or effect. In the event that Defendant exercises
13 this option, it will be solely responsible for the Administrator's costs reasonably incurred through
14 the date the withdrawal notice is received by the Administrator.

15 **NULLIFICATION OF SETTLEMENT AGREEMENT**

16 89. In the event of any of the following: (i) the Court does not enter any order specified
17 herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) the Court does
18 not enter the Settlement Order and Judgment as provided herein which becomes final as a result of
19 the occurrence of the Effective Date; or (iv) the Settlement does not become final for any other
20 reason, including the opt-out of eight percent (8%) or more of the Class Members and Defendant's
21 rejection of the Settlement on that basis, this Settlement Agreement shall be null and void *ab initio*
22 and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as
23 withdrawn or vacated by stipulation of the Parties. In such case, (i) the Parties shall be returned to
24 their respective statuses as of the date immediately prior to the execution of this Settlement
25 Agreement, and (ii) the Parties shall proceed in all respects as if this Settlement Agreement had not
26 been executed. In the event an appeal is filed from the Settlement Order and Judgment, or any other
27 appellate review is sought prior to the Effective Date, administration of the Settlement shall be
28 stayed pending final resolution of the appeal or other appellate review.

1 **NOTIFICATION AND CERTIFICATION BY ADMINISTRATOR**

2 90. The Administrator shall keep the Parties' Counsels apprised of the status of the
3 settlement administration process and its distributions of Settlement Awards on a weekly basis.

4 **NO EFFECT ON EMPLOYEE BENEFITS**

5 91. The Settlement Awards paid to Settlement Class Members and the Class
6 Representative Service Payment paid to Plaintiff shall be deemed not to be "pensionable" earnings
7 and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits
8 (e.g., vacation, sabbatical, holiday pay, retirement plans, etc.) of Settlement Class Members or
9 Plaintiff. The Parties agree that any Settlement Awards or Class Representative Service Payment
10 paid to Settlement Class Members under the terms of this Settlement Agreement do not represent
11 any modification of Settlement Class Members' previously credited hours of service or other
12 eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any
13 other plan or program sponsored by Defendant. Further, any Settlement Awards or Enhancement
14 Award paid hereunder shall not be considered "compensation" in any year for purposes of
15 determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee
16 welfare benefit plan, or any other plan or program sponsored by Defendant.

17 **PRIVACY OF DOCUMENTS AND INFORMATION**

18 92. Information and documents provided to Class Counsel pursuant to Cal. Evid. Code
19 §1152 and all copies and summaries of any identifying information (including the Class Members
20 and PAGA Members name, last-known mailing address, Social Security number, number of
21 Covered Class Workweeks and number of Covered PAGA Pay Periods) provided to Class Counsel
22 by Defendant in connection with the mediation, other settlement negotiations, or in connection with
23 the Settlement ("Class Data"), may be used only with respect to this Settlement, and no other
24 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
25 or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's
26 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff
27 shall destroy, all paper and electronic versions of Class Data received from Defendant, unless, prior
28 to the Court's discharge of the Administrator's obligation, Defendant makes a written request to

1 Class Counsel for the return, rather than the destruction of Class Data.

2 **PUBLICITY**

3 93. From and after the execution of this Settlement Agreement, Plaintiff and Class
4 Counsel agree not to publicize this Settlement in any way and, except as required by law, agree to
5 limit statements regarding the Action and the Settlement to responding to questions and describing
6 and explaining the terms of this Settlement Agreement to Class Members. Plaintiff and Class
7 Counsel shall not hold any press conference or speak to the media regarding the Action or
8 Settlement and shall not include information regarding the Settlement in any presentations to
9 prospective clients, or the public, or in any advertisement in any form or media. The Parties will
10 agree to make no comments to the media or otherwise publicize the terms of the settlement on any
11 social media or websites. This shall not restrict Class Counsel from responding to inquiries posed
12 by Class Members relating to this Settlement.

13 **EXHIBITS AND HEARINGS**

14 94. The terms of this Settlement Agreement include the terms set forth herein and
15 attached Exhibits, which are incorporated by reference as though fully set forth herein. Any exhibits
16 to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any
17 paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only
18 and do not constitute a part of this Settlement.

19 **INTERIM STAY OF PROCEEDINGS**

20 95. The Parties agree to hold in abeyance all proceedings in this Action, except such
21 proceedings necessary to implement and complete the Settlement, pending the Final Approval
22 Hearing to be conducted by the Court.

23 **AMENDMENT OR MODIFICATION**

24 96. This Settlement Agreement may be amended or modified only by a written
25 instrument or signed stipulation signed by counsel for all Parties or their successors-in-interest.

26 **ENTIRE AGREEMENT**

27 97. This Settlement Agreement and the attached exhibits constitute the entire agreement
28 among the Parties, and no oral or written representations, warranties or inducements have been

1 made to any Party concerning this Settlement Agreement or its exhibits other than the
2 representations, warranties and covenants contained and memorialized in such documents. All prior
3 or contemporaneous negotiations, agreements, understandings, and representations, whether
4 written or oral, are expressly superseded hereby and are of no further force and effect. Each of the
5 Parties acknowledge that she or it has not relied on any promise, representation or warranty, express
6 or implied, not contained in this Settlement Agreement.

7 **AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**

8 98. Counsel for all Parties warrant and represent that they are expressly authorized by
9 the Parties whom they represent to enter into this Settlement Agreement and to take all appropriate
10 action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to
11 effectuate its terms, and to execute any other documents required to effectuate the terms of this
12 Settlement Agreement. The Parties and their counsel agree to cooperate with each other and to use
13 their best efforts to ensure the implementation of the Settlement. In the event the Parties are unable
14 to reach agreement on the form or content of any document needed to implement the Settlement,
15 or on any supplemental provisions or actions that may become necessary to effectuate the terms of
16 this Settlement, the Parties shall seek the assistance of the Court or the Mediator to resolve such
17 disagreement.

18 **BINDING ON SUCCESSORS AND ASSIGNS**

19 99. This Settlement Agreement shall be binding upon, and inure to the benefit of, the
20 heirs, beneficiaries, successors or assigns of the Parties hereto, as previously defined.

21 **CALIFORNIA LAW GOVERNS**

22 100. All terms of this Settlement Agreement and the exhibits hereto shall be governed by
23 and interpreted according to the laws of the State of California, regardless of its conflict of laws.

24 **COUNTERPARTS**

25 101. This Settlement Agreement may be executed in one or more counterparts. All
26 executed counterparts and each of them shall be deemed to be one and the same instrument,
27 provided that counsel for the Parties to this Settlement Agreement shall exchange among
28 themselves original signed counterparts.

1
2 **COOPERATION AND DRAFTING**

3 102. Each of the Parties has cooperated in the drafting and preparation of this Settlement
4 Agreement; hence the drafting of this Settlement Agreement shall not be construed against any of
5 the Parties.

6 **APPEAL AND OPT OUT AND OBJECTION**

7 103. Plaintiff waives any right to appeal the Settlement and will not opt-out of the
8 Settlement or object to the Settlement and will be considered a Settlement Class Member.

9 **JURISDICTION OF THE COURT**

10 104. Any dispute regarding the interpretation or validity of or otherwise arising out of
11 this Settlement Agreement, or relating to the Action or the Settled Claims, shall be subject to the
12 exclusive jurisdiction of the California state courts in and for the County of Sacramento, and the
13 Plaintiff, Settlement Class Members, and Defendant agree to submit to the personal and exclusive
14 jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the interpretation,
15 implementation and enforcement of the terms of this Settlement Agreement and all orders and
16 judgments entered in connection therewith, and the Parties and their counsel submit to the
17 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement
18 embodied in this Settlement Agreement and all orders and judgments entered in connection
19 therewith.

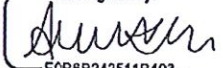
20 **INVALIDITY OF ANY PROVISION**

21 105. The Parties request that before declaring any provision of this Settlement Agreement
22 invalid, the Court shall first attempt to construe all provisions valid to the fullest extent possible
23 consistent with applicable precedents. The Court may allocate less to the Named Plaintiff, Class
24 Counsel, and/or Administrator than indicated in this Settlement Agreement without impacting the
25 validity and enforceability of the Agreement. Except for the provisions set forth in the preceding
26 sentence, in the event that any of the material terms or conditions of this Agreement are not fully
27 and completely approved by the Court and satisfied, this Agreement shall terminate at the option
28 of either Party, or both, and all terms of the Agreement, including any payments by Defendant,

shall be null and void. Any sums not awarded for the Class Counsel Attorneys' Fee Award and Class Counsel Costs Award, Class Representative Service Payment, and Settlement Administration Costs, as well as amounts attributed to Class Members who opt-out, shall be added to the NSA at the time of distribution. Without limiting the generality of the foregoing, if this Agreement is terminated for failure to satisfy any of the terms or conditions of this Agreement, nothing in this Agreement shall be used, construed or admissible as evidence by or against any Party as a determination, admission, or concession of any issue of law or fact in this litigation, or in any other proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend this litigation as if this Agreement never existed.

Dated: 4/24/2024, 2024

DocuSigned by:


ECB6B242511B403...

Plaintiff Adriana Garcia

Dated: 5.6 2024

MARQUEZ BROTHERS FOODS, INC.

BY: 

Executive Vice President

AGREED AS TO FORM:

Dated: May 6, 2024



Yvonne Arvanitis Fossati

Hazel U. Poci

Isabella L. Shin

JACKSON LEWIS, P.C.

Attorneys for Defendant Marquez Brothers Foods, Inc.

Dated: April 24 2024



Marcus Bradley

BRADLEY/GROMBACHER, LLP

Attorneys for Plaintiff Adriana Garcia

4881-9119-5061, v. 1