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FILED
Superior Court of California
County of Los Angeles

08/15/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: B. Guerrero Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EDGAR MATA and ELVIS OLIVARES,
individually, on behalf of other members of the
general public similarly situated, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”);

Plaintiffs,

v.

DAY-LEE FOODS INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV21664

Assigned for All Purposes to:
Honorable Kenneth R. Freeman
Department 14

CLASS ACTION

**FURTHER AMENDED ~~PROPOSED~~
ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Hearing Date: July 19, 2022
Hearing Time: 11:00 a.m.
Hearing Place: Department 14

Complaint Filed: June 4, 2020
FAC Filed: December 6, 2021
Trial Date: None Set

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

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable Kenneth R. Freeman presiding, on July 19, 2022 at 11:00 a.m.. The Court having
4 considered the papers submitted in support of the Motion, HEREBY ORDERS THE
5 FOLLOWING:

6 1. The following Class is conditionally certified for purposes of settlement only: any
7 and all persons who have been employed by Defendant Day-Lee Foods, Inc. (“Defendant”) as
8 non-exempt employees in California at any time from June 4, 2016, to September 15, 2021
9 (“Class,” “Class Members,” and “Class Period”).

10 2. The Court grants preliminary approval of the settlement based upon the terms set
11 forth in the Amended Joint Stipulation and Settlement Agreement (“Settlement Agreement,”
12 “Settlement,” or “Agreement”) attached hereto as **Exhibit 1**. Capitalized terms shall have the
13 definitions set forth in the Settlement Agreement.

14 3. The Settlement appears to be fair, adequate, and reasonable to the Class. The
15 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
16 only to any objections that may be raised at the Final Approval Hearing and final approval by
17 this Court.

18 4. Plaintiffs Edgar Mata and Elvis Olivares (“Plaintiffs”) are conditionally approved
19 as the Class Representatives for the Class.

20 5. Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation are
21 conditionally approved as Class Counsel for the Class.

22 6. A Final Approval Hearing on the question of whether the Settlement Agreement,
23 the Attorney Fee Award, the Cost Award, and the Class Representative Enhancement Payments
24 should be finally approved as fair, reasonable, and adequate as to all Class Members who did not
25 submit a valid and timely request to exclude themselves from the Settlement (“Participating Class
26 Members”) is scheduled on the date and time set forth in Paragraph 13 below.

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1 7. The Court confirms Phoenix Class Action Administration Solutions (“Phoenix”) as
2 the Settlement Administrator.

3 8. The proposed payment of Administration Costs to Phoenix in the amount not to
4 exceed \$15,000 for its services is conditionally approved.

5 9. The Court also hereby conditionally approves and orders payment from the
6 Maximum Settlement Amount the Private Attorneys General Act of 2004 (“PAGA”) Payment
7 of \$100,000, seventy-five percent (75%) of which (\$75,000) will be paid to the California Labor
8 and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which
9 (\$25,000) shall be distributed to the aggrieved employees eligible to recover the PAGA Payment
10 that consist of all individuals employed as non-exempt employees by Defendant within
11 California from May 12, 2020, through September 15, 2021 (“PAGA Payment,” “Eligible
12 Aggrieved Employees,” and “PAGA Timeframe”), on a pro rata basis.

13 10. The Court approves, as to form and content, the Notice of Class Action Settlement
14 (“Class Notice”) as attached as **Exhibit A** to the Settlement Agreement. The Court also approves
15 the procedure for Class Members to participate in, to opt out of, and to object to the Settlement
16 as set forth in the Class Notice. The Court also approves, as to the form and content, of the
17 Election Not to Participate In (“Opt Out” From) Class Action Settlement (“Exclusion Form”) the
18 Class Members may use to opt out of the Settlement attached as **Exhibit B** to the Settlement
19 Agreement. The Class Notice and Exclusion Form are collectively known as the Notice Packet.

20 11. The Court directs the mailing of the Notice Packet to all identified Class Members
21 via first-class regular U.S. Mail in accordance with the implementation schedule set forth in
22 paragraph 13 below. The Court finds the dates selected for the mailing and distribution of the
23 Notice Packet, as set forth in the Implementation Schedule, meet the requirements of due process
24 and provide the best notice practicable under the circumstances and shall constitute due and
25 sufficient notice to all persons entitled.

26 12. To facilitate administration of the Settlement Agreement pending final approval,
27 the Court hereby enjoins Plaintiffs and all Class Members from filing or prosecuting any claims,
28

1 suits or administrative proceedings (including, but not limited to, filing claims with the Division
2 of Labor Standards Enforcement of the California Department of Industrial Relations) released
3 by the Settlement Agreement (Released Claims) unless and until such Class Members have filed
4 valid requests for exclusion with the Settlement Administrator and the time for filing valid
5 requests for exclusion with the Settlement Administrator has not elapsed.

6 13. The Court orders the following **Implementation Schedule** for further
7 proceedings:

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| 9 | a. | Deadline for Defendant to submit Class List to Settlement Administrator | Within twenty-one (21) calendar days after entry of the Preliminary Approval Order |
| 10 | b. | Deadline for Settlement Administrator to mail the Notice Packet to Class Members | Within fourteen (14) calendar days after the receipt of the Class List from Defendant |
| 11 | c. | Deadline for Class Members to request for exclusion from Settlement or postmark objections to Settlement to the Settlement Administrator | Forty-five (45) calendar days from the initial mailing of the Notice Packet |
| 12 | d. | Deadline for Class Counsel to file Motion for Final Approval of Settlement | Within thirty (30) calendar days before the final approval hearing date in conformity with Department 14 policy |
| 13 | e. | Deadline for Class Counsel to file Motion for Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments | Within thirty (30) calendar days before the final approval hearing date in conformity with Department 14 policy |
| 14 | f. | Final Approval Hearing and Final Approval | December 22, 2022 at 10:00 a.m. in Department 14 |
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21 **IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Kenneth R. Freeman", is written over a horizontal line.

22
23 Dated: 08/15/2022

24 By Kenneth R. Freeman / Judge
25 Honorable Kenneth R. Freeman
26 Judge of the Superior Court

EXHIBIT 1

AMENDED JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiffs Edgar Mata and Elvis Olivares (“Plaintiffs,” “Plaintiff Mata,” and “Plaintiff Olivares”) on behalf of themselves and others similarly situated and other aggrieved employees and Defendant Day-Lee Foods, Inc. (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: All administrative costs incurred by the Settlement Administrator to administer this Settlement including the cost of notice to the Class Members, settlement administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement, which shall not exceed \$15,000. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Amended Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award**: The amount, not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$665,000, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Case or Class Action**: The lawsuit originally filed by Masako Fujiya on June 4, 2020, entitled *Fujiya v. Day-Lee Foods, Inc.*, Case No. 20STCV21664, in the Superior Court of California, County of Los Angeles as well as the First Amended Complaint filed by Plaintiffs on December 6, 2021 entitled *Mata, et al., v. Day-Lee Foods, Inc.*, in the Superior Court of California, County of Los Angeles.
- E. **Class**: Any and all persons who have been employed by Defendant as non-exempt employees in California at any time from June 4, 2016, to September 15, 2021.
- F. **Class Counsel**: Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation.
- G. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.

- H. Class Notice or Notice:** The “Notice of Class Action Settlement” or “Notice” shall mean the notice to be provided to all Class Members regarding the terms of this Settlement, substantially like the form attached hereto as **Exhibit A**, subject to Court approval. The Notice shall constitute class notice pursuant to California Rule of Court 3.769 (f) and, once approved by the Court shall be deemed compliant with California Rule of Court 3.766.
- I. Class Period:** The time period from June 4, 2016, to September 15, 2021.
- J. Class Representatives or Plaintiffs:** Edgar Mata and Elvis Olivares.
- K. Class Representative Enhancement Payments:** The amount the Court awards to Plaintiff for their services as Class Representatives, which will not exceed \$10,000 to each Plaintiff. These payments shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. These enhancement payments are subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. Complaints:** The complaints originally filed by Masako Fujiya in this case entitled *Fujiya v. Day-Lee Foods, Inc.*, Case No. 20STCV21664, in the Superior Court of California, County of Los Angeles, on June 4, 2020, and the First Amended Complaint filed by Plaintiffs in this case entitled *Mata, et al., v. Day-Lee Foods, Inc.* in the Superior Court of California, County of Los Angeles, on December 6, 2021.
- M. Comprehensive Release:** Plaintiffs are releasing in exchange for the consideration provided for by this Agreement a comprehensive release of all known and unknown claims by Plaintiffs, including a California Civil Code section 1542 waiver arising out of the operative allegations in the Case.
- N. Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- O. Counsel for Defendant:** Attorneys Daniel H. Qualls and William G. Anderson of Lewis Brisbois Bisgaard & Smith LLP.
- P. Court:** The Superior Court of California, County of Los Angeles.
- Q. Defendant:** Day-Lee Foods, Inc.

- R. Effective Final Settlement Date:** The effective date of this Settlement or Final Settlement Date shall be: (1) the date of final affirmation of the Final Approval from any appeal, the expiration of the time for, or the denial of, a petition to review the Final Approval, or if review is granted, the date of final affirmation of the Final Approval following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final Approval or the final dismissal of any proceeding to review the Final Approval, provided that the Final Approval is affirmed and/or not reversed in any part; or (3) if no Class Members intervene but objections are filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Final Approval of the Settlement, as determined under Rule 8.104(a)(3) of the California Rules of Court or (4) if no Class Members intervene and there are no objections, the date the Court enters the Final Approval Order and Final Judgment.
- S. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA Payment that consist of all individuals employed as non-exempt employees by Defendant within California from May 12, 2020, through September 15, 2021 ("PAGA Timeframe").
- T. Exclusion Form:** The Election Not to Participate In ("Opt Out" From) Class Action Settlement, substantially like the form attached hereto as **Exhibit B**, subject to Court approval.
- U. Judgment or Final Approval:** The "Final Approval Order" means the final order entered by the Court following the Final Fairness and Approval Hearing. The "Final Judgment" means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- V. Gross Settlement Amount:** The total value of the Settlement is a non-reversionary One Million Nine Hundred Thousand Dollars (\$1,900,000). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer is not included in the Gross Settlement Amount and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- W. Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement

Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.

- X. **LWDA**: California Labor and Workforce Development Agency.
- Y. **Net Settlement Amount**: The total amount of money available for payout to Participating Class Members, which is the Gross Settlement Amount less the Attorney Fee Award, the Cost Award, Class Representative Enhancement Payments, the PAGA Payment paid to the LWDA and Eligible Aggrieved Employees, and Administration Costs. In other words, the Net Settlement Amount is the portion of the Gross Settlement Amount that will be distributed to Class Members who do not request exclusion from the Settlement.
- Z. **Notice Packet**: The Notice and Exclusion Form.
- AA. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- BB. **PAGA Payment**: The PAGA Payment consists of \$100,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Class Action. Seventy-five percent (75%) of which (\$75,000) shall be paid to the LWDA, and twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- CC. **PAGA Released Claims**: PAGA Released Claims are any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties that were alleged or which could have been alleged in the Class Action based on the facts and allegations pleaded in the Complaints and Plaintiff Edgar Mata's letter to the LWDA. The scope of the release of the PAGA claims is limited to claims arising during the PAGA Timeframe.
- DD. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- EE. **Parties**: Plaintiffs Edgar Mata and Elvis Olivares as individuals and as Class Representatives, and Defendant Day-Lee Foods, Inc.
- FF. **Preliminary Approval or Preliminary Approval Order**: The order entered by the Court following the Preliminary Approval Hearing approving the proposed Settlement.
- GG. **Qualified Settlement Fund**: A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.*, which is established

by the Settlement Administrator for the benefit of Participating Class Members, Plaintiffs and Class Counsel.

- HH. Released Claims:** Released Claims are all claims, rights, demands, damages, liabilities and causes of action, in law or in equity, arising at any time during the Class Period alleged in the Complaints, Plaintiff Edgar Mata’s letter to the LWDA, or that could have been alleged based on the facts pleaded in the Class Action, along with related claims and all associated penalties. The scope of the Released Claims is limited to the claims arising during the Class Period.
- II. Released Parties:** Defendant and any and all of its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.
- JJ. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Notice Packet.
- KK. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Notice Packet by first class U.S. mail to all Class Members at the address Defendant have on file for those Class Members and to all former employee Class Members at the address resulting from the skip trace. The Notice Packet will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out (exclude themselves) from the Settlement. Any Class Member who does not receive Notice Packet after the steps outlined above have been taken will still be bound by the Settlement and/or Judgment.
- LL. Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions (“Phoenix”).
- MM. Superior Court:** The Superior Court of California, County of Los Angeles.

II. RECITALS

- A.** Per the Complaints, the Plaintiffs allege, *inter alia*, on behalf of themselves, all others similarly situated, and other aggrieved employees, that Defendant violated California state wage and hour laws and the California Business and Professions Code section 17200 *et seq.* and PAGA because of Defendant’s wage and hour policies and practices. Specifically, Plaintiffs allege that Defendant: (1) failed to pay all wages, including minimum wages, regular wages, overtime and double time; (2) failed to properly calculate overtime and double time wages, partly due to off-the-clock work and an improper rounding

policy; (3) failed to provide meal breaks (including without limitation first and second meal breaks) each day based on the hours worked by each employee, including meal breaks that were short, late, interrupted, and/or missed altogether; (4) failed to authorize and permit legally compliant rest breaks each day based on the hours worked by each employee, including rest breaks that were short, late, interrupted, and/or missed altogether; (5) failed to factor non-discretionary bonuses into employees' regular rates of pay for overtime compensation purposes; (6) failed to timely pay wages during employment for each pay period for every employee; (7) failed to timely pay wages upon discharging employees; and (8) failed to reimburse employees for all reasonable and necessary business expenses incurred in the discharge of their duties for Defendant. Plaintiffs further alleged that the aforementioned resulted in the Class receiving inaccurate wage statements; the underpayment of wages to employees upon termination and/or resignation; unfair business practices; and a violation of PAGA.

- B.** After Masako Fujiya originally filed the complaint, the Parties agreed to attend mediation. Prior to mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. Specifically, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. Plaintiffs also interviewed Class Members who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- C. Mediation.** Plaintiffs and Class Counsel have engaged in good faith, arms-length negotiations with Defendant concerning possible settlement of the claims asserted in the Class Action. On August 26, 2021, the Parties participated in a mediation before mediator Steven J. Rottman. Under the auspices of the mediator, the Parties reached a settlement of the Class Action in principle, on September 14, 2021.
- D. Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have considered the uncertainty and risk of further litigation, the potential outcome, the existing arbitration agreements and the difficulties and delays inherent in such litigation as well as Defendant's past and current financial condition confirmed through the opinion

of an accounting expert. Plaintiffs and Class Counsel conducted extensive settlement negotiations, including formal mediation on August 26, 2021. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- E. Defendant’s Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- F. Defendant’s Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for PAGA or class treatment. Defendant also asserts several defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any statements, discussions, or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can serve as adequate Class Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- G. Plaintiffs’ Claims.** Plaintiffs assert that Defendant’s defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiffs, Class Members, or Class Counsel will oppose Defendant’s efforts to use this Agreement to prove that Plaintiffs and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes,

that Defendant are obligated to pay under this Settlement Agreement is One Million Nine Hundred Thousand Dollars (\$1,900,000).

- B. Notice to the Labor and Workforce Development Agency (“LWDA”).** On May 12, 2021, Plaintiff Edgar Mata filed and served his Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 Thus, Plaintiff Edgar Mata has satisfied his notice obligations under the PAGA.
- C. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the Settlement Class only for purposes of settlement. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit. Defendant expressly reserves the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be modified or reversed on appeal or otherwise not become final.
- E. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as the representatives for the Class.
- F. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- G. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to: (i) the number of weeks he or she worked during the Class Period based on the Class List provided by Defendant, divided by (ii) the total number of weeks

worked by any and all Participating Class Members collectively, during the Class Period based on the same Class List, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

2. **Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) wages and eighty percent (80%) penalties and interests. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share. Eligible Aggrieved Employees' portion of the PAGA Payment will be allocated as one hundred percent (100%) penalties and will be issued an IRS form 1099 if it exceeds \$600.

H. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To the Plaintiffs, Edgar Mata and Elvis Olivares.** In addition to their respective Individual Settlement Shares, and subject to the Court's approval, Plaintiffs Edgar Mata and Elvis Olivares will each receive up to Ten Thousand Dollars (\$10,000) as the Class Representative Enhancement Payments. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Enhancement Payments. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payments, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiffs, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members.
2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agree not to oppose, a total Attorney Fee Award not to exceed thirty-five

percent (35%) or \$665,000 of the Gross Settlement Amount and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. Except as provided herein, each side shall bear its own attorneys' fees and costs.

- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator – Phoenix – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$15,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. In the event the Court does not approve the entirety of the application for the Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendant nor the Plaintiffs shall be responsible for paying the difference between the amount requested and the amount awarded.
- 5. To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.

6. To Eligible Aggrieved Employees. The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the \$25,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. Settlement checks issued to the Eligible Aggrieved Employees pursuant to this Agreement shall expire one hundred eighty (180) days from the date they are issued by Defendant. Any unclaimed funds after the one hundred eighty (180) days shall be turned over by the Settlement Administrator to the California State Controller: Unpaid Wage Fund.

I. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for: (a) preparing, translating into Spanish, printing, and mailing the Notice Packet to the Class Members; (b) keeping track of any objections or requests for exclusion from Class Members; (c) performing skip traces and re-mailing Notice Packets and Individual Settlement Shares to Class Members; (d) calculating any and all payroll tax deductions as required by law; (e) calculating each Participating Class Member's Individual Settlement Share and each Eligible Aggrieved Employee's portion of the PAGA Payment; (f) providing weekly status reports to Counsel for Defendant and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; (g) providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; (h) mailing Individual Settlement Shares and portion of the PAGA Payment to Participating Class Members and Eligible Aggrieved Employees respectively; (i) mailing the portion of the PAGA Payment to the LWDA; (j) distributing the Attorney Fee Award and the Cost Award to Class Counsel; (k) printing and providing Class Members and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; (l) providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; (m) providing any funds remaining in the Qualified Settlement Fund as a result of uncashed checks to the California State Controller: Unpaid Wage Fund; and (n) performing other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Phoenix or otherwise have a relationship with Phoenix that could create a conflict of interest.

J. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiffs will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice and Exclusion Form. Class Counsel will submit to Counsel for Defendant for approval drafts of the motions for Preliminary Approval of settlement, Notice Packet to Class Members. Counsel for Defendant will not unreasonably withhold approval. Class Counsel will not submit motions to the Court for Preliminary Approval, or Notice Packets, without Counsel for Defendant's approval.
 - b.** At the Preliminary Approval hearing, the Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval hearing.
 - c.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The amounts of the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments.
- 2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

- a. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the following information about each Class Member's: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; and (5) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class ("collectively "Class List"). If any or all this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former Defendant employee Class Members. The Settlement Administrator shall maintain the Class List and all data contained within the Class List as private and confidential. This provision will not impede Class Counsel's ability to discharge fiduciary duties, including effectuating the terms of this settlement.
- b. The Settlement Administrator shall run all the addresses on the Class List through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. The Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available within fourteen (14) calendar days after the receipt of the Class List from Defendant.
- c. If a Notice Packet is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If the Notice

Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or forwarded mail, will have their Response Deadline to postmark an Exclusion Form, or mail an objection to the Settlement extended by ten (10) calendar days from the original Response Deadline. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed notice.

- d. Class Members may dispute the information provided in their Notice Packet, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled.
- e. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. However, any cure period will not extend the Response Deadline. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendant of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final

Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

- 3. Objections to Settlement.** The Notice Packets will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. For any Class Member to object to this Settlement, or any term of it, the person making the objection must not submit a request for exclusion (i.e., must not opt out). The timeframe to submit an objection will not be increased for returned mailings.

 - a. Format.** Any Objections must: (a) state the objecting person's full name, address, and telephone number and the name and address of counsel, if any; (b) have the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; (f) be signed by the objecting Class Member or his or her attorney; and (g) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing.
 - b. Appearance at Final Approval and Oral Objection.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel, at his or her own expense and orally object to the Settlement. Any attorney who will represent an individual objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than fifteen (15) calendar days before the Final Approval hearing. However, the Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak regarding his or her objection regardless of whether the Class Member submitted a written objection. In other words, a Class Member is not required to submit a written objection to be heard at the Final Approval Hearing.
 - c.** If a Class Member objects to the Settlement, the objecting Class Member will remain a member of the Settlement and if the Court approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as a Participating Class Member who does not object.

- d. Plaintiffs and Defendant will be permitted to respond in writing to such objections no later than seven (7) days before the Final Approval hearing. Plaintiffs waive any right to object to the Settlement, and hereby endorse the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class.

- 4. **Request for Exclusion from the Settlement (“Opt-Out”).** The Notice Packet will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member’s name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.
 - a. **Confirmation of Authenticity.** The date of the initial mailing of the Notice Packet, and the date the signed request to be excluded is postmarked, shall be conclusively determined according to the records of the Settlement Administrator. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment, will not receive an Individual Settlement Share, and will not have any right to object, appeal, or comment thereon. A Class Member who does not complete and mail a timely Exclusion Form will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

 - b. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed to Class Members, the number of re-mailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

- c. Defendant's Option to Terminate.** Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if ten percent (10%) or more of the Class Members make a valid request to be excluded from the Settlement. If Defendant exercises this option to nullify the Settlement, Defendant shall pay for all of the third-party administrator's costs incurred up to the point of Defendant's notification of nullification of the Settlement. The Parties agree to an opt-out/objection period of thirty (30) days.
- d. Eligible Aggrieved Employees May Not Opt-Out of PAGA Settlement.** Notwithstanding the foregoing, the Parties agree that there is no statutory or other right for any Eligible Aggrieved Employees to opt out or otherwise exclude himself or herself from the PAGA portion of the Agreement which releases the PAGA Released Claims. An Eligible Aggrieved Employee who submits a valid and timely request for exclusion shall still receive his or her share of the PAGA Payment and shall release the PAGA Released Claims.

5. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a.** Upon expiration of the Objection/Exclusion Deadlines, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) the Administration Costs; (4) the Class Representative Enhancement Payments; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement. Class Counsel will submit to Counsel for Defendant for approval drafts of the motion for Final Approval of settlement to Class Members. Counsel for Defendant will not unreasonably withhold approval. Class Counsel will not submit motions to the Court without Counsel for Defendant's approval.
- b.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no

further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree Plaintiffs shall be responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement Payments, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.
9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is

the Gross Settlement Amount. The Settlement Administrator shall keep Counsel for Defendant and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendant and Class Counsel.

- a. **Funding the Settlement:** No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of One Million Nine Hundred Thousand Dollars (\$1,900,000) needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. At this time, Defendant will also wire Defendant's portion of payroll taxes as the Class Members' current or former employer, which will be paid separately and in addition to the Gross Settlement Amount, to the Settlement Administrator. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.
- b. **Disbursement:** Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. The Settlement Administrator will also forward a check for the PAGA Payment to the LWDA for settlement of the PAGA claim.
- c. **Qualified Settlement Fund:** The Parties and Settlement Administrator shall treat the Qualified Settlement Fund as coming into existence on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

10. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks, and pay the

amount of the Individual Settlement Share to the California State Controller: Unpaid Wage Fund.

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

12. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Amount.

K. Release of Claims. Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, Class Members, who do not submit a timely and valid request for exclusion, hereby waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims for the time frame within the Class Period.

L. Effect of PAGA Settlement. Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are barred from pursuing any action for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, against the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in Plaintiff Edgar Mata's letter to the LWDA and the Complaints. The scope of the release of the PAGA claims is limited to claims arising during the PAGA Timeframe.

M. Plaintiffs' Release of Claims and General Release. Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, and in exchange for the Class Representative Enhancement Payments to the Plaintiffs in an amount not to exceed Ten Thousand Dollars (\$10,000) to each Plaintiff, in recognition of their work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiffs hereby provide a general release of claims for themselves and their respective spouse, heirs, successors and assigns, and forever release, remise, and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, equity, or otherwise, arising out of Plaintiffs' respective employment with Defendant, payment of wages during that employment and the cessation of that employment and/or violation of any federal, state or local statute, rule, ordinance or regulation. With respect to the General Release, each of the

Plaintiffs stipulates and agrees that, as of the Effective Final Settlement Date, Plaintiffs shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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.

N. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Case, or that but for the Settlement, a Class should be certified in the Case. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Case will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant's, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy, or bonus program. Defendant retain the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.

- 3. Publicity.** Class Counsel and Plaintiffs agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel’s adequacy to serve as Class Counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys’ fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administrating this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiffs agree that they shall not publish any press releases or press statements regarding the Settlement, identify Defendant or Counsel for Defendant by name in any media including Class Counsel’s website, or have any communications with the press or media about the Case or the Settlement. Plaintiffs, in response to inquiries, will state that that “the Case was resolved.” This provision will not impede Class Counsel’s ability to discharge fiduciary duties, including effectuating the terms of this settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. Nothing in this Agreement in any way limits or negates the enforceability and effect of any underlying arbitration agreements signed by employees of Defendant, obligating them to arbitrate any and all claims on an individual (and not on a class, collective, or representative) basis.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Counsel for Defendant warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents,

supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.
- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 9. Amendment or Modification of the Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest subject to the Court's approval.
- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 11. No Prior Assignment.** Plaintiffs hereby represent, covenant, 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 rights herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 15. Jurisdiction of the Superior Court.** Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 16. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 17. 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.
- 18. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 19. Class Size Escalator.** Defendant estimates that the Class size is 551 and the number of workweeks is 53,509. If the actual number of Class Members exceeds fifteen percent (15%) of 551 or the actual total workweeks exceeds ten percent (10%) of 53,509, the Gross Settlement Amount shall increase

proportionally by the increase in the class size or workweeks in excess of such percentages, whichever is greater.

[SIGNATURES ON NEXT PAGE]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 05/10/2022, 2022


EDGAR MATA



Plaintiff

Dated: 05/11/2022, 2022

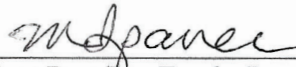
ELVIS OLIVARES



Plaintiff

Dated: May 9, 2022

DAY-LEE FOODS, INC.



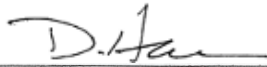
Defendant Day-Lee Foods, Inc.

Misako Ipavec

Senior Vice President of Corporate Management and
Authorized Signatory for Day-Lee Foods, Inc.

Dated: May 12, 2022

JUSTICE LAW CORPORATION



Douglas Han, Esq.

Attorneys for Plaintiffs Edgar Mata and Elvis
Olivares, on behalf of themselves and all others
similarly situated

Dated: May 11, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP



Daniel H. Qualls, Esq.

William G. Anderson, Esq.

Attorneys for Defendant Day-Lee Foods, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation.

This is not a lawsuit against you, and you are not being sued.

However, your legal rights are affected by whether you act or don't act.

TO: Any and all persons who have been employed by Defendant Day-Lee Foods, Inc. (“Defendant”) as non-exempt employees in California at any time from June 4, 2016, to September 15, 2021.

The California Superior Court, County of Los Angeles has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned actions (the “Class Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

Any and all persons who have been employed by Defendant as non-exempt employees in California at any time from June 4, 2016, to September 15, 2021.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

| | |
|--|--------|
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1. *Why Have I Received This Notice?*

The personnel records of Day-Lee Foods, Inc (“Defendant”) indicate that you may be a Class Member. The Settlement will resolve all Class Members’ Released Claims, as described below, from the time period from June 4, 2016 to September 15, 2021 (the “Class Period”).

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the Superior Court of California, County of Los Angeles. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2022 at [time a.m./p.m.], before Hon. Kenneth R. Freeman, located at 312 North Spring Street, Los Angeles, California 90012, Department 14 (Spring Street Courthouse).

2. What Is This Case About?

Masako Fujiya originally filed the wage-and-hour class action lawsuit against Defendant in the Superior Court of California, County of Los Angeles, on June 4, 2020, Case Number 20STCV21664. The wage-and-hour class action lawsuit alleged violation of: (1) Labor Code section 226.7 (unpaid rest period premiums); (2) Labor Code sections 1194 and 1197 (unpaid minimum wages); (3) Labor Code sections 201 and 202 (final wages not timely paid); (4) Labor Code section 226(a) non-compliant wage statements; and (5) Business & Professions Code sections 17200, *et seq.*

On May 12, 2021, Plaintiff Edgar Mata provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions

The Parties attended mediation on the matter on August 26, 2021. Under the auspices of the mediator Steven J. Rottman, the Parties were able to reach a settlement of the Class Action.

In line with the Parties’ decision to settle the Class Action, the Parties filed a First Amended Complaint in the Superior Court of California, County of Los Angeles on December 6, 2021. The First Amended Complaint withdrew Masako Fujiya as the plaintiff and added Plaintiffs Edgar Mata and Elvis Olivares (“Plaintiffs”) as the new plaintiffs and class representatives. Moreover, the First Amended Complaint alleged violation of: (1) Labor Code sections 510 and 1198 (unpaid overtime); (2) Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) Labor Code section 226.7 (unpaid rest period premiums); (4) Labor Code sections 1194, 1197.1, and 1197 (unpaid minimum wages); (5) Labor Code sections 201, 202, and 203 (final wages not timely paid); (6) Labor Code section 226(a) non-compliant wage statements; (7) Labor Code section 2800 and 2802 (unreimbursed business expenses); (8) Labor Code sections 2698, *et seq.* (Private Attorneys General Act of 2004); and (9) Business & Professions Code sections 17200, *et seq.*

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. Am I A Class Member?

You are a Class Member if you are currently or were formerly employed by Defendant as a non-exempt employee in California at any time from June 4, 2016 to September 15, 2021.

4. How Does This Class Action Settlement Work?

In this Class Action, Plaintiffs sued on behalf of themselves and all other similarly situated employees who were employed by Defendant as non-exempt employees in California at any time during the Class Period. Plaintiffs and these other current and former employees comprise a “Class” and are “Class Members.” The settlement of this Class Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

| Attorneys for Plaintiffs and the Class | Attorneys for Defendant |
|---|--|
| JUSTICE LAW CORPORATION Douglas Han Shunt Tatavos-Gharajeh 751 N. Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Telephone: (818) 230-7502 Facsimile: (818) 230-7259 | LEWIS BRISBOIS BISGAARD & SMITH LLP Daniel H. Qualls William G. Anderson 333 Bush Street, Suite 1100 San Francisco, California 94104-2872 Telephone: (415) 362-2580 Facsimile: (414) 434-0882 |

The Court has decided that Justice Law Corporation is qualified to represent you and all other Class Members simultaneously.

Class Counsel is working on your behalf. If you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and will receive an Individual Settlement Share based on the total number of workweeks you were employed as a non-exempt employee in California during the Class Period. You will release all the Released Claims, as defined in Section No. 9 below, and you will give up your right to pursue the Released Claims, as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the Settlement, you will not receive an Individual Settlement Share and you will not give up the right to sue the Released Parties, including Defendant, for any the Released Claims as defined in Section No. 9 below.
- **OBJECT:** You may mail a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

Regardless of which option you choose, you must keep the Settlement Administrator advised of any change of address.

7. How Do I Opt Out Or Exclude Myself From This Settlement?

If you do not wish to participate in the Settlement, you may be excluded from the Settlement (*i.e.*, “opt out”) by sending a timely opt out form. A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT OUT’ FORM) CLASS ACTION SETTLEMENT”) (“Exclusion Form”) has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes this same information. If you opt out of the Settlement, you will not be releasing the claims set forth in Section No. 9. If you opt out of the settlement, the settlement amount to be paid by Day-Lee Foods, Inc. will not decrease and remain the same. The Exclusion Form must be signed, dated, and mailed by First Class U.S. Mail, **postmarked no later than _____, 2022** to: **DAY-LEE FOODS, INC. C/O PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS, [INSERT ADDRESS]**. You cannot exclude yourself by phone.

Eligible Aggrieved Employees May Not Opt-Out of PAGA Settlement. Notwithstanding the foregoing, you do not have the right to opt out or otherwise exclude yourself from the PAGA portion of the Agreement which releases the PAGA Released Claims. If you submit a valid and timely request for exclusion, you will still receive your share of the PAGA Payment and will release the PAGA Released Claims.

If you received a re-mailed Class Notice, whether by skip-trace or forwarded mail, your Response Deadline to postmark an Exclusion Form, or mail and serve an objection to the Settlement will be extended by ten (10) calendar days from the original Response Deadline. The envelope should indicate whether the Class Notice has been forwarded or re-mailed. We encourage you to keep copies of all documents, including the envelope, in the event the deadline is challenged.

The Court will exclude any Class Member who submits a complete and timely Exclusion Form as described in the paragraph above. The Exclusion Form must: (a) include the Class Member’s name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline. Exclusion Forms that do not include all required information and/or that are not timely submitted will be deemed

null, void, and ineffective. Any Class Member who fails to submit a valid and timely Exclusion Form on or before the above-specified deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the Action if the Settlement receives final approval from the Court.

You are responsible for ensuring that the Settlement Administrator receives any request for exclusion you submit.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by mailing it to the Settlement Administrator at [address] by [the Response Deadline]. The Objections must: (a) state the objecting person's full name, address, and telephone number and the name and address of counsel, if any; (b) have the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; (f) be signed by the objecting Class Member or his or her attorney; and (g) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector's own counsel and orally object to the Settlement. Class Members' timely and valid objections to the Settlement will still be considered even if the objector does not appear at the Final Approval Hearing. However, the Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak regarding his or her objection regardless of whether the Class Member submitted a written objection. In other words, a Class Member is not required to submit a written objection to be heard at the Final Approval Hearing.

Class Members who fail to object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Again, to be valid and effective, any objections must be mailed to the Settlement Administrator postmarked on or before [the Response Deadline].

If the Court rejects the notice of objection, the Class Member will receive an Individual Settlement Share and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge Defendant and any and all of its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties").

A. Released Claims.

The Released Claims are all claims, rights, demands, damages, liabilities and causes of action, in law or in equity, arising at any time during the Class Period alleged in the Complaints, Plaintiff Edgar Mata's letter to the LWDA, or that could have been alleged based on the facts pleaded in the Class Action, along with related claims and all associated penalties. The scope of the Released Claims is limited to the claims arising during the Class Period ("Released Claims").

B. PAGA Released Claims.

The PAGA Released Claims are any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties that were alleged or which could have been alleged in the Class Action based on the facts and allegations pleaded in the Complaints and Plaintiff Edgar Mata's letter to the LWDA. The scope of the release of the PAGA claims is limited to claims arising during the PAGA Timeframe ("PAGA Released Claims").

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under the Agreement shall be up to but no more than \$1,900,000 ("Gross Settlement Amount").

The "Net Settlement Amount" means the portion of the Gross Settlement Amount available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payments to Plaintiff Edgar Mata and Elvis Olivares in an amount up to \$10,000 to each Plaintiff for the prosecution of the Class Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Administration Costs to the Settlement Administrator in the amount not to exceed \$15,000; (3) the PAGA Payment of \$100,000, seventy-five percent (75%) of which (\$75,000) shall be paid to the LWDA, and twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis; (4) the Attorney Fee Award to Class Counsel in an amount not to exceed \$665,000 (35% of the Gross Settlement Amount); and (5) payment to Class Counsel of Cost Award in an amount not to exceed \$20,000 for litigation costs. All these payments are subject to court approval.

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed among all Class Members who have not opted out. The Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to: (i) the number of weeks he or she worked during the Class Period based on the Class List provided by Defendant, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class List, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties to the amount of weeks that he or she worked.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on Defendant's records which show you worked [REDACTED] workweeks during the Class Period.

If you believe the number of eligible workweeks records are incorrect, you must provide documentation and/or an explanation to show contrary information to the Settlement Administrator at [address] on or before [the Response Deadline]. If you do not provide any documents supporting your dispute, the number of workweeks reported in Defendant's records will be presumed correct, and your challenge will be rejected by the Settlement Administrator. Any evidence submitted will be reviewed and the Class Counsel and Counsel for Defendant will make a final determination.

Twenty percent (20%) of your Individual Settlement Share will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share only and reported on an IRS Form W-2.

The remaining eighty percent (80%) of your Individual Settlement Share will be treated as penalties, interest, and reimbursement, and will be paid pursuant to an IRS Form 1099.

No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of One Million Nine Hundred Thousand Dollars (\$1,900,000) needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. At this time, Defendant will also wire Defendant's portion of payroll taxes as the Class Members' current or former employer, which will be paid separately and in addition to the Gross Settlement Amount, to the Settlement Administrator. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.

Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. The Settlement Administrator will also forward a check for the PAGA Payment to the LWDA for settlement of the PAGA claim.

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks, and pay the amount of the Individual Settlement Share to the California State Controller: Unpaid Wage Fund.

11. What is the PAGA Payment and Am I Eligible for it?

Under the terms of the Settlement, \$100,000 has been set aside as a PAGA Payment. This portion is the total amount of civil penalties collected on behalf of California. \$75,000 will be sent to California. Eligible Aggrieved Employees will share the remaining \$25,000 based on the number of pay periods they worked.

You are an "aggrieved employee" eligible ("Eligible Aggrieved Employee") to share the PAGA Payment under the settlement, if you are an individual employed as a non-exempt employee who worked for Defendant within California from May 12, 2020, through September 15, 2021 ("PAGA Timeframe").

The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the \$25,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share.

Settlement checks issued to the Eligible Aggrieved Employees pursuant to the Agreement shall expire one hundred eighty (180) days from the date they are issued by Defendant. Any unclaimed funds after the one hundred eighty (180) days shall be turned over by the Settlement Administrator to the California State Controller: Unpaid Wage Fund.

Based on your total number of pay periods, your estimated Individual Settlement Share for the PAGA Payment is \$. One hundred percent (100%) of this payment will be considered penalties and will be issued an IRS

form 1099 if it exceeds \$600. You are responsible for paying any federal, state, or local taxes owed as a result of this payment.

Because these penalties can only be sought by California, you cannot exclude yourself from the PAGA portion of the settlement if the Court gives final approval.

If you are not an Eligible Aggrieved Employee, this Section does not apply to you.

12. *How Will the Attorneys for the Class and the Class Representatives Be Paid?*

The attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiffs and the Class shall be paid an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (or \$665,000) for attorney fees and up to \$20,000 for litigation costs.

Defendant has paid all their own attorneys' fees and costs.

As set forth in Section No. 10 above, the Plaintiffs will also be paid a Class Representative Enhancement Payments, subject to Court approval.

13. *Final Approval Hearing and Additional Information*

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2022 at [time a.m./p.m.], before Judge Kenneth R. Freeman, located at 312 North Spring Street, Los Angeles, California 90012, Department 14. You are not required to appear at this hearing. Any changes to the hearing date will be available on the Settlement Administrator's website [INSERT SETTLEMENT ADMINISTRATOR'S WEBSITE ADDRESS]. Class Members will receive notice of final judgment by checking the Settlement Administrator's website [INSERT SETTLEMENT ADMINISTRATOR'S WEBSITE ADDRESS].

Due to the current pandemic, the Court may not hold a final fairness hearing in-person. You may appear at the hearing remotely through the Los Angeles Superior Court's VCourt Remote Appearances System. You cannot set up a remote appearance through the VCourt Remote Appearances System until [30 days prior to hearing] and you must set up the remote appearance more than 2 hours prior to the hearing. It may take time to set up the remote appearance, so provide yourself time to go through the sign-up procedure.

When you are ready to schedule your appearance, go to <https://lacourt.portalscloud.com/VCourt/> and click on the "Schedule" button. You will be directed to a sign in page. If you have an account, then sign in. If you do not have an account, click the link for "Sign up now" and follow the instructions to sign up for an account. Once signed in or once you finish setting up an account, you will be directed to a page to "Search For A Case." Type in "20STCV21664" in the "Enter Case Number" field and click the "Proceed to Step 2" button. On the next page, choose the "Other" check box to designate the type of "Attendee" that you are. Fill in your name in the box for "Attendee Name." Fill in "class member" in the box for "Attendee Role." Fill in your email in the boxes for "Attendee Email" and "Confirm Email." Then, fill in your phone number in the box for "Attendee Phone." For the "Party Name" menu, select "Edgar Mata and Elvis Olivares." Then, click on the "Proceed to Step 3" button. On the next page, click on the box for "[fill in date/time, event description]" and select audio or video from the "Appearance Type" menu. You will be charged a fee based on the type of appearance that you choose. Then, click on the "Proceed to Step 4" button. Click on the "Go to Payment Site" button. Click on the Create Credit Card Payment Authorization and fill in your credit card billing information associated with the credit card you will be using, your phone number, and email address. Click on the "Next" button. Fill in your credit card information and review the terms and conditions. If you agree, click the checkbox to agree with the terms and

conditions and click the “Next” button. Verify the information and click on the “Create Payment Authorization” button. On the next page, you will be provided the telephone number which you will use to call in to make your appearance and the conference ID number and PIN which you must use to remotely appear. Save this information and call in 10 to 15 minutes prior to [time and date for the final approval hearing].

Please monitor the Los Angeles County Superior Court’s website at <https://www.lacourt.org/> for any updates regarding the Court’s procedures regarding the pandemic.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the “Day-Lee Foods, Inc. class action settlement.”

This Notice does not contain all the terms of the proposed Settlement or all the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Los Angeles County Superior Court at 111 North Hill Street Los Angeles, CA 90012 between 8:30 a.m. and 4:30 p.m.

PLEASE DO NOT TELEPHONE THE COURT OR COURT’S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

ELECTION NOT TO PARTICIPATE IN (“OPT OUT” FROM) CLASS ACTION SETTLEMENT

Superior Court of the State of California, County of Los Angeles

Edgar Mata, et al., v. Day-Lee Foods, Inc.

Case No. 20STCV21664

DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE SETTLEMENT.

THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN _____, 2022. IT MUST BE SENT VIA REGULAR U.S. MAIL.

PLEASE MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:

DAY-LEE FOODS, INC. SETTLEMENT ADMINISTRATOR, C/O PHOENIX CLASS ACTION SETTLEMENT ADMINISTRATION SOLUTIONS [INSERT ADMINISTRATOR ADDRESS]

IT IS MY DECISION NOT TO PARTICIPATE IN THE CLASS ACTION REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT AND ANY CLAIMS I HAVE WILL NOT BE RELEASED.

I confirm that I am and/or was employed by Day-Lee Foods, Inc. and worked as a non-exempt employee in California during at any time from June 4, 2016 to September 15, 2021. I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to be excluded from the class, and I have decided **not** to participate in the proposed settlement.

Dated: _____

(Signature)

(Last Four Digits of Social Security Number)

(Type or print name and former name(s))

(Telephone Number)

(Address)

(Address continued)

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103.

On July 27, 22, I served the foregoing document described as

FURTHER AMENDED [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE

on interested parties in this action by submitting a true and correct electronic copy thereof, to the below as follows:

Daniel H. Qualls (Daniel.Qualls@lewisbrisbois.com)
William Anderson (William.Anderson@lewisbrisbois.com)
Jennifer Marigmen (Jennifer.Marigmen@lewisbrisbois.com)

LEWIS BRISBOIS BISGAARD & SMITH LLP

333 Bush Street, Suite 1100
San Francisco, CA 94101

Attorney(s) for Defendant Day-Lee Foods, Inc.

[X] BY ELECTRONIC SERVICE

Pursuant to the Court's Order or an agreement between the Parties regarding Electronic Service, I caused the documents described above to be E-Served through Caseanywhere.com by electronically mailing a true and correct copy to the individual(s) listed above, at the time indicated by Caseanywhere.com

[X] STATE

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

Executed on July 27, 2022, at Pasadena, California.



Anna Okada