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TALAMO FOOD SERVICE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

PORFIRIO RIVERA and ANDRES HARO,
on behalf of themselves and all others
similarly situated and aggrieved,

Plaintiff,

v.

TALAMO FOOD SERVICE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 19CV355856

[Assigned for all purposes to the Hon.
Patricia M. Lucas Dept. 3]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: September 30, 2019

Trial Date: None Set

1
2 This Joint Stipulation re: Class Action and Representative Action Settlement
3 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among
4 plaintiffs PORFIRIO RIVERA (“Plaintiff Rivera”) and ANDRES HARO (“Plaintiff Haro”)
5 individually and on behalf of the Settlement Class, as defined below, on the one hand; and
6 TALAMO FOOD SERVICE, INC. (“Talamo” or “Defendant”), on the other hand, in the lawsuit
7 entitled *Porfirio Rivera v. Talamo Food Service, Inc., et al.* filed in Santa Clara County Superior
8 Court, Case No. 19CV39556 (the “Class Action”) and the lawsuit entitled *Porfirio Rivera v.*
9 *Talamo Food Service, Inc., et al.* filed in Santa Clara Superior Court, Case No. 19CV359684 (the
10 “PAGA Action”). Plaintiff Rivera, Plaintiff Haro, and Defendant shall be, at times, collectively
11 referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and
12 forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the
13 terms and conditions of this Agreement.

14 **1. DEFINITIONS**

15 **A. “Actions”** means, collectively, *Porfirio Rivera v. Talamo Food Service, Inc., et*
16 *al.* filed in Santa Clara County Superior Court, Case No. 19CV39556 and *Porfirio Rivera v.*
17 *Talamo Food Service, Inc., et al.* filed in Santa Clara Superior Court, Case No. 19CV359684.

18 **B. “Class Action”** means *Porfirio Rivera v. Talamo Food Service, Inc., et al.* filed
19 in Santa Clara County Superior Court, Case No. 19CV39556.

20 **C. “Class Counsel”** means: David Bibiyan, Esq. and Diego Aviles, Esq. of Bibiyan
21 Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
22 “Plaintiffs’ Counsel.”

23 **D. “Class Period”** means the period from September 30, 2015 up to and including
24 October 24, 2020.

25 **E. “Court”** means the Superior Court of the State of California for the County of
26 Santa Clara.

27 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
28 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an

1 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
2 have been filed, the date on which they have been resolved or exhausted.

3 **G. “Defendant”** means Talamo Food Service, Inc.

4 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
5 the wage portions of the Individual Settlement Payments (defined below) under the Federal
6 Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and
7 federal taxes and contributions required of employers, such as for unemployment insurance.

8 **I. “General Release”** means the general release of claims by Plaintiffs, which is in
9 addition to their limited release of claims as Participating Class Members.

10 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Four
11 Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00),¹ which shall be paid by
12 Defendant, from which all payments for the Individual Settlement Payments to Participating
13 Class Members (defined below) and the Court-approved amounts for attorneys’ fees and
14 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
15 Costs, Service Awards, and the Labor Code Private Attorneys’ General Act, codified at Labor
16 Code Section 2698, et seq. (“PAGA”) payment, shall be paid. It expressly excludes Employer
17 Taxes, which shall be paid by Defendant separate and apart from the Gross Settlement Amount.

18 **K. “Service Award”** means monetary amounts to be paid to Plaintiff Rivera and
19 Plaintiff Haro of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500) each,
20 which subject to Court approval, will be paid out of the Gross Settlement Amount.

21 **L. “Individual Settlement Payment”** means a payment to a Participating Class
22 Member (defined below) of his or her net share of the Net Settlement Amount (defined below,
23 which share and payment shall be determined by the calculations provided in this Agreement).

24 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
25 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
26 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
27 submit a timely and valid Request for Exclusion.

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¹ As the same may be increased in accordance with Paragraph 16, below.

1 **N. “LWDA Payment” of “PAGA Payment”** means the payment to the State of
2 California Labor and Workforce Development Agency (“LWDA”) for its seventy-five percent
3 (75%) share of the total amount allocated toward penalties under the PAGA all of which is to be
4 paid from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
5 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which
6 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA
7 and Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will remain a part of the
8 Net Settlement Amount for payment to Participating Class Members.

9 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
10 that is available for distribution to the Participating Class Members after deductions for the Court-
11 approved allocations for Settlement Administration Costs, Service Awards to Plaintiff Rivera
12 and Plaintiff Haro, an award of attorneys’ fees, reimbursement of litigation costs and expenses
13 to Class Counsel, and the LWDA Payment.

14 **P. “Operative Complaint” or “Complaint”** means, collectively, the First Amended
15 Complaint that was filed with the Court in the Class Action pursuant to this Agreement that
16 effectively consolidated the Actions in the Class Action.

17 **Q. “PAGA Action”** means *Porfirio Rivera v. Talamo Food Service, Inc., et al.* filed
18 in Santa Clara Superior Court, Case No. 19CV359684, which has been dismissed without
19 prejudice.

20 **R. “PAGA Period”** means the period from September 30, 2018 through October 24,
21 2020.

22 **S. “Participating Class Members”** means all Settlement Class Members who do
23 not submit a timely and valid Request for Exclusion.

24 **T. “Plaintiffs”, “Named Plaintiffs” or “Class Representatives”** shall refer to,
25 collectively, Plaintiffs Porfirio Rivera and Andres Haro.

26 **U. “Preliminary Approval Date”** means the date on which the Court enters an
27 Order granting preliminary approval of the Settlement.

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1 **V. “Released Parties”** shall mean Defendant and each of its past, present, and future
2 respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-sponsored
3 employee benefit plans of any nature and their successors and predecessors in interest, including
4 all of their officers, directors, shareholders, employees, agents, principals, heirs, representatives,
5 accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

6 **W. “Response Deadline”** means the deadline for Settlement Class Members to mail
7 or fax any Requests for Exclusion, objections, or Workweek Disputes to the Settlement
8 Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first
9 mailed in English and Spanish by the Settlement Administrator. The date of the postmark or fax-
10 stamp shall be the exclusive means for determining whether a Request for Exclusion, objection,
11 or Workweek Dispute was submitted by the Response Deadline.

12 **X. “Request for Exclusion”** means a written request to be excluded from the
13 Settlement Class pursuant to Section 9.C below.

14 **Y. “Settlement Administration Costs”** means all costs incurred by the Settlement
15 Administrator in administration of the Settlement, including, but not limited to, translating the
16 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
17 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
18 associated taxes and withholdings, providing declarations, generating Individual Settlement
19 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
20 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
21 fees and reimbursement of litigation costs and expenses, to Plaintiffs for their Service Awards,
22 and to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections
23 and related information, and any other actions of the Settlement Administrator as set forth in this
24 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are
25 estimated not to exceed \$6,750. If the actual amount of the Settlement Administration Costs is
26 less than \$6,750, the difference between \$6,750 and the actual Settlement Administration Costs
27 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
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1 \$6,750 then such excess will be paid solely from the Gross Settlement Amount and Defendant
2 will not be responsible for paying any additional funds in order to pay these additional costs.

3 **Z. “Settlement Administrator”** means Phoenix Settlement Administrators, which
4 will be responsible for the administration of the Settlement including, without limitation,
5 translating the Class Notice in Spanish, the distribution of the Individual Settlement Payments to
6 be made by Defendant from the Gross Settlement Amount
7 and related matters under this Agreement.

8 **AA. “Settlement Class” or “Settlement Class Members”** means all current and
9 former non-exempt, hourly paid employees who worked in California for Defendant at any time
10 during the Class Period.

11 **BB. “Workweeks”** means the number of workweeks that a Settlement Class Member
12 was employed by Defendant in a non-exempt, hourly position during the Class Period. If a
13 Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a
14 “Workweek Dispute.”

15 **2. BACKGROUND**

16 **A.** Plaintiff Rivera filed a putative wage-and-hour class action complaint against
17 Defendant on September 30, 2019. Plaintiff Rivera alleges that during the Class Period, with
18 respect to Plaintiff Rivera and the Settlement Class Members, Defendant, *inter alia*, failed to pay
19 any and all of the Settlement Class Members’ overtime wages and minimum wages for all hours
20 worked and/or recorded. Plaintiff Rivera further alleges that Defendant failed to provide
21 compliant meal and rest periods and associated premium payments; failed to issue compliant and
22 accurate itemized wage statements; failed to timely pay all wages due and owing at the time of
23 termination or resignation; failed to provide reimbursements for necessary work-related
24 expenses; and engaged unfair competition based on the alleged Labor Code Violations.

25 **B.** On September 30, 2019, Plaintiff Rivera filed with the LWDA and served on
26 Defendant a notice under Labor Code section 2699.3 (“Rivera PAGA Notice”) stating he
27 intended to serve as a proxy of the LWDA to recover civil penalties for aggrieved employees.
28 The PAGA Notice includes violations of law originally pled in the Class Action, plus a request

1 for penalties for failure to comply with Labor Code section 2810.5. On December 4, 2019, when
2 65 days passed without any communication from the LWDA, Plaintiff Rivera filed a separate
3 PAGA Action in the Santa Clara County Superior Court, Case No. 19CV359684., on behalf of
4 himself and aggrieved employees in the PAGA Period as a proxy of the LWDA to recover civil
5 penalties for the Labor Code violations set out in the Rivera PAGA Notice.

6 **C.** On November 11, 2019, Plaintiff Haro filed with the LWDA and served on
7 Defendant a notice under Labor Code section 2699.3 (“Haro PAGA Notice”) stating he intended
8 to serve as a proxy of the LWDA to recover civil penalties for aggrieved employees. The Haro
9 PAGA Notice includes violations of law similar to those originally pled in the Class Action, plus
10 a request for penalties for failure to comply with Labor Code section 2810.5.

11 **D.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
12 mediation, in which Plaintiff Rivera and Plaintiff Haro were provided with, among other things:
13 class data points to permit pertinent calculation of workweeks, pay periods, number of shifts, and
14 employee numbers within the Class Period and PAGA Period; (2) the average hourly rate for
15 non-exempt employees working during the Class Period and PAGA period; (3) written policies,
16 including employee handbooks in place during the Class Period and PAGA Period; (4) a
17 sampling of time and payroll records from the Class Period and PAGA Period; and (5) Plaintiff
18 Rivera and Plaintiff Haro’s personnel files.

19 **E.** On March 16, 2020, in anticipation of mediation, Plaintiff Haro signed a tolling
20 agreement with Defendant whereby any statutes of limitations related to, among other things,
21 any rights, demands, causes of action and defenses thereto arising out of the Haro PAGA Notice,
22 including, without limitation, Plaintiff Haro’s rights to bring an individual action, representative
23 action under PAGA, and class action were tolled through September 1, 2020.

24 **F.** On August 25, 2020, the Parties participated in a full-day mediation before
25 mediator Tripper Ortman, Esq., a well-regarded mediator experienced in mediating complex
26 labor and employment matters. With the aid of the mediator’s evaluation, the Parties reached the
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1 Settlement to resolve the Actions in the weeks after mediation. Shortly thereafter, Plaintiff filed
2 a First Amended Complaint in the Class Action effectively consolidating the Actions and adding
3 Andres Haro as a Named Plaintiff, as further set out below.

4 **G.** Class Counsel has conducted significant investigation of the law and facts relating
5 to the claims asserted in the Actions, the Rivera PAGA Notice and the Haro PAGA Notice and
6 has concluded that that the Settlement set forth herein is fair, reasonable, adequate, and in the
7 best interests of the Settlement Class, taking into account the sharply contested issues involved,
8 the expense and time necessary to litigate the Actions through trial and any appeals, the risks and
9 costs of further litigation of the Actions, the risk of an adverse outcome, the uncertainties of
10 complex litigation, the information learned through informal discovery regarding Plaintiff Rivera
11 and Plaintiff Haro's allegations, and the substantial benefits to be received by the Settlement
12 Class Members.

13 **H.** Defendant has concluded that, because of the substantial expense of defending
14 against the Actions, the length of time necessary to resolve the issues presented herein, the
15 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
16 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
17 claims asserted against it in the Actions, the Rivera PAGA Notice and the Haro PAGA Notice.
18 However, Defendant nevertheless desires to settle the Actions for the purpose of avoiding the
19 burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the
20 controversies engendered by the Actions.

21 **I.** Since mediation, pursuant to a stipulation by the Parties, Plaintiffs filed a First
22 Amended Complain in the Class Action effectively consolidating the Class Action and PAGA
23 Action and including as both class representatives and PAGA representatives Plaintiffs Rivera
24 and Haro.

25 **J.** This Agreement is intended to and does effectuate the full, final, and complete
26 resolution of all Released Claims of Plaintiff Rivera and Plaintiff Haro and Settlement Class
27 Members, other than those Settlement Class Members who submit a timely and valid Request
28 for Exclusion.

1 **3. JURISDICTION**

2 The Court has jurisdiction over the Parties and the subject matter of the Actions. The
3 Actions include claims that, if proven, would authorize the Court to grant relief pursuant to the
4 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
5 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
6 pursuant to California Rule of Court, rule 3.769, subdivision (h).

7 **4. STIPULATION OF CLASS CERTIFICATION**

8 The Parties stipulate to the certification of the Settlement Class under this Agreement for
9 purposes of settlement only.

10 **5. CONSOLIDATION OF ACTIONS AND MOTION FOR PRELIMINARY**
11 **APPROVAL**

12 The Parties have stipulated to the filing of a First Amended Complaint in the Class Action
13 that includes all of the allegations in the PAGA Action and the Haro PAGA Notice, thereby
14 effectively consolidating all allegations in the PAGA Action and Haro PAGA Notice into this
15 Action. The First Amended Complaint adds Plaintiff Haro as a named plaintiff jointly making
16 all allegations in the First Amended Complaint. If and when the First Amended Complaint is
17 filed, Plaintiff Rivera will dismiss the PAGA Action without prejudice. Shortly thereafter,
18 Plaintiff Rivera and Plaintiff Haro will move for an order granting preliminary approval of the
19 Settlement, approving and directing the mailing of the proposed Notice of Class Action
20 Settlement ("Class Notice") attached hereto as **Exhibit "A"**, conditionally certifying the
21 Settlement Class for settlement purposes only, and approving the deadlines proposed by the
22 Parties for the submission of Requests for Exclusion, Workweek Disputes, and objections, the
23 papers in support of Final Approval of the Settlement, and any responses to Objections or
24 opposition papers to the Motion for Final Approval. The Parties hereby expressly agree that
25 whether or not the Court finally approves the Settlement, Plaintiff Rivera's allegations from the
26 PAGA Action will relate back to the date on which Plaintiff Rivera filed the PAGA Action, and
27 Defendant will be estopped from making any argument that there is any adverse effect on the
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1 statute of limitations caused by Plaintiff Rivera's dismissal of the PAGA Action without
2 prejudice to effectuate this consolidation.

3 **6. STATEMENT OF NO ADMISSION**

4 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
5 Rivera, Plaintiff Haro, and the Settlement Class with respect to any claims or allegations asserted
6 in the Actions, the Rivera PAGA Notice and Haro PAGA Notice. This Agreement shall not be
7 deemed an admission by Defendant of any claims or allegations asserted in the Actions, the
8 Rivera PAGA Notice and Haro PAGA Notice. Except as set forth elsewhere herein, in the event
9 that this Agreement is not approved by the Court, or any appellate court, is terminated, or
10 otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or affected
11 in any way any claims, rights or remedies, or defenses in the Actions, the Rivera PAGA Notice
12 and Haro PAGA Notice, and Defendant will not be deemed to have waived, limited, or affected
13 in any way any of its objections or defenses in the Actions, the Rivera PAGA Notice and Haro
14 PAGA Notice. The Parties shall be restored to their respective positions in the Actions prior to
15 the entry of this Settlement.

16 **7. RELEASE OF CLAIMS**

17 **A. Release by All Participating Class Members.**

18 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
19 of Judgment, Plaintiffs and all Participating Class Members waive, release, discharge, and
20 promise never to assert in any forum against the Released Parties all claims against the Released
21 Parties asserted in the First Amended Complaint filed in the Class Action, or any and all claims
22 that may be asserted against the Released Parties based on the factual allegations in the First
23 Amended Complaint to be filed in the Class Action, as follows: For the duration of the Class
24 Period, the release includes: (a) all claims for failure to pay overtime wages; (b) all claims for
25 failure to pay minimum wages; (c) all claims for failure to provide meal and rest periods and
26 associated premium pay; (d) all claims for the failure to timely pay wages upon termination; (e)
27 all claims for failure to timely pay wages before separation of employment; (f) all claims for
28 inaccurate wage statements; and (g) all claims asserted through California Business &

1 Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the First
2 Amended Complaint. For individuals employed during the PAGA Period, the release includes,
3 for the duration of the PAGA Period, all claims released during the Class Period, as well as all
4 asserted PAGA claims for penalties arising out of Labor Code Sections 226.3, 558, 1197.1 and
5 2699 based on the factual allegations and Labor Codes sections alleged to have been violated in
6 the Rivera PAGA Notice, Haro PAGA Notice and the First Amended Complaint to be filed in
7 the Class Action, including, without limitation, failure to comply with Labor Code section 201,
8 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 2802, and 2810.5.

9 **B. General Release.**

10 Effective only upon the entry of an Order granting Final Approval of the Settlement and
11 entry of Judgment, in addition to the Released Claims, Plaintiffs make the additional following
12 General Release: Plaintiffs release the Released Parties from of all claims, demands, rights,
13 liabilities and causes of action of every nature and description whatsoever, known or unknown,
14 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
15 or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act
16 or omission of the Released Parties through the date of full execution of this Agreement in
17 connection with their employment or the termination thereof. With respect to the General
18 Release, Plaintiffs stipulate and agree that, through the Final Approval Date, Plaintiffs shall be
19 deemed to have, and by operation of the Final Judgment shall have, expressly waived and
20 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
21 1542 of the California Civil Code, or any other similar provision under federal or state law, which
22 provides:

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

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1 **8. SETTLEMENT ADMINISTRATOR**

2 Plaintiffs and Defendant, through their respective counsel, have selected Phoenix
3 Settlement Administrators to administer the Settlement, which includes but is not limited to
4 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
5 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
6 expenses of the Settlement Administrator, currently estimated to be \$6,750.00, will be paid from
7 the Gross Settlement Amount. If the actual Settlement Administrator fees are less than
8 \$6,750.00, the difference will remain a part of the Net Settlement Amount.

9 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

10 **A. Notice to the Settlement Class Members.**

11 (1) Within thirty (30) calendar days after the Preliminary Approval Date,
12 Defendant's Counsel shall provide the Settlement Administrator with information with respect
13 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
14 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social
15 Security Number in Defendant's possession, custody, or control; and (3) employment dates of
16 each Class Member worked during the Class Period by the Settlement Class Member ("Class
17 List"). The Settlement Administrator shall perform an address search using the United States
18 Postal Service National Change of Address ("NCOA") database and update the addresses
19 contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar
20 days of receiving the Class List from Defendant, the Settlement Administrator shall mail the
21 Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S.
22 Mail using the most current mailing address information available. The Settlement Administrator
23 shall maintain a list with names and all addresses to which notice was given, and digital copies
24 of all the Settlement Administrator's records evidencing the giving of notice to any Settlement
25 Class Member, for at least four (4) years from the Final Approval Date.

26 (2) The Class Notice will set forth:

27 (a) the Settlement Class Member's estimated payment and the basis
28 for it;

- 1 (b) the information required by California Rule of Court, rule 3.766,
2 subdivision (d);
3 (c) the material terms of the Settlement;
4 (d) the proposed Settlement Administration Costs;
5 (e) the definition of the Settlement Class;
6 (f) a statement that the Court has preliminarily approved the
7 Settlement;
8 (g) how the Settlement Class Member can obtain additional
9 information, including contact information for Class Counsel;
10 (h) information regarding opt-out and objection procedures;
11 (i) the date and location of the Final Approval Hearing; and
12 (j) that the Settlement Class Member must notify the Settlement
13 Administrator no later than the Response Deadline if the
14 Settlement Class Member disputes the accuracy of the number of
15 Workweeks as set forth on his or her Class Notice (“Workweek
16 Dispute”). If a Settlement Class Member fails to timely dispute
17 the number of Workweeks attributed to him or her in conformity
18 with the instructions in the Class Notice, then he or she shall be
19 deemed to have waived any objection to its accuracy and any claim
20 to any additional settlement payment based on different data.

21 (3) If a Class Notice from the initial notice mailing is returned as
22 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
23 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
24 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
25 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
26 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
27 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
28 Administrator with a forwarding address before the Response Deadline shall be promptly re-

1 mailed to the forwarding address affixed thereto. Class members who are re-mailed a Class
2 Notice shall have an additional fifteen (15) calendar days to submit a Request for Exclusion,
3 objection or to dispute estimated payments.

4 (4) No later than seven (7) calendar from the Response Deadline, the
5 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
6 completion of the notice process, including the number of attempts to obtain valid mailing
7 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
8 and copies of all Requests for Exclusion and objections/comments received by the Settlement
9 Administrator.

10 **B. Objections.**

11 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
12 Class Members) may object or comment regarding the Settlement. In order for any Settlement
13 Class Member to object or comment to this Settlement, or any term of it, he or she should do so
14 by mailing or faxing a written objection or comment to the Settlement Administrator at the
15 address or phone number provided on the Class Notice no later than the Response Deadline. The
16 Settlement Administrator shall email a copy of the objection/comment forthwith to Class Counsel
17 and Defendant's counsel. Class Counsel shall lodge a copy of the objection or comment with the
18 Court with the Motion for Final Approval. The objection or comment should set forth in writing:
19 (1) the objector's/commenter's name and address, and (2) the reason(s) for the
20 objection/comment, along with whatever legal authority, if any, the objector/commenter asserts
21 supports the objection. If a Settlement Class Member objects or comments regarding this
22 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if
23 the Court approves this Agreement, the Settlement Class Member will be bound by the terms of
24 the Settlement in the same way and to the same extent as a Settlement Class Member who does
25 not object or comment. The date of mailing of the Class Notice to the objecting or commenting
26 Settlement Class Member shall be conclusively determined according to the records of the
27 Settlement Administrator. Settlement Class Members do not need to object or comment in
28 writing to be heard at, or object/comment to the Settlement, at the Final Approval Hearing.

1 **C. Requesting Exclusion.**

2 Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
3 Settlement by mailing or faxing a written request to be excluded from the Settlement (“Request
4 for Exclusion”) to the Settlement Administrator, postmarked or fax-stamped on or before the
5 Response Deadline. To be valid, a Request for Exclusion must include the Class Member’s name,
6 social security number and signature and the following statement or something to its effect:
7 “Please exclude me from the Settlement Class in the *Porfirio Rivera v. Talamo Food Service,*
8 *Inc.* matter” or a statement of similar meaning. The Settlement Administrator shall immediately
9 provide copies of all Requests for Exclusion to Class Counsel and Defendant’s Counsel and shall
10 report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided
11 in advance of the Final Approval Hearing. Any Settlement Class Member who requests
12 exclusion using this procedure will not be entitled to receive any payment from the Settlement
13 and will not be bound by the Settlement Agreement or have any right to object to, appeal, or
14 comment on the Settlement. Any Settlement Class Member who does not opt out of the
15 Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of
16 the Settlement, including those pertaining to the Released Claims, as well as any Judgment that
17 may be entered by the Court if Final Approval of the Settlement is granted.

18 **D. Disputes Regarding Settlement Class Members’ Workweek Data.**

19 Each Settlement Class Member may dispute the number of Workweeks attributed to him
20 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed or
21 faxed to the Settlement Administrator by the Settlement Class Member, postmarked or fax-
22 stamped on or before the Response Deadline. The Settlement Administrator shall immediately
23 provide copies of all disputes to Class Counsel and counsel for Defendant and shall immediately
24 attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the
25 assistance of Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the
26 Court shall adjudicate the dispute.

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1 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
2 **MEMBERS**

3 Individual Settlement Payments will be calculated and distributed to Participating Class
4 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
5 Members' respective number of Workweeks during the Class Period. Specific calculations of the
6 Individual Settlement Payments will be made as follows:

7 A. The Settlement Administrator will determine the total number of Workweeks
8 worked by each Settlement Class Member and the aggregate number of Workweeks worked by
9 all Settlement Class Members during the Class Period ("Class Workweeks"), as reflected on
10 the Class List provided by Defendant.

11 B. To determine each Participating Class Member's Individual Settlement Share,
12 the Settlement Administrator will determine the aggregate number of Workweeks worked by
13 all Participating Class Members during the Class Period ("Participating Class Workweeks")
14 and use the following formula: Individual Settlement Share = (Participating Class Member's
15 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

16 C. This net amount is to be paid out to Participating Class Members by way of
17 check and is referred to as "Individual Settlement Payment(s)."

18 **DISTRIBUTION OF PAYMENTS**

19 **A. Distribution of Individual Settlement Payments.**

20 Settlement Class Members who do not submit a timely and valid Request for Exclusion
21 (i.e., Participating Class Members) will receive an Individual Settlement Payment. Individual
22 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)
23 calendar days after the date of their issuance. Within seven (7) calendar days after expiration
24 of the 180-day period, checks for such payments shall be canceled and funds associated with
25 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code
26 of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest,
27 if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to
28 Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use

1 in Santa Clara County. The Settlement Administrator shall prepare a report regarding the
2 distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be
3 presented to the Court by Class Counsel along with a proposed amended judgment that is
4 consistent with the provisions of Code of Civil Procedure section 384.

5 **B. Funding of Settlement.**

6 Defendant shall, fifteen (15) calendar days after entry of the Final Order and Judgment
7 following a Final Fairness and Approval hearing, or by July 31, 2021, whichever comes later,
8 deposit the Gross Settlement Amount and Employer Taxes, into an account established by the
9 Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an
10 interest bearing qualified settlement account ("QSA") with an FDIC insured banking institution,
11 for distribution in accordance with this Agreement and the Court's orders and subject to the
12 conditions described herein. Individual Settlement Payments for Class Members shall be paid
13 exclusively from the QSA, pursuant to the settlement formula set forth herein, and shall be mailed
14 within seven (7) calendar days after Defendant delivers the Gross Settlement Amount and
15 Employers Taxes as required by this Agreement.

16 Payments from the QSA shall be made for (1) the Service Awards to Plaintiff Rivera and
17 Plaintiff Haro, as specified in this Agreement and approved by the Court; (2) the Attorneys' Fees
18 and Cost Award to be paid to Class Counsel, as specified in this Agreement and approved by the
19 Court; (3) the Settlement Administrator Costs, as specified in this Agreement and approved the
20 Court; and (4) the amount allocated to PAGA penalties to be paid to the LWDA, as specified in
21 this Agreement and approved by the Court. The balance remaining shall constitute the Net
22 Settlement Amount from which Individual Settlement Payments shall be made to Participating
23 Class Members, less applicable taxes and withholdings. All interest accrued shall be for the
24 benefit of the Class Members and distributed in a pro-rata basis.

25 **C. Time for Distribution.**

26 Within seven (7) calendar days after funding of the full Gross Settlement Amount by
27 Defendant, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
28 Administrator shall distribute all payments due under the Settlement, including the Individual

1 Settlement Payments to Participating Class Members, as well as the Court-approved payments
2 for the Service Awards to Plaintiffs, attorneys' fees and litigation costs and expenses to Class
3 Counsel, Administration Costs to the Settlement Administrator, and the portion of the LWDA
4 payment payable to the LWDA.

5 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

6 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
7 fees of up to one third of the Gross Settlement Amount, or One Hundred Fifty Thousand Dollars
8 and Zero Cents (\$150,000.00). Class Counsel shall further apply for, and Defendant shall not
9 oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
10 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
11 up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees
12 and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees
13 and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
14 The "future" aspect of the amounts stated herein includes, without limitation, all time and
15 expenses expended by Class Counsel (including any appeals therein). There will be no additional
16 charge of any kind to either the Settlement Class Members or request for additional consideration
17 from Defendant for such work. Should the Court approve attorneys' fees and/or litigation costs
18 and expenses in amounts that are less than the amounts provided for herein, then the unapproved
19 portion(s) shall be a part of the Net Settlement Amount. As of the date the Judgment becomes
20 Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and
21 any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and
22 expenses against Defendant arising from or related to the Action.

23 **12. SERVICE AWARD TO PLAINTIFFS**

24 Named Plaintiffs shall seek, and Defendant shall not oppose, Service Awards in an
25 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
26 both Plaintiff Rivera and Plaintiff Haro, for participation in and assistance with the Class Action.
27 Any Service Awards awarded to Plaintiff Rivera and Plaintiff Haro shall be paid from the Gross
28 Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves Service

Awards to Plaintiff Rivera and Plaintiff Haro in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. TAXATION AND ALLOCATION

A. Each Individual Settlement Share shall be allocated as follows: 10% as wages (to be reported on an IRS Form W2); and 90% as interest and penalties (to be reported on an IRS Form 1099). The Parties agree that the employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

C. All Employer Taxes shall be paid by Defendant separate, apart and above from the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of payroll taxes as described above.

14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the PAGA Payment), and twenty-five percent (25%) (\$2,500.00) will remain a part of the Net Settlement Amount to be distributed to Participating Class Members on a *pro rata* basis, based upon their respective Workweeks.

1 **15. COURT APPROVAL**

2 This Agreement is contingent upon an order by the Court granting Final Approval of the
3 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
4 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
5 shall be restored to their respective positions in the Actions prior to entry of this Settlement. If
6 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
7 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
8 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
9 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
10 the Settlement Agreement being voided or not approved, and which control in such an event.

11 **16. INCREASE IN WEEKLY PAY PERIODS**

12 Defendant represents that there are no more than 14,415 Workweeks during the Class
13 Period. In the event the number of Workweeks increases by more than 5%, or 721
14 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the
15 Workweek Value. The Workweek Value shall be calculated by dividing the Gross Settlement
16 Amount (\$450,000.00) by 14,415, which amounts to a Workweek Value of \$31.22. Thus, for
17 example, should there be 15,500 Workweeks in the Class Period, then the Gross Settlement
18 Amount shall be increased by \$32,937.10. (15,500 Weekly Pay Periods – 14,415 Weekly
19 Pay Periods x \$31.22/weekly pay period.)

20 **17. NOTICE OF JUDGMENT**

21 In addition to any duties set out herein, the Settlement Administrator shall provide
22 notice of the Final Judgment entered in the Class Action by posting the same on its website.

23 **18. MISCELLANEOUS PROVISIONS**

24 **A. Interpretation of the Agreement.**

25 This Agreement constitutes the entire agreement between Plaintiff Rivera, Plaintiff Haro,
26 and Defendant with respect to its subject matter. Except as expressly provided herein, this
27 Agreement has not been executed in reliance upon any other written or oral representations or
28 terms, and no such extrinsic oral or written representations or terms shall modify, vary or

1 contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to
2 be construed according to its terms and may not be varied or contradicted by extrinsic evidence.
3 The Agreement will be interpreted and enforced under the laws of the State of California, both
4 in its procedural and substantive aspects, without regard to its conflict of law provisions. Any
5 claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved
6 solely and exclusively in the Superior Court of the State of California for the County of Santa
7 Clara, and Plaintiff Rivera, Plaintiff Haro, and Defendant hereby consents to the personal
8 jurisdiction of the Court in the Action over it solely in connection therewith. The foregoing is
9 only limited to disputes concerning this Agreement and in no way limits or negates the
10 enforceability and effect of any underlying arbitration agreements signed by employees of
11 Defendant obligating them to arbitrate any and all claims on an individual (and not on a class,
12 collective, or representative) basis. Plaintiff Rivera and Plaintiff Haro, on behalf of themselves
13 and on behalf of the Settlement Class, and Defendant participated in the negotiation and drafting
14 of this Agreement and had available to them the advice and assistance of independent counsel.
15 As such, neither Plaintiff Rivera, Plaintiff Haro, nor Defendant may claim that any ambiguity in
16 this Agreement should be construed against the other. The Agreement may be modified only by
17 a writing signed by counsel for the Parties and approved by the Court.

18 **B. No Admission of Liability or Class Certification for Other Purposes.**

19 Defendant denies that they have engaged in any unlawful activity, have failed to comply
20 with the law in any respect, have any liability to anyone under the claims asserted in the Action,
21 or that but for the Settlement a class should be certified in the Action. This Agreement is entered
22 into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement
23 is intended or will be construed as an admission of liability or wrongdoing by Defendant, or an
24 admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by
25 Defendant was meritorious. This Settlement and the fact that Plaintiffs and Defendant were
26 willing to settle the Action will have no bearing on, and will not be admissible in connection
27 with, any litigation (other than solely in connection with effectuating the Settlement pursuant to
28 this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant

1 of any liability or wrongdoing as to Plaintiffs, Class Members, or any other person, and
2 Defendant specifically disclaim any such liability or wrongdoing. Moreover, it is not, and it
3 should not be construed as, any admission of fact or law in this matter or any other matter that a
4 class action is appropriate. The parties have entered into this settlement with the intention of
5 avoiding further disputes and litigation with the attendant inconvenience, expenses and risks.
6 Nothing in this Agreement shall be construed as an admission by Plaintiffs that Plaintiffs' claims
7 do not have merit or that class action is inappropriate.

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

18 This section and all other provisions of this Agreement notwithstanding, any and all
19 provisions of this Agreement may only be admitted in evidence and otherwise used in any and
20 all proceedings for the limited purpose of enforcing any or all terms of this Agreement or
21 defending any claims released or barred by this Agreement.

22 **C. No Tax Advice.**

23 Neither Class Counsel nor Defendant's Counsel intend anything contained in this
24 Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement
25 be relied upon as such within the meaning of United States Treasury Department Circular 230
26 (31 CFR Part 10, as amended) or otherwise.

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1 **D. No Effect on Other Benefits.**

2 The Settlement Shares will not result in any additional benefit payments (such as 401(k)
3 or bonus) beyond those provided by this Agreement to Plaintiffs or Participating Class Members,
4 and Plaintiffs and Participating Class Members will be deemed to have waived all such claims,
5 whether known or unknown by them, as part of their release of claims under this Agreement.

6 **E. Further Cooperation.**

7 Plaintiff Rivera, Plaintiff Haro, Defendant, and their respective attorneys shall proceed
8 diligently to prepare and execute all documents, to seek the necessary approvals from the Court,
9 and to do all things reasonably necessary to consummate the Settlement as expeditiously as
10 possible.

11 **F. Counterparts.**

12 The Agreement may be executed in one or more actual or non-original counterparts, all
13 of which will be considered one and the same instrument and all of which will be considered
14 duplicate originals.

15 **D. Authority.**

16 Each individual signing below warrants that he or she has the authority to execute this
17 Agreement on behalf of the party for whom or which that individual signs.

18 **E. No Third-Party Beneficiaries.**

19 Plaintiff Rivera, Plaintiff Haro, Participating Class Members, Class Counsel, and
20 Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

21 **F. Force Majeure.**

22 The failure of any party to perform any of its obligations hereunder shall not subject such
23 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
24 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
25 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
26 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
27 terrorist acts, acts or failures to act of any third parties, or any other similar or different
28 circumstances or causes beyond the reasonable control of such party.

1 **E. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal holiday, that deadline shall be continued until the following business day.

4 **F. Severability.**

5 In the event that one or more of the provisions contained in this Agreement shall for any
6 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
7 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
8 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
9 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

10
11 **IT IS SO AGREED:**

12 Dated: 10/11, 2020

PORFIRIO RIVERA S.
Porfirio Rivera S (Nov 11, 2020 19:46 PST)

PORFIRIO RIVERA
Plaintiff and Class Representative

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16 Dated: _____, 2020

ANDRES HARO
Plaintiff and Class Representative

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19
20 Dated: _____, 2020

TALAMO FOOD SERVICE, INC.
Defendant
By:
Its:

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24 **AGREED AS TO FORM:**

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26 Dated: _____, 2020

DAVID D. BIBIYAN
Counsel for Plaintiffs Porfirio Rivera and
Andres Haro

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F. Severability.

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IT IS SO AGREED:

Dated: _____, 2020

PORFIRIO RIVERA
Plaintiff and Class Representative

Dated: 11/11/2020, 2020

Andres
Andres Haro T (Nov 11, 2020 11:42 PST)
ANDRES HARO
Plaintiff and Class Representative

Dated: _____, 2020

TALAMO FOOD SERVICE, INC.
Defendant
By:
Its:

AGREED AS TO FORM:

Dated: November 12, 2020


DAVID D. BIBIYAN
Counsel for Plaintiffs Porfirio Rivera and Andres Haro

1 **E. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal holiday, that deadline shall be continued until the following business day.

4 **F. Severability.**

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6 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
7 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
8 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
9 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

10

11 **IT IS SO AGREED:**

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13 Dated: _____, 2020

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PORFIRIO RIVERA
Plaintiff and Class Representative

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16 Dated: _____, 2020

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ANDRES HARO
Plaintiff and Class Representative

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20 Dated: 11-11-20, 2020

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TALAMO FOOD SERVICE, INC.
Defendant
By: Joseph Talamo
Its:

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24 **AGREED AS TO FORM:**

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26 Dated: _____, 2020

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DAVID D. BIBIYAN
Counsel for Plaintiffs Porfirio Rivera and
Andres Haro

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Dated: November 11, 2020



MOLLIE BURKS
SAT SANG S. KHALSA
NICHOLAS MORRELL
**Counsel for Defendant Talamo Food Service,
Inc.**