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PRIMAL PET FOODS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

CANDIDA ARACELY TORRES, on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

PRIMAL PET FOODS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant.

CASE NO.: FCS054783

[Assigned to the Hon. Wendy G. Getty in
Dept. 8]

CLASS ACTION

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

Action Filed: May 18, 2020

Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 ("Settlement" or "Agreement" or "Settlement Agreement") is made by, between and among
3 plaintiff Candida Aracely Torres ("Plaintiff Torres") and plaintiff Juan A. Villareal-Romero
4 ("Plaintiff Villareal-Romero," and, collectively with Plaintiff Torres, "Plaintiffs"), individually
5 and on behalf of the Settlement Class, as defined below, on the one hand; and defendant Primal
6 Pet Foods, Inc. ("Primal Pet" or "Defendant"), on the other hand, in the lawsuit entitled *Torres*
7 *v. Primal Pet Foods, Inc.* filed in Solano County Superior Court, Case No. FCS054783 (the
8 "Class Action") and the lawsuit entitled *Torres v. Primal Pet Foods, Inc.* filed in Solano County
9 Superior Court, Case No. FCS055248 (the "PAGA Action" and collectively, the "Actions"),
10 which has since been consolidated with the Class Action. Plaintiffs and Defendant shall be, at
11 times, collectively referred to as the "Parties." This Agreement is intended by the Parties to fully,
12 finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and
13 subject to the terms and conditions of this Agreement.

14 **1. DEFINITIONS**

15 A. "Actions" means, collectively, *Torres v. Primal Pet Foods, Inc.* filed in Solano
16 County Superior Court, Case No. FCS054783 and *Torres v. Primal Pet Foods, Inc.* filed in
17 Solano County Superior Court, Case No. FCS055248, which has since been consolidated with
18 the Class Action.

19 B. "Class Action" means *Torres v. Primal Pet Foods, Inc.* filed in Solano County
20 Superior Court, Case No. FCS054783.

21 C. "Class Counsel" means: David Bibiyan, Esq., Diego Aviles, Esq., and Sara
22 Ehsani-Nia, Esq., of Bibiyan Law Group, P.C. The term "Class Counsel" shall be used
23 synonymously with the term "Plaintiffs' Counsel."

24 D. "Class Period" means the period from May 18, 2016 through and including May
25 12, 2021 or the date the Court grants preliminary approval of the Settlement, whichever occurs
26 first.

27 E. "Court" means the Superior Court of the State of California for the County of
28 Solano.

1 **F. “Defendant”** means Primal Pet Foods, Inc.

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

6 **H. “Effective Date”** means the later of: (1) the Final Approval Date if no objections
7 are filed, or if any objections which were filed are withdrawn before the Final Approval Date;
8 (2) if one or more objections are filed and not subsequently withdrawn, the Effective Date is the
9 date five (5) calendar days after the deadline to file an appeal, unless an appeal is filed, in which
10 case the Effective Date is the date five calendar days after an appeal is dismissed or the Final
11 Approval Order is affirmed on appeal.

12 **I. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
13 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
14 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
15 are filed, the date on which they have been resolved or exhausted.

16 **J. “General Release”** means the general release of all wage-and-hour related
17 claims by Plaintiffs, which is in addition to their limited release of claims as Participating Class
18 Members.

19 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
20 Million Eight Hundred Thousand Dollars and Zero Cents (\$1,800,000.00),¹ which shall be paid
21 by Defendant, from which all payments for the Individual Settlement Payments to Participating
22 Class Members and the Court-approved amounts for attorneys’ fees and reimbursement of
23 litigation costs and expenses to Class Counsel, Settlement Administration Costs, Service Awards
24 to Plaintiffs, and the payment made to the Labor and Workforce Development Agency
25 (“LWDA”) for resolution of Plaintiffs’ claims under the California Private Attorneys General
26 Act, codified at Labor Code Section 2698, *et seq.* (“PAGA”), shall be paid. It expressly excludes
27 only Employer Taxes, which shall be paid by Defendant separate and apart from the Gross

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

1 Settlement Amount. For the avoidance of any doubt, the \$1,800,000.00 plus any applicable
2 Employer Taxes, if any, shall be the total consideration to be paid by the Defendant in the
3 Settlement, and no more, subject only to the provisions of Section 17 hereof to the extent they
4 may be applicable.

5 L. "Individual Settlement Payment" means a payment to a Participating Class
6 Member of his or her net share of the Net Settlement Amount.

7 M. "Individual Settlement Share" means the gross amount of the Net Settlement
8 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
9 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
10 submit a timely and valid Request for Exclusion.

11 N. "LWDA Payment" of "PAGA Payment" means the payment to the State of
12 California Labor and Workforce Development Agency ("LWDA") for its seventy-five percent
13 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
14 from the Gross Settlement Amount. The Parties have agreed that One Hundred Thousand Dollars
15 and Zero Cents (\$100,000.00) shall be allocated toward PAGA penalties ("PAGA Payment"), of
16 which Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) will be paid to the LWDA
17 and Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) will remain a part of the Net
18 Settlement Amount for payment to Participating Class Members on a *pro rata* basis.

19 O. "Net Settlement Amount" means the portion of the Gross Settlement Amount
20 that is available for distribution to Participating Class Members after deductions for the Court-
21 approved allocations for Settlement Administration Costs, Service Awards to Plaintiffs, an award
22 of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, and the
23 LWDA Payment.

24 P. "Operative Complaint" or "Complaint" means the First Amended Complaint
25 to be filed with the Court in the Class Action, and which shall include the allegations in the
26 PAGA Action, as set forth in Section 5 herein.

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1 **Q. “PAGA Period”** means the period from May 15, 2019 through and including May
2 12, 2021 or the date the Court grants preliminary approval of the Settlement, whichever occurs
3 first.

4 **R. “Participating Class Members”** means all Settlement Class Members who do
5 not submit a timely and valid Request for Exclusion.

6 **S. “Plaintiff Torres”** shall refer to Plaintiff Candida Aracely Torres.

7 **T. “Plaintiff Villareal-Romero”** shall refer to Plaintiff Juan A. Villareal-Romero.

8 **U. “Plaintiffs,” “Named Plaintiffs” or “Class Representatives”** shall refer to
9 Plaintiffs Candida Aracely Torres and Juan A. Villareal-Romero.

10 **V. “Preliminary Approval Date”** means the date on which the Court enters an
11 Order granting preliminary approval of the Settlement.

12 **W. “Released Parties”** shall mean Defendant and each of its past, present, and future
13 respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and
14 assigns, and each of these entities’ past or present directors, officers, employees, partners,
15 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and
16 personal or legal representatives.

17 **X. “Response Deadline”** means the deadline for Settlement Class Members to mail
18 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
19 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
20 and Spanish by the Settlement Administrator. The date of the postmark shall be the exclusive
21 means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was
22 submitted by the Response Deadline.

23 **Y. “Request for Exclusion”** means a written request to be excluded from the
24 Settlement Class pursuant to Section 9.C below.

25 **Z. “Service Award”** means monetary amounts to be paid to Plaintiff Torres of up to
26 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500) and to Plaintiff Villareal-
27 Romero of up to Five Thousand Dollars and Zero Cents (\$5,000) which subject to Court
28 approval, will be paid out of the Gross Settlement Amount.

1 **AA. "Settlement Administration Costs"** means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to, translating the
3 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
4 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
5 associated taxes and withholdings, providing declarations, generating Individual Settlement
6 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
7 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys'
8 fees and reimbursement of litigation costs and expenses, to Plaintiffs for their Service Award,
9 and to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections
10 and related information, and any other actions of the Settlement Administrator as set forth in this
11 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are
12 estimated not to exceed \$8,750. If the Settlement Administration Costs exceed \$8,750, then such
13 excess will be paid solely from the Gross Settlement Amount and Defendant will not be
14 responsible for paying any additional funds in order to pay these additional costs.

15 **BB. "Settlement Administrator"** means the Third-Party Administrator chosen by
16 the Parties that will be responsible for the administration of the Settlement including, without
17 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement
18 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
19 this Agreement.

20 **CC. "Settlement Class," "Settlement Class Members" or "Class Members"** means
21 all current and former non-exempt, hourly paid employees who worked in California for
22 Defendant at any time during the Class Period.

23 **DD. "Workweeks"** means the number of workweeks that a Settlement Class Member
24 was employed by Defendant in a non-exempt, hourly position during the Class Period. If a
25 Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a
26 "Workweek Dispute."

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1 **2. BACKGROUND**

2 **A.** Plaintiff Torres filed a putative wage-and-hour class action complaint against
3 Defendant on May 18, 2020. She alleged that during the Class Period, with respect to herself
4 and the Settlement Class Members, Defendant, *inter alia*, failed to pay the Settlement Class
5 Members' overtime wages and minimum wages for all hours worked and/or recorded; engaged,
6 suffered or permitted employees to work off the clock including, without limitation, for time
7 spent donning and doffing mandatory equipment; failed to compensate employees for time spent
8 waiting to clock in; failed to provide compliant meal and rest periods and associated premium
9 payments; failed to issue compliant and accurate itemized wage statements; failed to timely pay
10 all wages due and owing at the time of termination or resignation; and engaged in unfair
11 competition due to the alleged Labor Code Violations.

12 **B.** On May 15, 2020, Plaintiff Torres filed with the LWDA and served on Defendant
13 a notice under Labor Code section 2699.3 (the "Original PAGA Notice") stating she intended to
14 serve as a proxy of the LWDA to recover civil penalties for aggrieved employees. The Original
15 PAGA Notice includes violations of law pled in the Class Action, in addition to a request for
16 penalties for failure to comply with Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5.

17 **C.** On August 24, 2020, when 65 days passed without any communication from the
18 LWDA, Plaintiff Torres filed a separate PAGA Action in the Solano County Superior Court,
19 Case No. FCS055248 for penalties under Labor Code sections 210, 226.3, 558, 1197.1 and 2699,
20 on behalf of herself and all other aggrieved employees in the PAGA Period as a proxy of the
21 LWDA to recover civil penalties for the Labor Code violations set out in the Original PAGA
22 Notice. In the PAGA Action, Plaintiff Torres alleged that during the PAGA Period, with respect
23 to herself and other aggrieved employees, Defendant, *inter alia*, failed to pay overtime wages
24 and minimum wages for all hours worked and/or recorded; engaged, suffered or permitted
25 employees to work off the clock including, without limitation, for time spent donning and doffing
26 mandatory equipment; failed to compensate employees for time spent waiting to clock in; failed
27 to provide compliant meal and rest periods and associated premium payments; failed to issue
28 compliant and accurate itemized wage statements; and failed to comply with the notice

1 requirements of Labor Code § 2810.5 (the Wage Theft Prevention Act); and failed to provide
2 employees with the proper amount of sick leave.

3 **D.** Defendant denies any and all claims as to liability, damages, penalties, interests,
4 fees, restitution, injunctive relief, and all other forms of relief, as well as the allegations asserted
5 by Plaintiffs and in the Action. Defendant further denies that it has violated any applicable
6 statute, law, regulation, or the applicable California Industrial Welfare Commission orders or
7 engaged in any wrongdoing whatsoever. Defendant has also asserted numerous affirmative
8 defenses to the claims asserted in the Action.

9 **E.** Notwithstanding, in the interests of avoiding further litigation, reducing legal
10 expense and reaching a resolution to this matter, Plaintiff Torres (and later Plaintiff Villareal-
11 Romero) and Defendant agreed to participate in a mediation in which all Parties were ultimately
12 adequately represented and participated.

13 **F.** In entering this Agreement, the Parties agree and represent that they have each
14 conducted and been able to conduct a thorough investigation of facts related to the claims asserted
15 in the Actions. The investigation included the exchange of information pursuant to informal
16 discovery. Counsel for the Parties also have investigated the applicable law as applied to the
17 facts discovered regarding the alleged claims of Plaintiffs and the Defendant's denials thereof
18 and potential defenses thereto, and the damages and other remedies claimed by Plaintiffs on
19 behalf of themselves and the class they seek to represent. Among other things, the formal and
20 informal discovery included Defendant's provision to Class Counsel, among other things, of: (1)
21 the hire dates, separation dates, and rates of pay (as applicable) for Class Members and any other
22 allegedly aggrieved employees; (2) a representative sampling of corresponding time and payroll
23 records; (3) Defendant's written policies in place during the Class Period; including those within
24 its Employee Handbooks; and (4) a sampling of contact information for Class Members currently
25 and formerly employed by Defendant.

26 **G.** The Parties each conducted their own analysis as to the potential recoveries for
27 putative class members and/or aggrieved employees due to the practices alleged in the Actions,
28 which allegations are denied by Defendant, and independently evaluated this information in light

1 of the claims alleged. Plaintiffs also contacted several Class Members and other employees of
2 Defendant and were able to interview them and obtain information relevant to the claims asserted
3 in the Actions and otherwise relevant to Defendant's employment practices, including related to
4 the issues that have become the subject of the amendments to the class action and PAGA
5 complaints that will be made pursuant to this Agreement.

6 **H.** On February 11, 2021, the Parties participated in an approximately 17-hour
7 mediation before mediator Lynn Frank, Esq., a well-regarded mediator experienced in mediating
8 complex labor and employment matters. With the aid of the mediator's evaluation, the Parties
9 reached the Settlement to resolve the Actions.

10 **I.** On February 19, 2021, Plaintiffs filed with the LWDA and served on Defendant
11 a notice under Labor Code section 2699.3 ("Amended PAGA Notice"), adding Plaintiff
12 Villareal-Romero and including allegations of, among other things, failure to reimburse all
13 business expenses, and failing to properly pay for paid time off and/or vacation pay after their
14 investigation by Class Counsel and discussions regarding potential penalties on these bases
15 during mediation between counsel.

16 **J.** Moreover, the Parties have stipulated to the filing of a First Amended Complaint
17 effectively consolidating the allegations set forth in the Class Action, PAGA Action, the Original
18 PAGA Notice, and the Amended PAGA Notice, all of which have been investigated by Class
19 Counsel prior to mediation, and adding Plaintiff Villareal-Romero as a class representative.

20 **K.** The settlement discussions during and before mediation were conducted at arm's-
21 length and this Agreement is the result of an informed and detailed analysis by the Parties, of
22 Defendants' potential liability of total exposure in relation to the costs and risks associated with
23 continued litigation.

24 **L.** Class Counsel has conducted significant investigation of the law and facts relating
25 to the claims asserted in the Actions and has concluded that that the Settlement set forth herein
26 is fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
27 the sharply contested issues involved, the expense and time necessary to litigate the Actions
28 through trial and any appeals, the risks and costs of further litigation of the Actions, the risk of

1 an adverse outcome, the uncertainties of complex litigation, the information learned through
2 informal discovery regarding Plaintiffs' allegations, and the substantial benefits to be received
3 by the Settlement Class Members.

4 **M.** Defendant has concluded that, because of the substantial expense of defending
5 against the Actions, the length of time necessary to resolve the issues presented herein, the
6 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
7 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
8 claims asserted against them in the Actions. However, Defendant nevertheless desires to settle
9 the Actions for the purpose of avoiding the burden, expense and uncertainty of continuing
10 litigation and for the purpose of putting to rest the controversies engendered by the Actions.

11 **N.** This Agreement is intended to and does effectuate the full, final, and complete
12 resolution of all Released Claims of Plaintiffs and Settlement Class Members, other than those
13 Settlement Class Members who submit a timely and valid Request for Exclusion.

14 **O.** This Settlement Agreement is thus made and entered into by and between
15 Plaintiffs, individually, and on behalf of all other members of the general public similarly situated
16 and on behalf of other aggrieved employees pursuant to the California Private Attorneys General
17 Act and Defendant, and is subject to the terms and conditions hereof, and to the Court's approval.
18 The Parties expressly acknowledge that this Settlement Agreement is entered solely for the
19 purpose of compromising significantly disputed claims and that nothing herein is an admission
20 of liability or wrongdoing by Defendant. Nothing contained in this Stipulation, nor the fact of
21 this Stipulation itself, shall be construed or deemed as an admission of liability, culpability,
22 negligence, or wrongdoing on the part of the Released Parties (defined below). Nothing herein
23 shall constitute an admission by the Released Parties that the Action was properly brought as a
24 class or representative action other than for settlement purposes. This Settlement of the Action,
25 the negotiation and execution of this Stipulation, and all acts performed or documents executed
26 pursuant to or in furtherance of this Stipulation: (i) are not, shall not be deemed to be, and may
27 not be used as, an admission or evidence of any wrongdoing or liability on the part of the Released
28 Parties or of the truth of any of the factual allegations in the Actions; (ii) are not, shall not be

1 deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the
2 part of the Released Parties in any civil, criminal, or administrative proceeding in any court,
3 administrative agency or other tribunal; and (iii) are not, shall not be deemed to be, and may not
4 be used as, an admission or evidence of the appropriateness of these or similar claims for class
5 certification, representative action status or other than for purposes of administering this
6 Settlement Agreement. If for any reason this Settlement Agreement is not approved, it will be
7 of no force or effect, and the Parties shall be returned to their original respective positions.

8 **3. JURISDICTION**

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

14 **4. STIPULATION OF CLASS CERTIFICATION**

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

17 **5. CONSOLIDATION OF ACTIONS AND MOTION FOR PRELIMINARY**
18 **APPROVAL**

19 The Parties have stipulated to the filing of a First Amended Complaint in the Class Action
20 adding Plaintiff Villareal-Romero as a class representative and proxy of the LWDA, as well as
21 to effectively consolidate all allegations in the Class Action, PAGA Action, the Original PAGA
22 Notice, and Amended PAGA Notice, all of which were investigated prior to mediation. If and
23 when the First Amended Complaint is filed, Plaintiffs will dismiss the PAGA Action without
24 prejudice. In addition, Plaintiffs will move for an order granting preliminary approval of the
25 Settlement, approving and directing the mailing of the proposed Notice of Class Action
26 Settlement ("Class Notice") attached hereto as Exhibit "A", conditionally certifying the
27 Settlement Class for settlement purposes only, and approving the deadlines proposed by the
28 Parties for the submission of Requests for Exclusion, Workweek Disputes, and Objections, the

1 papers in support of Final Approval of the Settlement, and any responses to Objections or
2 opposition papers to the Motion for Final Approval. The Parties hereby expressly agree that
3 whether or not the Court finally approves the Settlement, Plaintiffs' allegations from the PAGA
4 Action will relate back to the date on which Plaintiff Torres filed the PAGA Action, and
5 Defendant will be estopped from making any argument that there is any adverse effect on the
6 statute of limitations caused by Plaintiff Torres's dismissal of the PAGA Action without
7 prejudice to effectuate this effective consolidation.

8 **6. STATEMENT OF NO ADMISSION**

9 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiffs
10 and the Settlement Class with respect to any claims or allegations asserted in the Original PAGA
11 Notice, in the Amended PAGA Notice, and in the Actions. This Agreement shall not be deemed
12 an admission by Defendant of any claims or allegations asserted in the Original PAGA Notice,
13 Amended PAGA Notice, or in the Actions. Except as set forth elsewhere herein, in the event
14 that this Agreement is not approved by the Court, or any appellate court, is terminated, or
15 otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or affected
16 in any way any claims, rights or remedies in the Actions, and Defendant will not be deemed to
17 have waived, limited, or affected in any way any of its objections or defenses in the Actions. The
18 Parties shall be restored to their respective positions in the Actions prior to the entry of this
19 Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is
20 reversed on appeal, then this Settlement Agreement shall have no force or effect (except as
21 expressly stated herein), shall not be admissible as evidence for any purpose against any Party in
22 this or any future proceeding involving the Parties (including that the amount of the settlement
23 shall not be admissible against Defendant for any purpose in this or any future proceeding) except
24 to enforce any surviving provisions, and no Party shall be bound by its terms except to the extent:
25 (a) the Court reserves any authority to issue any appropriate orders when denying approval;
26 and/or (b) there are any terms and conditions in this Settlement Agreement (such as this
27 paragraph) specifically stated to survive the Settlement Agreement being voided or not approved,
28 and which control in such an event. For the avoidance of doubt, this paragraph expressly survives

1 in the event that this Settlement Agreement is otherwise terminated or becomes void for any
2 reason.

3 **7. RELEASE OF CLAIMS**

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

5 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
6 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
7 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiffs and
8 all Participating Class Members waive, release, and discharge the Released Parties from any and
9 all claims, demands, rights, liabilities, and/or causes of action they have or may have had against
10 the Released Parties that are asserted in the First Amended Complaint filed in the Class Action
11 or that could have been asserted against the Released Parties based on the factual allegations in
12 the First Amended Complaint filed in the Class Action, as follows: For the duration of the Class
13 Period, the release includes: (a) all claims for failure to pay overtime wages; (b) all claims for
14 failure to pay minimum wages; (c) all claims for failure to provide compliant meal and rest
15 periods and associated premium pay; (d) all claims for the failure to comply with the law on the
16 timely payment of wages upon termination; (e) all claims for wage statements that do not comply
17 with the law; (f) all claims for failure to reimburse business expenses and/or to administer an
18 appropriate expense reimbursement policy; (g) all claims for failure to pay timely wages; (h) all
19 claims for failure to pay all wages or comply with the law on recording and paying for all time
20 worked; (i) all claims for failure to comply with the notice requirements of Labor Code § 2810.5
21 (the Wage Theft Prevention Act); (j) all claims for failure to comply with applicable sick time
22 and vacation time laws, including all claims for failure to provide employees with the proper
23 amount of sick leave or vacation time, and/or to pay out vacation time properly at the conclusion
24 of employment; (k) all claims for failure to maintain accurate records and to comply with
25 applicable laws on the maintenance of employment and time recording records; (l) all claims
26 asserted through California Business & Professions Code § 17200 *et seq.* arising out of the Labor
27 Code violations referenced in the First Amended Complaint; and (m) any premiums, penalties,
28 interest, damages, liquidated damages, punitive damages, restitution, costs, attorneys' fees, other

1 monetary relief, injunctive relief, declaratory relief, accounting, or any other legal or equitable
2 remedy based on or related to the released claims. For Class Members employed during the
3 PAGA Period, the release includes, for the duration of the PAGA Period, all claims released
4 during the Class Period, as well as all claims for civil penalties under PAGA arising out of Labor
5 Code Sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 based on the factual allegations and
6 Labor Code sections alleged to have been violated in the Class Action, as amended, which
7 includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6,
8 226, 226.3, 226.7, 227.3, 246, 432, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 1199,
9 2699, 2699.3, 2800, 2801, 2802, and 2810.5.

10 **B. General Release by Class Representatives.**

11 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
12 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
13 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, in addition to
14 the Released Claims, Plaintiffs make the additional following General Release: Plaintiffs release
15 the Released Parties from any and all claims, demands, rights, liabilities and causes of action of
16 every nature and description whatsoever, known or unknown, asserted or that might have been
17 asserted, whether in tort, contract, statute, or any other common law claim, including but not
18 necessarily limited to any and all claims of wrongful discharge, defamation, slander, libel, fraud,
19 assault, battery, promissory estoppel, negligent or intentional infliction of emotional distress,
20 negligent or intentional misrepresentation, negligent or intentional interference with contract or
21 prospective economic advantage, unfair business practices, negligence, personal injury, invasion
22 of privacy, false imprisonment, conversion, breach of contract, restitution, and breach of the
23 covenant of good faith and fair dealing, any and all claims of discrimination, retaliation or
24 harassment based on sex, age, race, national origin, disability, sexual orientation, medical
25 condition, pregnancy or on any other protected basis, claims under Title VII, the Civil Rights Act
26 of 1964, the Civil Rights Act of 1991; the Rehabilitation Act; the Equal Pay Act, the Americans
27 with Disabilities Act ("ADA"), the Employee Retirement Income Security Act ("ERISA"), the
28 Fair Labor Standards Act, except as prohibited by law, the Fair Credit Reporting Act, the Older

1 Workers Benefit Protection Act, the Worker Adjustment and Retraining Notification Act, the
2 Family and Medical Leave Act, except as prohibited by law, the Sarbanes-Oxley Act of 2002,
3 the Uniformed Services Employment and Reemployment Rights Act, the California Government
4 Code, the California Labor Code, the California Civil Code and all applicable Wage Orders
5 issued by the California Industrial Welfare Commission, the California Business & Professions
6 Code, and any and all other federal, state and local laws and regulations relating to employment,
7 and any and all claims for attorneys' fees and costs, and interest and penalties, *except for* any
8 claims Class Representative may have for: (a) unemployment, state disability and/or paid family
9 leave insurance benefits pursuant to the terms of applicable law; (b) workers' compensation
10 insurance benefits pursuant to applicable state law under the terms of any worker's compensation
11 insurance policy or fund; (c) continued participation in the Company's group medical benefit
12 plans at a former employee's own expense pursuant to the terms and conditions of the federal
13 law known as "COBRA" and/or any applicable state law counterpart; (d) benefit entitlements
14 vested, if any, pursuant to written terms of any Employee benefit plan governed by the federal
15 law known as "ERISA"; (e) violation of any federal, state or local statutory and/or public policy
16 right or entitlement that, by applicable law, is not waivable; and (f) any wrongful act or omission
17 occurring after the Final Approval Date.. With respect to the General Release, Plaintiffs stipulate
18 and agree that, through the Final Approval Date, Plaintiffs shall be deemed to have, and by
19 operation of the Final Judgment and payment to the Settlement Administrator shall have,
20 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights
21 and benefits of Section 1542 of the California Civil Code, or any other similar provision under
22 federal or state law, which provides:

23 A general release does not extend to claims which the creditor
24 does not know or suspect to exist in his or her favor at the time of
25 executing the release, which if known by him or her must have
26 materially affected his or her settlement with the debtor or
27 released party.

27 Plaintiffs agree and understand that if, hereafter, they discover facts different from or in
28 addition to those which they now know or believe to be true, that the waivers and releases set

1 forth in this Agreement shall be and remain effective in all respects notwithstanding such
2 different or additional facts or the discovery thereof.

3 **8. SETTLEMENT ADMINISTRATOR**

4 Plaintiffs and Defendant, through their respective counsel, have selected Phoenix
5 Settlement Administrators to administer the Settlement, which includes but is not limited to
6 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
7 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
8 expenses of the Settlement Administrator, currently estimated to be \$8,750, will be paid from the
9 Gross Settlement Amount. If the actual Settlement Administrator fees are more or less than
10 \$8,750, the difference will, respectively, lessen or enhance the Net Settlement Amount.
11 Defendant shall have no responsibility or liability of any nature in any way arising out of or
12 related to the acts or omissions of the Settlement Administrator, including but not limited to its
13 payment (or non-payment) of settlement payments.

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

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

16 (1) Within ten (10) calendar days after the Preliminary Approval Date,
17 Defendant's Counsel shall provide the Settlement Administrator with information with respect
18 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
19 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social
20 Security Number in Defendant's possession, custody, or control; and (3) the hire dates and
21 termination dates for each Settlement Class Member ("Class List"). The Settlement
22 Administrator shall perform an address search using the United States Postal Service National
23 Change of Address ("NCOA") database and update the addresses contained on the Class List
24 with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class
25 List from Defendant, the Settlement Administrator shall mail the Class Notice in English and
26 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current
27 mailing address information available. The Settlement Administrator shall maintain a list with
28 names and all addresses to which notice was given, and digital copies of all the Settlement

1 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
2 least four (4) years from the Final Approval Date. Such information shall be available to Class
3 Counsel and Defendant's Counsel upon request.

4 (2) The Class Notice will set forth:

- 5 (a) the Settlement Class Member's estimated Individual Settlement
6 Payment and the basis for it;
- 7 (b) the information required by California Rule of Court, rule 3.766,
8 subdivision (d);
- 9 (c) the material terms of the Settlement;
- 10 (d) the proposed Settlement Administration Costs;
- 11 (e) the definition of the Settlement Class;
- 12 (f) a statement that the Court has preliminarily approved the
13 Settlement;
- 14 (g) how the Settlement Class Member can obtain additional
15 information, including contact information for Class Counsel;
- 16 (h) information regarding opt-out and objection procedures, including
17 deadlines;
- 18 (i) the date and location of the Final Approval Hearing; and
- 19 (j) that the Settlement Class Member must notify the Settlement
20 Administrator no later than the Response Deadline if the
21 Settlement Class Member disputes the accuracy of the number of
22 Workweeks as set forth on his or her Class Notice ("Workweek
23 Dispute"). If a Settlement Class Member fails to timely dispute
24 the number of Workweeks attributed to him or her in conformity
25 with the instructions in the Class Notice, then he or she shall be
26 deemed to have waived any objection to its accuracy and any claim
27 to any additional settlement payment based on different data.
28

1 (3) If a Class Notice from the initial notice mailing is returned as
2 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
3 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
4 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
5 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
6 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
7 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
8 Administrator with a forwarding address before the Response Deadline shall be promptly re-
9 mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class
10 Notice shall have an additional fifteen (15) calendar days to submit a Request for Exclusion,
11 objection or to dispute estimated payments.

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

18 **B. Objections.**

19 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
20 Class Members) may object to the Settlement, either in writing or in person as provided in this
21 paragraph. In order for any Settlement Class Member to object to this Settlement, or any term
22 of it, in writing, he or she must do so by mailing a written objection to the Settlement
23 Administrator at the address or phone number provided on the Class Notice no later than the
24 Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith
25 to Class Counsel and Defendant's counsel. Defendant's Counsel shall lodge a copy of the
26 Objection with the Court with the Motion for Final Approval. The Objection should set forth in
27 writing: (1) the objector's name and address, and (2) the reason(s) for the Objection, along with
28 whatever legal authority, if any, the objector asserts supports the Objection. If a Settlement Class

1 Member objects to the Settlement, the Settlement Class Member will remain a member of the
2 Settlement Class and if the Court approves this Agreement, the Settlement Class Member will be
3 bound by the terms of the Settlement in the same way and to the same extent as a Settlement
4 Class Member who does not object. The date of mailing of the Class Notice to the objecting
5 Settlement Class Member shall be conclusively determined according to the records of the
6 Settlement Administrator. Settlement Class Members need not object in writing to be heard at
7 the Final Approval Hearing; they may object or comment in person at the hearing at their own
8 expense.

9 **C. Requesting Exclusion.**

10 Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
11 Settlement by mailing a written request to be excluded from the Settlement (“Request for
12 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline.
13 To be valid, a Request for Exclusion must include the Class Member’s name, social security
14 number and signature and the following statement or something to its effect: “Please exclude me
15 from the Settlement Class in the *Torres v. Primal Pet Foods, Inc.* matter” or a statement of
16 similar meaning. The Settlement Administrator shall immediately provide copies of all Requests
17 for Exclusion to Class Counsel and Defendant’s Counsel and shall report the Requests for
18 Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final
19 Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure
20 will not be entitled to receive any payment from the Settlement and will not be bound by the
21 Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any
22 Settlement Class Member who does not opt out of the Settlement by submitting a timely and
23 valid Request for Exclusion will be bound by all terms of the Settlement, including those
24 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
25 Final Approval of the Settlement is granted. Defendant has the right to withdraw from the
26 settlement at any time prior to final approval if more than 10% of Settlement Class Members
27 affirmatively and validly opt out of the Settlement.

1 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

2 Class Members will have an opportunity to dispute the information provided in their Class
3 Notice. To the extent Class Members dispute the number of Workweeks to which they have been
4 credited, Class Members may produce evidence to the Settlement Administrator showing that
5 such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's
6 records will be presumed determinative. However, if a Class Member produces evidence to the
7 contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member
8 and will make the final decision as to the number of Workweeks that should be applied. All such
9 disputes are to be resolved not later than fourteen (14) calendar days after the Response Deadline.

10 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
11 **MEMBERS**

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

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

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

25 C. Individual Settlement Payments are to be calculated by the Settlement
26 Administrator by subtracting all applicable tax withholdings from the Individual Settlement
27 Shares as set forth in Section 14 of this Agreement.

28 ///

1 **D.** This net amount is to be paid out to Participating Class Members by way of
2 check and is referred to as "Individual Settlement Payment(s)."

3 **11. DISTRIBUTION OF PAYMENTS**

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

5 Settlement Class Members who do not submit a timely and valid Request for Exclusion
6 (i.e., Participating Class Members) will receive an Individual Settlement Payment. Individual
7 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)
8 calendar days after the date of their issuance. Within seven (7) calendar days after expiration
9 of the 180-day period, checks for such payments shall be canceled and funds associated with
10 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code
11 of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest,
12 if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to
13 Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use
14 in Solano County. The Settlement Administrator shall prepare a report regarding the
15 distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be
16 presented to the Court by Class Counsel along with a proposed amended judgment that is
17 consistent with the provisions of Code of Civil Procedure section 384.

18 **B. Funding of Settlement.**

19 Defendant Primal Pet shall make a payment of \$1,800,000, the Gross Settlement Amount,
20 to the Settlement Administrator. Defendant shall have fourteen (14) calendar days following the
21 Effective Date to fully fund the Gross Settlement Amount to the Settlement Administrator
22 pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified
23 settlement account ("QSA") with an FDIC insured banking institution, for distribution in
24 accordance with this Agreement and the Court's Orders and subject to the conditions described
25 herein. In addition, as part of the final payment, Defendant shall include the Employer's Taxes
26 owed on the wages portion of the settlement, which shall be determined by the Settlement
27 Administrator. Individual Settlement Payments for Class Members shall be paid exclusively
28 from the QSA, pursuant to the settlement formula set forth herein.

1 Payments from the QSA shall be made for (1) the Service Awards to Plaintiffs as
2 specified in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award
3 to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the
4 Settlement Administrator Costs, as specified in this Agreement and approved the Court; and (4)
5 the amount allocated to PAGA penalties to be paid to the LWDA, as specified in this Agreement
6 and approved by the Court. The balance remaining shall constitute the Net Settlement Amount
7 from which Individual Settlement Payments shall be made to Participating Class Members, less
8 applicable taxes and withholdings. All interest accrued shall be for the benefit of the Class
9 Members and distributed in a pro-rata basis.

10 **C. Time for Distribution.**

11 No more than fourteen (14) calendar days after payment of the full Gross Settlement
12 Amount by Defendant, as well as Employer Taxes, the Settlement Administrator shall distribute
13 all payments due under the Settlement, including the Individual Settlement Payments to
14 Participating Class Members, as well as the Court-approved payments for the Service Award to
15 Plaintiffs, attorneys' fees and litigation costs and expenses to Class Counsel, Administration
16 Costs to the Settlement Administrator, and the portion of the LWDA payment payable to the
17 LWDA.

18 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

19 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
20 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, or Six Hundred Thirty
21 Thousand Dollars and Zero Cents (\$630,000.00). Class Counsel shall further apply for, and
22 Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of
23 actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration
24 testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
25 Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all
26 past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval
27 of the settlement in the Actions. The "future" aspect of the amounts stated herein includes,
28 without limitation, all time and expenses expended by Class Counsel (including any appeals

1 therein). There will be no additional charge of any kind to either the Settlement Class Members
2 or request for additional consideration from Defendant for such work. Should the Court approve
3 attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts
4 provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.
5 Class Counsel shall be solely and legally responsible to pay all applicable taxes on any award of
6 fees and costs and shall hold harmless Defendant and Defendant's counsel from any claim or
7 liability for taxes, penalties, or interest arising as a result of payment of said fee and cost awards.
8 Class Counsel shall provide the Settlement Administrator with properly completed and signed
9 IRS Form W-9s in order for the Settlement Administrator to process the fee and cost award
10 approved by the Court as required.

11 **13. SERVICE AWARD TO PLAINTIFFS**

12 Named Plaintiffs shall seek, and Defendant shall not oppose, a Service Award in an
13 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
14 Plaintiff Torres and Five Thousand Dollars and Zero Cents (\$5,000) for Plaintiff Villareal-
15 Romero, for participation in and assistance with the Class Action. Any Service Award awarded
16 to Plaintiffs shall be paid by the Settlement Administrator from the Gross Settlement Amount
17 and shall be reported by the Settlement Administrator on an IRS Form 1099. If the Court
18 approves Service Awards to Plaintiffs in less than the amounts sought herein, then the
19 unapproved portion(s) shall be a part of the Net Settlement Amount. Named Plaintiffs shall each
20 be solely and legally responsible to pay any and all applicable taxes on their respective Service
21 Awards and shall hold harmless Defendant, Class Counsel and Defendant's counsel from any
22 claim or liability for taxes, penalties, or interest arising as a result of payment of the Service
23 Awards.

24 **14. TAXATION AND ALLOCATION**

25 A. Each Individual Settlement Share shall be allocated as follows: 30% as wages and
26 meal and rest period premiums, to be subject to all applicable tax withholdings; and 70% as
27 interest and penalties, not to be subject to payroll tax withholdings. The Settlement
28 Administrator shall then calculate each Individual Settlement Payment by deducting all

1 applicable tax withholdings from each Individual Settlement Share, based on and using said
2 allocation. The Settlement Administrator shall issue an IRS Form W-2 to each Participating
3 Class Member for the portion of each Individual Settlement Payment allocated as wages and
4 meal and rest premiums and subject to all applicable tax withholdings. The Settlement
5 Administrator shall issue an IRS Form 1099 to each Participating Class Member for the portions
6 of each Individual Settlement Payment allocated as non-wage penalties and interest and not
7 subject to payroll tax withholdings.

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

14 **C.** All Employer Taxes shall be paid by Defendant separate, apart and above from
15 the Gross Settlement Amount. Defendant shall remain liable to pay the Employer Taxes, as
16 described above.

17 **D.** Neither Counsel for Plaintiffs nor Defendant intend anything contained in this
18 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
19 be relied upon as such within the meaning of United States Treasury Department Circular 230
20 (31 C.F.R. Part 10, as amended) or otherwise.

21 **15. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

22 The Parties agree to allocate One Hundred Thousand Dollars and Zero Cents (\$100,000)
23 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
24 percent (75%) of the amount allocated toward PAGA (\$75,000.00) will be paid to the LWDA
25 (i.e., the PAGA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement
26 Amount (\$25,000.00), to be distributed to Participating Class Members on a *pro rata* basis, based
27 upon their respective Workweeks in the Class Period.

28 / / /

1 **16. 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 then this Settlement Agreement shall have no force or effect (except as expressly stated herein),
8 shall not be admissible as evidence for any purpose against any Party in this or any future
9 proceeding involving the Parties (including that the amount of the settlement shall not be
10 admissible against Defendant for any purpose in this or any future proceeding) except to enforce
11 any surviving provisions, and no Party shall be bound by its terms except to the extent: (a) the
12 Court reserves any authority to issue any appropriate orders when denying approval; and/or (b)
13 there are any terms and conditions in this Settlement Agreement (such as this paragraph)
14 specifically stated to survive the Settlement Agreement being voided or not approved, and which
15 control in such an event. If, for any reason, this Settlement Agreement is voided or terminated
16 for any reason, not approved by the Court or approval is reversed on appeal, this paragraph
17 expressly survives and the Parties agree to remain bound by its terms.

18 **17. INCREASE IN WEEKLY PAY PERIODS**

19 Defendant represents that there are no more than 24,242 Workweeks worked by Class
20 Members between May 18, 2016 through December 20, 2020. In the event the number of
21 Workweeks in the Class Period exceeds 26,666 Workweeks, then the Gross Settlement Amount
22 shall be increased proportionally for every Workweek above and beyond 26,666 Workweeks
23 by the Workweek Value. The Workweek Value shall be calculated by dividing the Gross
24 Settlement Amount (\$1,800,000.00) by 24,242, which amounts to a Workweek Value of
25 \$74.25. Thus, for example, should there be 27,000 Workweeks in the Class Period, then the
26 Gross Settlement Amount shall be increased by \$24,799.50. (27,000 Workweeks – 26,666
27 Workweeks x \$74.25/Workweek.)

28 / / /

1 **18. NOTICE OF JUDGMENT**

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

4 **19. MISCELLANEOUS PROVISIONS**

5 **A. Interpretation of the Agreement.**

6 This Agreement constitutes the entire agreement between Plaintiffs and Defendant with
7 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
8 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
9 oral or written representations or terms shall modify, vary or contradict its terms. In entering
10 into this Agreement, the Parties agree that this Agreement is to be construed according to its
11 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
12 interpreted and enforced under the laws of the State of California, both in its procedural and
13 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
14 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
15 in the Superior Court of the State of California for the County of Solano, and Plaintiffs and
16 Defendant hereby consent to the personal jurisdiction of the Court in the Actions over it solely
17 in connection therewith. The foregoing is only limited to disputes concerning this Agreement
18 and in no way limits or negates the enforceability and effect of any underlying arbitration
19 agreements signed by employees of Defendant obligating them to arbitrate any and all claims on
20 an individual (and not on a class, collective, or representative) basis, if any. Plaintiffs, on
21 Plaintiffs' behalf and on behalf of the Settlement Class, and Defendant participated in the
22 negotiation and drafting of this Agreement and had available to them the advice and assistance
23 of independent counsel. As such, neither Plaintiffs nor Defendant may claim that any ambiguity
24 in this Agreement should be construed against the other. The Agreement may be modified only
25 by a writing signed by counsel for the Parties and approved by the Court.

26 ///

27 ///

28 ///

1 **B. Further Cooperation.**

2 Plaintiffs, Defendant, and their respective attorneys shall proceed diligently to prepare
3 and execute all documents, to seek the necessary approvals from the Court, and to do all things
4 reasonably necessary to consummate the Settlement as expeditiously as possible.

5 **C. Counterparts.**

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

9 **D. Authority.**

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

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

13 Plaintiffs, Participating Class Members, Class Counsel, and Defendant are direct
14 beneficiaries of this Agreement, but there are no third-party beneficiaries.

15 **F. Deadlines Falling on Weekends or Holidays.**

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

18 **G. Severability.**

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

24 *(Signature page follows)*

1 **IT IS SO AGREED:**

2 Dated: Apr 1, 2021, 2021

Cándida Aracely torres
Cándida Aracely torres (Apr 1, 2021 10:12 PDT)

CANDIDA ARACELY TORRES
Plaintiff and Class Representative

4 Dated: _____, 2021

JUAN A. VILLAREAL-ROMERO
Plaintiff and Class Representative

6 Dated: _____, 2021

PRIMAL PET FOODS, INC.
Defendant
By:
Its:

10 **AGREED AS TO FORM:**

11
12 Dated: April 1, 2021


DAVID D. BIBIYAN
Counsel for Plaintiff Candida Aracely Torres

14
15 Dated: _____, 2021

CHRISTOPHER J. BANKS
Counsel for Defendant Primal Pet Foods, Inc.

1 **IT IS SO AGREED:**

2 Dated: _____, 2021

3 CANDIDA ARACELY TORRES
4 Plaintiff and Class Representative

5 Dated: Apr 1, 2021, 2021

Juan Angel Villarreal Romero

Juan Angel Villarreal Romero (Apr 1, 2021 16:12 PDT)

6 JUAN A. VILLAREAL-ROMERO
7 Plaintiff and Class Representative

8 Dated: _____, 2021

PRIMAL PET FOODS, INC.

Defendant

By:

Its:

10 **AGREED AS TO FORM:**

11
12 Dated: _____, 2021

DAVID D. BIBIYAN

Counsel for Plaintiff Candida Aracely Torres

14
15 Dated: _____, 2021

CHRISTOPHER J. BANKS

Counsel for Defendant Primal Pet Foods, Inc.

1 **IT IS SO AGREED:**

2 Dated: _____, 2021

CANDIDA ARACELY TORRES
Plaintiff and Class Representative

4 Dated: _____, 2021

JUAN A. VILLAREAL-ROMERO
Plaintiff and Class Representative

7 Dated: MARCH 31, 2021


PRIMAL PET FOODS, INC.

Defendant

By: MATTHEW KOSS

Its: Founder, Chief Product Officer

10 **AGREED AS TO FORM:**

12 Dated: _____, 2021

DAVID D. BIBIYAN

Counsel for Plaintiff Candida Aracely Torres

15 Dated: March 31, 2021, 2021



CHRISTOPHER J. BANKS

Counsel for Defendant Primal Pet Foods, Inc.