

Kevin Mahoney (SBN: 235367)  
[kmahoney@mahoney-law.net](mailto:kmahoney@mahoney-law.net)  
Berkeh Alemzadeh (SBN: )  
[balem@mahoney-law.net](mailto:balem@mahoney-law.net)  
**MAHONEY LAW GROUP, APC**  
249 East Ocean Boulevard, Suite 814  
Long Beach, CA 90802  
Telephone: (562) 590-5550  
Facsimile: (562) 590-8400

Attorneys for Plaintiff ANTONIO MONTEJANO, as an individual and on behalf of all employees similarly situated,

ILYA FILMUS (SBN 251512)  
S. ASHAR AHMED (SBN 256711)  
**INFINITY LAW GROUP LLP**  
1020 Aileen St.  
Lafayette, California 94549  
Tel: (415) 426-3580  
Fax: (415) 426-3581  
Email: [ifilmus@infinitylawca.com](mailto:ifilmus@infinitylawca.com)  
[aahmed@infinitylawca.com](mailto:aahmed@infinitylawca.com)

Attorneys for Defendant GUL FOOD MANAGEMENT, INC. dba JACK IN THE BOX

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

ANTONIO MONTEJANO, as an individual  
and on behalf of all employees similarly  
situated,

Plaintiff,

v.

GUL FOOD MANAGEMENT, INC. dba  
JACK IN THE BOX; and DOES 1 through  
50, inclusive,

Defendant.

Case No. CGC-19-577248

**CLASS ACTION**

**FIFTH AMENDED AND RESTATED  
STIPULATION OF CLASS AND  
REPRESENTATIVE ACTION  
SETTLEMENT AND RELEASE**

Assigned for all purposes to:  
Hon. Anne-Christine Massullo, Dept. 304

Complaint Filed: July 1, 2019  
Trial Date: None Yet Set

1  
2 **FIFTH AMENDED AND RESTATED STIPULATION OF CLASS ACTION**

3 **SETTLEMENT AND RELEASE**

4 IT IS HEREBY STIPULATED, by and among Plaintiff ANTONIO MONTEJANO, on behalf of  
5 himself, the Settlement Class Members, and Aggrieved Employees on the one hand, and  
6 Defendant GUL FOOD MANAGEMENT, INC. dba JACK IN THE BOX,; and subject to the  
7 approval of the Court, that the above-captioned action is hereby being compromised and settled  
8 pursuant to the terms and conditions set forth in this Fifth Amended and Restated Joint Stipulation  
9 of Class and Representative Action Settlement and Release (the "Settlement").

10 **1. DEFINITIONS**

11 Capitalized terms used in this Settlement shall have the meanings set forth below:

12 1.1. "Montejano Class Action" shall mean the lawsuit entitled *Montejano v. Gul Food*  
13 *Management, Inc. dba Jack In The Box*, and DOES 1 through 50, pending in the Superior Court  
14 of the State of California, County of San Francisco, and designated as Case No. CGC-19-577248.

15 1.2. The "Montejano PAGA Action" shall mean the operative Private Attorney's  
16 General Act Complaint commenced on November 5, 2019, entitled *Montejano v. Gul Food*  
17 *Management, Inc. dba Jack In The Box*, and DOES 1 through 50, in the Superior Court of  
18 California, County of San Francisco, Case No. CGC-19580532.

19 1.3. "Claims Administrator" means Phoenix Settlement Administrators.

20 1.4. "Claims Administration Costs" means the amount to be paid to the third-party  
21 Claims Administrator to administer the Settlement, not to exceed Twenty Thousand Dollars  
22 (\$20,000.00).

23 1.5. "Class Counsel" means Kevin Mahoney of the Mahoney Law Group, APC, who  
24 are representing Plaintiff, the Class, and the Aggrieved Employees in the Montejano Class Action  
25 and Montejano PAGA Action.

26 1.6. "Class Counsel Award" means reasonable attorneys' fees for Class Counsel's  
27 litigation and resolution of the Montejano Class Action and Montejano PAGA Action in a  
28 maximum amount of Two Hundred Six Thousand Six Hundred Sixty-Six Dollars and Sixty-

1 Seven Cents (\$206,666.67) or (1/3rd of the Gross Settlement Amount). The Court shall determine  
2 the amount of the Class Counsel Award, and it shall be paid from the Gross Settlement Amount.

3 1.7. "Class Counsel Costs" means expenses incurred by Class Counsel for Class  
4 Counsel's litigation and resolution of the Montejano Class Action and Montejano PAGA Action,  
5 not to exceed Twenty Thousand Dollars (\$20,000.00). The Court shall determine the amount of  
6 the Class Counsel Costs, and it shall be paid from the Gross Settlement Amount.

7 1.8. "Class Information" means information regarding Settlement Class Members and  
8 Aggrieved Employees that Defendant Gul Food Management Inc. dba Jack in the Box, will in  
9 good faith compile from its records and provide to the Claims Administrator. Class Information  
10 shall be provided as a Microsoft Excel spreadsheet and shall include: each Settlement Class  
11 Member's and Aggrieved Employee's full name; last known address; last known home telephone  
12 number; social security number; start and end dates of employment during the Class Period, and  
13 the total number of days each Settlement Class Member and Aggrieved Employee worked for  
14 Defendant Gul Food Management Inc. dba Jack in the Box, during the Class Period. Because  
15 social security numbers are included in the Class Information, the Claims Administrator shall  
16 maintain the Class Information in confidence; access shall be limited to those with a need to use  
17 the Class Information as part of the administration of the Settlement; and transmission shall be  
18 through use of a secure, password-protected file.

19 1.9. "Class Period" means the period from July 1, 2015 through September 10, 2020..

20 1.10. "Class Representative Enhancement Award" means the amount that the Court  
21 authorizes to be paid to the Class Representative Antonio Montejano, not to exceed Seven  
22 Thousand Five Hundred Dollars (\$7,500.00), in addition to his Individual Settlement Payment,  
23 for his service in connection with being the Class Representative. The Class Representative  
24 Enhancement Award shall be paid from the Gross Settlement Amount. Any portion of the  
25 requested Class Representative Enhancement Award that is not awarded to Plaintiff Antonio  
26 Montejano shall be part of the Net Settlement Amount.

27 1.11. "Court" means the Superior Court of the State of California for the County of San  
28 Francisco.

1 1.12. "Defendant" means Gul Food Management Inc. dba Jack in the Box, and all of its  
2 current and former parents, owners, subsidiaries, predecessors and successors, and each of their  
3 respective officers, directors, partners, shareholders and agents, and any other successors,  
4 assigns, or legal representatives.

5 1.13. "Defense Counsel" means Ilya Filmus and Ashar Ahmed of Infinity Law Group,  
6 LLP.

7 1.14. "Effective Date" means the date that the Gross Settlement Amount is fully funded  
8 pursuant to the payment plan as agreed to in this Agreement.

9 1.15. "Employee Taxes" means the employee's share of any and all applicable federal,  
10 state, and local payroll taxes on the portion of Participating Class Members' and Aggrieved  
11 Employees' Individual Settlement Payment that constitutes wages. The Employee Taxes will  
12 be paid out of the Net Settlement Amount.

13 1.16. "Employer Taxes" means the employer's share of any and all applicable federal,  
14 state, and local payroll taxes on the portion of Participating Class Members' and Aggrieved  
15 Employees' Individual Settlement Payment that constitutes wages. The Employer Taxes will be  
16 paid separately by the Employer and shall not be paid out of the Gross Settlement Amount.

17 1.17. "Final Approval Hearing" means the hearing held by the Court, pursuant to class  
18 action and PAGA procedures and requirements, on the motion for final approval of the  
19 Settlement.

20 1.18. "Final Approval Date" means the date, which the Court grants final approval of  
21 the Settlement.

22 1.19. "Final Judgment" means the Court's entry of an order of judgment in the  
23 Montejano Class Action and Montejano PAGA Action following the Court's final approval of  
24 the Settlement.

25 1.20. "Gross Settlement Amount" means the maximum amount Defendant shall have to  
26 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of  
27 all Individual Settlement Amounts to Participating Class Members and Aggrieved Employees,  
28 Class Counsel Award, Class Counsel Costs, Claims Administrator Costs, Class Representative



1 fees or expenses (other than Class Counsel Fees Payment and Class Counsel Litigation Expenses  
2 Payment) incurred by implementing the terms and conditions of this Agreement as approved by  
3 the Superior Court.

4 1.24. "Non-Participating Class Member" shall mean a Class Member who submits a  
5 complete, valid and timely request to be excluded from the Class Settlement pursuant to the  
6 instructions provided in the Class Notice and/or who has signed a release with Defendant to  
7 resolve any claims as alleged in the Montejano Class Action or based facts as alleged in the  
8 Montejano PAGA Action. Aggrieved Employees shall still be entitled to receive his or her share  
9 of the PAGA allocation of the Settlement.

10 1.25. "Notice of Settlement" means the Notice of Proposed Class and Representative  
11 Action Settlement (substantially in the form attached hereto as **Exhibit "A"**).

12 1.26. "Notice Packet" means the Notice of Proposed Class and Representative Action  
13 Settlement, Notice of Estimated Individual Settlement Payment, and the Request for Exclusion.

14 1.27. "PAGA Allocation" means ten thousand dollars (\$10,000.00), allocated from the  
15 Gross Settlement Amount for the compromise of claims for civil penalties pursuant to the Private  
16 Attorneys General Act of 2004 ("PAGA"). Per California Labor Code section 2699(i), seven  
17 thousand five hundred dollars (\$7,500.00), representing 75% of the PAGA Allocation, will be  
18 paid to California's Labor Workforce Development Agency. The remaining two thousand five  
19 hundred dollars (\$2,500.00), representing 25% of the PAGA Allocation, shall be distributed to  
20 Aggrieved Employees. (*See* definition of "Aggrieved Employees" in paragraph 1.41 below).

21 1.28. "Participating Class Members" means all Settlement Class Members who do not  
22 submit a valid and timely Request for Exclusion from the Class Settlement.

23 1.29. "Parties" means Plaintiff and Defendant collectively, and "Party" shall mean any  
24 Plaintiff or any Defendant, individually.

25 1.30. "Plaintiff" means Antonio Montejano.

26 1.31. "Plaintiff's General Released Claims" means, in addition to the releases made by  
27 Participating Class Members, Plaintiff, on behalf of himself, his heirs, successors, assigns,  
28 executors, trustees, and estates, in exchange for the terms and conditions of this Agreement,

1 including the Class Representative Enhancement Award requested or as otherwise authorized by  
2 the Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to  
3 the full extent permitted by law, of and from any and all claims arising from his employment with  
4 Defendant, known and unknown, asserted and unasserted, which Plaintiff had or may have had  
5 against the Released Parties, whether sounding in tort, in contract, in law, in equity or otherwise,  
6 and including but not limited to all claims for violation of any local, state, or federal statute, rule,  
7 or regulation.

8 1.32. “Preliminary Approval Date” means the date the Court enters the Preliminary  
9 Approval Order for the Settlement.

10 1.33. “Preliminary Approval Order” means the Proposed Order (filed concurrently with  
11 this Settlement) for preliminary approval of the Settlement, as amended by the Court.

12 1.34. “Released Class Claims” means any and all known and unknown claims, debts,  
13 liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or  
14 causes of action contingent or accrued for, arising out of the allegations and claims asserted in  
15 the Montejano Class Action including without limitation, all wage and hour claims for unpaid  
16 wages including minimum wage payments, failure to pay wages during employment, failure to  
17 pay overtime, failure to pay wages upon termination, uniform maintenance costs, meal and rest  
18 break violations, wage statement violations and penalties, waiting time penalties, reimbursement,  
19 restitution and other equitable relief, disgorgement, conversion, unjust enrichment, civil and  
20 statutory penalties, interests, liquidated damages, punitive damages, attorneys’ fees and costs,  
21 claims under California Labor Code sections 201-203, 204, 223, 226, 226.7, 510, 512, 558.1,  
22 1194, 1194.2, 1197, 2802, Industrial Welfare Commission Wage Order No. 9, claims under  
23 California Business & Professions Code sections 17200-17204, and any other benefit claims on  
24 account of the allegations asserted in the Montejano Class Action. This release shall apply to all  
25 claims arising at any point between July 1, 2015 through September 10, 2020.

26 “Released PAGA Claims” means any and all known and unknown PAGA claims, in the  
27 Montejano PAGA Action, and specifically, seeking civil penalties pursuant to PAGA for alleged  
28 violations of the following sections of the California Labor Code: 201-203, 204, 206, 210, 226,

1 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800,  
2 and 2802, and any other benefit claims on account of the allegations asserted in the Montejano  
3 PAGA Action. This release shall apply to all claims based on Plaintiff's Notice to the LWDA  
4 and the allegations in the operative complaint arising at any point between September 1, 2018  
5 through September 10, 2020." Even if an Aggrieved Employee chooses to "opt-out" of the Class  
6 Settlement, the Aggrieved Employee would still be bound by the PAGA release.

7 1.35. "**Released Parties**" means Gul Food Management Inc. dba Jack in the Box, and  
8 all of its current, former, and future parents, owners, subsidiaries, predecessors and successors,  
9 and all of their agents, employees, officers, directors, spouses, partners, shareholders, agents,  
10 and any other successors, assigns, or legal representatives, as well as any other individual or  
11 entity which could be jointly liable with any of the following.

12 1.36. "**Request for Exclusion**" means a Settlement Class Member's or Aggrieved  
13 Employee's completed Request for Exclusion form to opt out of the Settlement postmarked on or  
14 before the Response Deadline in the form substantially similar to that attached hereto as **Exhibit**  
15 **B**. Settlement Class Members to whom Notice Packets are resent after having been returned  
16 undeliverable to the Claims Administrator shall have an additional fourteen (14) days from the  
17 date of re-mailing or until the Response Deadline has expired, whichever is later to submit a  
18 Request for Exclusion.

19 1.37. "Response Deadline" means the date sixty (60) days after the Claims  
20 Administrator mails Notice Packets to Settlement Class Members, and shall be the last date on  
21 which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement,  
22 or (b) postmark Objections to the Settlement. Settlement Class Members to whom Notice Packets  
23 are resent after having been returned undeliverable to the Claims Administrator shall have an  
24 additional fourteen (14) calendar days from the date of re-mailing or until the Response Deadline  
25 has expired, whichever is later to submit an Objection to the Settlement or submit a Request for  
26 Exclusion.

27 1.38. "Settlement" means the terms of this Third Amended and Restated Stipulation of  
28 Class and Representative Action Settlement and Release.



1 1.39. "Settlement Class Member(s)" or "Settlement Class" means all non-exempt  
2 employees, currently and formerly employed by Defendant Gul Food Management Inc. dba Jack  
3 in the Box, in the State of California during the period of July 1, 2015 through September 10,  
4 2020. Similarly, Aggrieved Employees, as defined below, are included in this Settlement Class.

5 1.40. "Aggrieved Employees" means all non-exempt employees, currently and formerly  
6 employed by Defendant Gul Food Management Inc. dba Jack in the Box, in the State of California  
7 during the period September 1, 2018 through September 10, 2020. For purposes of this  
8 Settlement, these Similarly Aggrieved Employees are members of the Settlement Class as defined  
9 Section 1.40 above.

10 **1.41. RECITALS**

11 2.1. Class Certification. The Parties stipulate and agree to the certification of this  
12 Action for purposes of this Settlement only. Should the Settlement not become final and effective,  
13 class certification shall immediately be set aside (subject to further proceedings on motion of any  
14 party to certify or deny certification thereafter), the Settlement shall be deemed null and void, and  
15 will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose  
16 whatsoever. The Parties' willingness to stipulate to class certification as part of the Settlement  
17 shall have no bearing on and shall not be admissible in or considered in connection with, the issue  
18 of whether a class should be certified in a non-settlement context in this Action, and shall have  
19 no bearing on and shall not be admissible or considered in connection with the issue of whether  
20 a class should be certified in any other lawsuit.

21 2.2. Procedural History. On July 1, 2019, Plaintiff Antonio Montejano, a former  
22 employee of Defendant Gul Food Management Inc. dba Jack in the Box, filed the Montejano  
23 Class Action in the Superior Court of California for the County of San Francisco as a proposed  
24 class action on behalf of all current and former non-exempt California employees of Defendant  
25 Gul Food Management Inc. dba Jack in the Box, during the period of July 1, 2015 through  
26 September 10, 2020. Plaintiff Montejano alleged that Defendant Gul Food Management Inc. dba  
27 Jack in the Box, (1) failed to pay all wages, including overtime wages, (2) failed to provide meal  
28 periods; (3) failed to provide rest periods; (4) failed to pay wages upon termination of

1 employment; (5) failed to provide accurate itemized wage statements; (6) failed to indemnify for  
2 necessary business expenditures or losses in discharge of duties; and (7) engaged in unfair  
3 business practices. Plaintiff Montejano sought recovery under the California Labor Code, the  
4 applicable Industrial Welfare Commission Wage Order, and the California Business &  
5 Professions Code. On August 20, 2019, Defendant filed an Answer in which it denied  
6 Montejano's allegations and asserted sixty-four affirmative defenses.

7 2.3. On or about November 5, 2019, Plaintiff Montejano filed the Montejano PAGA  
8 Action, a representative action seeking civil penalties for violations of the Private Attorney's  
9 General Act ("PAGA").

10 2.4. Settlement Negotiations. On February 19, 2020, the Parties participated in a  
11 private mediation session with mediator Tripper Ortman, a well-respected, experienced mediator  
12 in the field of wage and hour class actions. Prior to the mediation, Class Counsel conducted  
13 extensive informal discovery and investigation during the prosecution of the Montejano Class  
14 Action, the class action case. The informal discovery and investigation included, among other  
15 things: (1) inspection and analysis of employee documents and data, including personnel files,  
16 time and payroll records, employment policies and procedures, and other relevant documents; (2)  
17 evaluation of legal positions taken by Defendants; (3) evaluation of potential class-wide damages  
18 and PAGA penalties; and (4) review and research of applicable law with respect to the claims and  
19 potential defenses brought by Defendant. Class Counsel has vigorously prosecuted this Class  
20 Action, and Defendant has vigorously defended it. The Parties have engaged in sufficient  
21 discovery and investigation to assess the relative merits of the claims and contentions of the  
22 Parties. Based on this information and the settlement discussions during the mediation conducted  
23 at arm's length and settlement discussions, on February 19, 2020, the Parties came to an  
24 agreement to settlement both the Montejano Class Action and Montejano PAGA Action. The  
25 settlement is the result of an informed and detailed evaluation of the potential liability of total  
26 exposure in relation to the costs and risks associated with continued litigation of the Montejano  
27 Action and Montejano PAGA Class Action.

28 2.5. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel

1 recognize the length of continued proceedings necessary to litigate their disputes through  
2 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into  
3 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays  
4 inherent in such litigation, including, but not limited to, the risks related to a contested motion for  
5 class certification, and the risks related to liability raised by the issues in this case. Plaintiff and  
6 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims  
7 asserted in the Montejano Class Action and Montejano PAGA Action and the difficulties in  
8 establishing damages for the Settlement Class Members. Plaintiff and Class Counsel have also  
9 taken into account Defendants' agreement to enter into a settlement that confers substantial relief  
10 upon Settlement Class Members. Based on the foregoing, Plaintiff and Class Counsel have  
11 determined that this Settlement is a fair, adequate, and reasonable, and is in the best interests of  
12 the Settlement Class Members and Similarly Aggrieved Employees.

13 2.6. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.

14 Defendant contends that the Settlement Class Members were properly and timely paid all wages  
15 owed, including, but not limited to, all straight time and overtime, were properly reimbursed, and  
16 were provided meal and rest periods as required under California law. However, Defendant has  
17 concluded that any further defense of this litigation would be protracted and expensive for all  
18 Parties. Substantial amounts of time, energy and resources of Defendant has been and, unless this  
19 Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff  
20 and Settlement Class Members. Defendant has also taken into account the risks of further  
21 litigation in reaching their decision to enter into this Settlement. Nonetheless, Defendant has  
22 concluded that further proceedings in Montejano Class Action and Montejano PAGA Action  
23 would be protracted and expensive and that it is desirable that Montejano Class Action and  
24 Montejano PAGA Action be fully and finally settled in the manner and upon the terms and  
25 conditions set forth in this Settlement in order to dispose of burdensome and protracted litigation,  
26 to permit the operation of Defendant's business without further expensive litigation and the  
27 distraction and diversion of its personnel with respect to matters at issue in Montejano Class  
28 Action and Montejano PAGA Action . Defendant has also taken into account the uncertainty and

1 risks inherent in any litigation, especially in complex cases such as this Action. Defendant has  
2 therefore determined that it is desirable and beneficial to them that Montejano Class Action and  
3 Montejano PAGA Action be settled in the manner and upon the terms and conditions set forth in  
4 this Settlement.

5       2.7.     No Admissions. The Parties understand and agree that this Settlement is the result  
6 of a good faith compromise of disputed claims and allegations, and Defendant is entering into  
7 this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this  
8 Settlement Agreement or any conduct or written or oral statements made in connection with this  
9 Settlement, where or not the Settlement Agreement is finally approved and/or consummated,  
10 may be offered as or construed to be an admission or concession of any kind by either of any of  
11 the Parties. In particular, but without limiting the generality of the foregoing, nothing about this  
12 Settlement or Settlement Agreement shall be offered or construed as an admission that  
13 Defendant has violated any of their obligations under the California Labor Code, or of liability  
14 in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of  
15 Defendant and/or Released Parties. In addition, this Settlement Agreement shall not be offered  
16 or be admissible in evidence against any of the Parties or any of the Released Parties, except in  
17 any action or proceeding brought by or against Plaintiff, the Class, Class Members, or Defendant  
18 to enforce its terms, or by Defendant in defense of any claims brought by Plaintiff, the Class,  
19 Class Members. The provision of this paragraph shall become effective when this Settlement is  
20 signed and shall be binding on the Parties and their counsel regardless of whether the Settlement  
21 Agreement is preliminarily and/or finally approved or terminated for any reason, or rendered  
22 null and void.

23       2.8.     Settlement Class Members' Claims. Plaintiff claims that the Released Claims  
24 have merit and give rise to liability on the part of Defendant. This Settlement is a compromise  
25 of disputed claims. Nothing contained in this Settlement and no documents referred to herein,  
26 nor any action taken to carry out this Settlement may be construed or used as an admission by  
27 or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the  
28 claims asserted.

1           2.9.     Defendant's Defenses. Defendant has denied and continues to deny each and all  
2 of the allegations, claims, and contentions alleged by Plaintiff in Montejano Class Action and  
3 Montejano PAGA Action. Defendant has expressly denied and continue to deny all charges of  
4 wrongdoing or liability against them arising out of any of the conduct, statements, acts, or  
5 omissions alleged in the Montejano Class Action and Montejano PAGA Action. Defendant  
6 contends that it complied in good faith with California and federal wage-and-hour laws and has  
7 dealt legally and fairly with Plaintiff and Settlement Class Members and Similarly Aggrieved  
8 Employees. Defendant further denies that, for any purpose other than settling the Montejano  
9 Class Action and Montejano PAGA Action, these claims are appropriate for class or  
10 representative treatment.

11           2.10.    Gross Amount Payable by Defendant. Under the terms of this Settlement, the  
12 gross amount payable by Defendant shall not exceed the Gross Settlement Amount of Six  
13 hundred twenty thousand dollars (\$620,000.00) as provided by this Agreement, exclusive of the  
14 normal employer's share of any payroll taxes attributable to the Settlement Share payments  
15 allocated to wages. Employer shall pay the employer's share of taxes separate and apart from  
16 the Gross Settlement Amount.

17           **3.     TERMS OF SETTLEMENT**

18 The Parties agree as follows:

19           3.1.     Binding Settlement. This Settlement shall bind the Parties and all Participating  
20 Class Members, subject to the terms and conditions hereof and the Court's approval.

21           3.2.     Release as To Plaintiff and All Settlement Class Members.

22               3.2.1.   Release as to All Settlement Class Members. As of the Effective Date,  
23 all Settlement Class Members, including Plaintiff, who do not opt out of  
24 the Settlement, will be deemed to have fully, finally and forever released,  
25 settled, compromised, relinquished, and discharged the Released Parties  
26 from the Released Class Claims for the period of July 1, 2015 through  
27 September 10, 2020 and September 1, 2018 through September 10, 2020  
28

1 for the Released PAGA Claims. Settlement Class Members, including  
2 Plaintiff, who do not opt out of the Settlement will be deemed to have  
3 released any further attempt, by lawsuit, administrative claim or action,  
4 arbitration, demand, or other action of any kind by each and all of the  
5 Settlement Class Members (including participation to any extent in any  
6 class or collective action), to obtain recovery against the Defendant that  
7 is encompassed in the Released Class Claims during both the Class  
8 Period and Representative Period for harms arising during the Class  
9 Period.

10 3.2.1.1. Release as to Plaintiff and All Aggrieved Employees. As of the Effective  
11 Date, all Aggrieved Employees, including Plaintiff, regardless of  
12 whether they opt out of the Class Settlement, will be deemed to have  
13 fully, finally and forever released, settled, compromised, relinquished,  
14 and discharged the Released Parties from the Released PAGA Claims for  
15 the period of September 1, 2018 through September 10, 2020 for the  
16 Released PAGA Claims based on Plaintiff's Notice to the LWDA and  
17 the allegations in the operative complaint.

18 3.2.2. Release as To Plaintiff. As of the Effective Date, Plaintiff will be deemed  
19 to have fully, finally and forever released, settled, compromised,  
20 relinquished, and discharged any and all of Plaintiff's General Released  
21 Claims against the Released Parties. With respect to the Plaintiff's  
22 General Released Claims only, Plaintiff shall be deemed to have, and by  
23 operation of the Final Judgment shall have, expressly waived and  
24 relinquished, to the fullest extent permitted by law, the provisions, rights,  
25 and benefits of section 1542 of the California *Civil Code*, or any other  
26 similar provision under federal or state law, which section provides:  
27  
28

1                    *A general release does not extend to claims which the creditor does not*  
2                    *know or suspect to exist in his or her favor at the time of executing the*  
3                    *release, which if known by him or her must have materially affected his*  
4                    *or her settlement with the debtor.*

5                    Plaintiff may hereafter discover facts in addition to or different from those they  
6 now know or believe to be true with respect to the subject matter of the Plaintiff's General  
7 Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the  
8 Final Judgment shall have, fully, finally, and forever settled and released any and all of the  
9 Plaintiff's General Released Claims, whether known or unknown, suspected or unsuspected,  
10 contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of  
11 law or equity now existing or coming into existence in the future, including, but not limited to,  
12 conduct that is negligent, intentional, with or without malice or a breach of any duty, law or rule,  
13 without regard to the subsequent discovery or existence of such different or additional facts.  
14 Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties for  
15 Plaintiffs' General Released Claims.  
16

17                    3.3.     Tax Liability. The Parties understand and agree that the Parties are not providing  
18 tax or legal advice. Participating Class Members will remain responsible for any Employee  
19 Taxes. Participating Class Members will assume any employee tax obligations or consequences  
20 that may arise from this Settlement and should consult with a tax expert if they have questions.  
21 However, Individual Settlement Payments will be allocated as follows: twenty percent (20%) as  
22 wages (a W-2 will be issued) and eighty percent (80%) as interest and penalties (a 1099 will be  
23 issued). Any required payroll deductions will be based on this apportionment. The Parties agree  
24 that, in the event that any taxing body determines that additional employee taxes are due from  
25 any Participating Class Member, such Participating Class Member assumes all responsibility  
26 for the payment of such taxes.

27                    3.3.1.   Any Non-Participating Class Member (who opted out of Class  
28

1 Settlement) who is also an Aggrieved Employee will receive an  
2 Individual PAGA Settlement Payment (defined under Section 1.21.0)  
3 which will be classified as penalties without any payroll deductions for  
4 which a Form 1099 will be issued. The Parties agree that, in the event  
5 that any taxing body determines employee taxes are due from any  
6 Aggrieved Employee, such Aggrieved Employee assumes all  
7 responsibility for such taxes.

8 3.4. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision  
9 of this Settlement, and no written communication or disclosure between or among the Parties,  
10 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any  
11 such communication or disclosure constitute or be construed or be relied upon as, tax advice  
12 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as  
13 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,  
14 independent legal and tax counsel for advice (including tax advice) in connection with this  
15 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other  
16 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
17 communication or disclosure by any attorney or advisor to any other party to avoid any tax  
18 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any  
19 other party has imposed any limitation that protects the confidentiality of any such attorney's or  
20 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure  
21 by the acknowledging party of the tax treatment or tax structure of any transaction, including  
22 any transaction contemplated by this Settlement.

24 3.5. Settlement Approval and Implementation Procedures. As part of this Settlement,  
25 the Parties agree to the following procedures for obtaining the Court's preliminary approval of  
26 the Settlement, certifying the Settlement Class, notifying Settlement Class Members of the  
27 Settlement, obtaining the Court's final approval of the Settlement, and processing the Individual  
28



1 Settlement Payments.

2 3.6. Stipulation to File a First Amended Complaint. The Plaintiff will file a First  
3 Amended Complaint to include the claims as alleged in the Montejano PAGA Action, so as to  
4 efficiently resolve both matters through this Settlement. Plaintiff will take all acts necessary to  
5 obtain the dismissal of the claims made under the Private Attorney General Act (“PAGA”), per  
6 the requirements set forth in Labor Code Section 2699(l). The Parties will cooperate fully in  
7 requesting the dismissal of the PAGA claims by the Court and Labor and Workforce  
8 Development Agency (LWDA).

9 3.7. Preliminary Approval and Certification. As soon as practicable after execution of  
10 this Settlement and the Court’s approval of the Parties’ Joint Stipulated Motion to Consolidate,  
11 but no later than thirty (30) days, the Parties will jointly submit this Settlement to the Court for  
12 its preliminary approval. Such submission will include this Settlement, the proposed Notice  
13 Packet, the proposed Preliminary Approval Order, and any, memoranda and evidence as may  
14 be necessary for the Court to determine that this Settlement is fair, adequate, and reasonable.  
15 The Parties agree to request the Court to enter an order conditionally certifying the Settlement  
16 Class after the preliminary approval hearing, in accordance with California Rules of Court, Rule  
17 3.769(c).  
18

19 3.8. Class Information. No more than twenty-one (21) calendar days after the entry of  
20 the Preliminary Approval Order, Defendant Gul Food, shall provide the Claims Administrator  
21 with the Class Information for purposes of mailing Notice Packets to Settlement Class Members,  
22 including: 1. Class Member’s full name; 2. Class Member’s last known address; 3. Class  
23 Member’s last four digits of social security number; 4. Class Member’s employee identification  
24 number; and based on Defendant’s payroll records, the Class Member’s total number of  
25 workweeks. The Settlement Administrator shall use commercially reasonable efforts to secure  
26 the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure  
27 or use of such data other than as permitted by the Settlement. The Settlement Administrator  
28

1 shall ensure that the Class Notice and any other communications to Class Members shall not  
2 include the Class Members' social security number, except for the last four digits, if necessary.

3 3.9. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the Claims  
4 Administrator will perform a search on the National Change of Address database to update the  
5 Settlement Class Members' addresses. No more than ten (10) calendar days after receiving the  
6 Class Information from Defendant Gul Food, as provided herein, the Claims Administrator shall  
7 mail copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S.  
8 Mail. The Claims Administrator shall exercise its best judgment to determine the current  
9 mailing address for each Settlement Class Member. The address identified by the Claims  
10 Administrator as the current mailing address shall be presumed to be the best mailing address  
11 for each Settlement Class Member. The Claims Administrator shall conduct a search on the  
12 National Change of Address database to update the Settlement Class Members' addresses  
13 immediately before mailing the Settlement checks to Class Members.  
14

15 3.10. Undeliverable Notices. Any Notice Packets returned to the Claims Administrator  
16 as undeliverable on or before the sixty (60) day Response Deadline shall be re-mailed to the  
17 forwarding address affixed thereto. Settlement Class Members whose Notice Packet, have been  
18 re-mailed, shall have an additional fourteen (14) calendar days from the re-mailing or until the  
19 Response Deadline has expired, whichever is later.

20 3.11. For each Settlement Class Member whose Notice Packet is returned, there will be  
21 one (1) skip trace by the Claims Administrator. If an updated mailing address is identified, the  
22 Claims Administrator shall resend the Notice Packet to the Settlement Class Member. One (1)  
23 supplemental Notice Packet shall be mailed to each Settlement Class Member whose original  
24 Notice Packet is returned as undeliverable to the Claims Administrator. Such re-mailing shall  
25 be made within five (5) business days of the Claims Administrator receiving notice that the  
26 respective Notice Packet was undeliverable. Any requests by the Claims Administrator for  
27 documents or information from Defendant Gul Food must be responded to within a reasonable  
28

1 amount of time by counsel for Defendant Gul Food. It is the intent of the Parties that reasonable  
2 means be used to locate the Settlement Class Members and apprise them of their rights.

3 3.12. Settlement Class Members to whom Notice Packets are resent after having been  
4 returned undeliverable to the Claims Administrator shall have an additional fourteen (14)  
5 calendar days from the date of remailing or until the Response Deadline has expired, whichever  
6 is later, to mail the Request for Exclusion or a Notice of Objection. Notice Packets that are resent  
7 shall inform the recipient of this adjusted deadline. The date of the postmark on the return  
8 envelope shall be the exclusive means used to determine whether a Settlement Class Member  
9 has returned his or her Request for Exclusion on or before the adjusted deadline. If a Settlement  
10 Class Member's Notice Packet is returned to the Claims Administrator more than once as  
11 undeliverable, then an additional Notice Packet shall not be re-mailed. In the event of a notice  
12 being remailed, the recipient will have until 14 days after the remailing or the Response  
13 Deadline, whichever is later to submit a Request for Exclusion or a Notice of Objection.  
14

15 3.13. Compliance with the procedures specified in paragraphs 3.9-3.12 of this  
16 Settlement shall constitute due and sufficient notice to Settlement Class Members of this  
17 Settlement and shall satisfy the requirement of due process. In the event the procedures set forth  
18 herein are followed and the intended recipient of a Notice Packet still does not receive the Notice  
19 Packet, the intended recipient will be a participating Class Member and will be bound by all  
20 terms of the Settlement and the Order Granting Final Approval entered by the Court. Nothing  
21 else shall be required of, or done by, the Parties, Class Counsel, and Defense Counsel to provide  
22 notice of the proposed Settlement.

23 3.14. Disputes. Settlement Class Members will have the opportunity during the sixty  
24 (60) day response period, should they disagree with Defendant Gul Food's records regarding  
25 their days worked during the Class Period, to provide documentation and/or an explanation to  
26 show contrary days worked. A space will be provided on the Notice of Settlement Payment for  
27 Class Members to raise such disputes. For a Class Member's dispute to be considered, the Class  
28

1 Member must fully complete the Dispute form included in the Notice, any documentation  
2 supporting the dispute, and timely return it to the Settlement Administrator. Class Members  
3 will have sixty (60) days after the date the Notice Packet is mailed by the Settlement  
4 Administrator to mail in a dispute, including any supporting evidence the Class Member may  
5 have. In the event of a notice being remailed, the recipient will have until 14 days after the  
6 remailing or the Response Deadline, whichever is later to submit a Dispute, including,  
7 documentation and/or an explanation to show contrary days worked. The date of the postmark  
8 of the return mailing envelope shall be the exclusive means used to determine whether a dispute  
9 has been timely submitted to the Settlement Administrator. If there is a dispute, the Claims  
10 Administrator will consult with the Parties to determine whether an adjustment is warranted.  
11 The Claims Administrator shall determine the eligibility for, and the amounts of, any Individual  
12 Settlement Payments under the terms of this Settlement. The Claims Administrator's  
13 determination of the eligibility for and amount of any Individual Settlement Payment shall be  
14 binding upon the Settlement Class Member and the Parties.

15  
16 3.15. Exclusions (Opt-Outs). The Notice Packet shall state that Settlement Class  
17 Members who wish to exclude themselves from the Settlement must submit a Request for  
18 Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain their name  
19 and address; (2) must be signed by the Settlement Class Member or an authorized representative;  
20 and (3) must be postmarked by the Response Deadline and returned to the Claims Administrator  
21 at the specified address. If the Request for Exclusion does not contain the information listed in  
22 (1)-(3), it will not be deemed valid for exclusion from this Settlement. If a Settlement Class  
23 Member's Notice Packet is returned to the Claims Administrator more than once as  
24 undeliverable, then an additional Notice Packet shall not be re-mailed. Settlement Class  
25 Members whose Notice Packet, have been re-mailed, shall have an additional fourteen (14)  
26 calendar days from the re-mailing or until the Response Deadline has expired, whichever is later,  
27 to submit a valid Request for Exclusion. The date of the postmark on the return-mailing  
28

1 envelope shall be the exclusive means used to determine whether a Request for Exclusion has  
2 been timely submitted. Any Settlement Class Member who requests to be excluded from the  
3 Settlement will not be entitled to any recovery of the Class allocation under the Settlement and  
4 will not be bound by the terms of the Settlement. However, Settlement Class Members shall still  
5 be entitled to receive their share of the PAGA allocation of the Settlement. Settlement Class  
6 Members who receive a Notice Packet, but fail to submit a valid and timely Request for  
7 Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and  
8 any Final Judgment entered in this Action if the Settlement is approved by the Court. At no  
9 time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of  
10 the Settlement Class to submit Requests for Exclusion from the Settlement. Class Counsel shall  
11 not represent any Settlement Class Member with respect to any such Requests for Exclusion.  
12 Settlement Class Members who submit a valid Request for Exclusion may not also submit a  
13 Notice of Objection.  
14

15 3.16. Objections. The Notice Packet shall state that Settlement Class Members who  
16 wish to remain Class Members, but desire to object to the Settlement must not submit a Request  
17 for Exclusion and must submit a written statement of objection (“Notice of Objection”) by the  
18 Response Deadline to the Claims Administrator. The Notice of Objection must be signed by the  
19 Settlement Class Member or his or her authorized representative and state: (1) the full name of  
20 the Settlement Class Member; (2) if possible, the dates of employment of the Settlement Class  
21 Member; and, (3) whether the Settlement Class Member intends to appear at the Final Approval  
22 Hearing. The Notice of Objection must be postmarked by the Response Deadline and returned  
23 to the Claims Administrator at the specified address. Settlement Class Members whose Notice  
24 Packet, have been re-mailed, shall have an additional fourteen (14) calendar days from the re-  
25 mailing or until the Response Deadline has expired, whichever is later, to submit a Notice of  
26 Objection. Within five (5) days of receiving a notice of objection from a Settlement Class  
27 Member, the Claims Administrator shall forward the notice of objection to Class Counsel and  
28

1 Defense Counsel. The Parties will thereafter lodge the Settlement Class Member's Notice of  
2 Objection with the Court. Written objections will be lodged with the Court even if the objector  
3 does not state their intent to appear at the Final Approval Hearing. Settlement Class Members,  
4 regardless of whether or not they submit a timely Notice of Objection, will have a right to appear  
5 at the Final Approval Hearing, with or without an attorney, in order to have their objections  
6 heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or  
7 otherwise encourage Settlement Class Members to file or serve written objections to the  
8 Settlement or appeal from the Final Judgment. Class Counsel shall not represent any Settlement  
9 Class Members with respect to any such objections. If an objector submits an objection without  
10 stating whether the Class Member intends to appear at the hearing, the Parties will file the  
11 Objection so that the Court may consider the Objection.

12  
13 3.17. Plaintiffs' Participation. By executing this Settlement, Plaintiff hereby stipulates  
14 he will not object to or exclude himself from the Settlement in anyway.

15 3.18. No Solicitation of Settlement Objections or Exclusions. The Parties and their  
16 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall  
17 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class  
18 Members to submit either written objections to the Settlement or Requests for Exclusion from  
19 the Settlement, or to appeal from the Court's Final Judgment.

20 3.19. Funding of the Gross Settlement. This is a non-reversionary Settlement in which  
21 Defendant is required to pay the entire Gross Settlement Amount. No portion of the Gross  
22 Settlement Amount will revert to Defendants. Defendant shall fully fund the Settlement up to  
23 twenty-four (24) months after the Final Approval Date. No payments from the Gross Settlement  
24 Amount shall be made before the Gross Settlement Amount is fully funded. No release in this  
25 Settlement shall be effective until the Gross Settlement Amount is fully funded. All Defendants  
26 are jointly and severally liable for the full funding of the Gross Settlement Amount. If Defendant  
27 defaults, Plaintiff and all Participating Class Members will be able to pursue all claims, and the  
28

1 Settlement becomes null and void.

2 3.20. No more than five (5) business days after the Gross Settlement Amount is fully  
3 funded, the Claims Administrator will provide the Parties with an accounting of all anticipated  
4 payments from the Gross Settlement Amount. The Net Settlement Amount shall be calculated  
5 by deducting from the Gross Settlement Amount payments for (1) Class Representative  
6 Enhancement Awards, as specified in this Settlement and approved by the Court; (2) Class  
7 Counsel Award, as specified in this Settlement and approved by the Court; (3) Class Counsel  
8 Costs, as specified in this Settlement and approved by the Court; (4) Claims Administration  
9 Costs, as specified in this Settlement and approved by the Court; and (5) the LWDA PAGA  
10 Allocation, as specified in this Settlement and approved by the Court. The Net Settlement  
11 Amount shall be distributed in Individual Settlement Payments in accordance with Paragraphs  
12 3.12.

13  
14 3.21. Individual Settlement Payments. Each Participating Class Member shall be  
15 eligible to receive an Individual Class Settlement Payment which is a share of the Net Settlement  
16 Amount, based on the number of weeks worked by the Participating Class Member during the  
17 Class Period, as a proportion of all weeks worked by all Participating Class Members during the  
18 Class Period. Individual Settlement Payments shall be paid pursuant to the formula set forth in  
19 Paragraph 3.22 below. Each Participating Class Member who is also an Aggrieved Employee  
20 shall be eligible to receive an Individual PAGA Settlement Payment which is a share of the  
21 twenty-five percent (25%) of the PAGA allocation, and shall be paid pursuant to the formula set  
22 forth in Paragraph 3.22.1 below. Where a Class Member timely opt-out of the Class Action  
23 Settlement, the Class Member shall still receive his or her portion of the Individual PAGA  
24 Settlement Payment based on a proportion of the number of workweeks during the PAGA  
25 period. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to  
26 Participating Class Members' last known mailing address no later than fifteen (15) calendar  
27 days after the Gross Settlement Amount is fully funded. Individual Settlement Payments will  
28

1 specifically indicate that they are void if not negotiated within one hundred eight (180) days of  
2 their issuance. Individual Settlement Payments reflect settlement of a dispute regarding wages,  
3 interest, and penalties. Individual Settlement Payments will be allocated as follows: twenty  
4 percent (20%) as wages; and eighty percent (80%) as interest and penalties. The “wage” portion  
5 of each Individual Settlement Payment will be reduced by Employee Taxes. The Claims  
6 Administrator shall issue the appropriate tax documents associated with the Individual  
7 Settlement Payments, including an IRS Form W-2 for the amounts allocated as “wages” and an  
8 IRS Form 1099 for the amounts allocated as “interest” or “penalties.”

9  
10 3.22. Individual Settlement Payment Formula. After deducting the Class Counsel  
11 Award and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative  
12 Enhancement Awards, and Claims Administration Costs, the remaining funds (the “Net  
13 Settlement Amount”), of approximately three hundred fifty-eight thousand three hundred thirty-  
14 three dollars and thirty-three cents (\$358,333.33) will be distributed as follows: To figure out  
15 the “Individual Class Settlement Payment” Formula, the Claims Administrator shall divide the  
16 Net Settlement Amount by the total number of workweeks Participating Class Members worked  
17 during the Class Period in order to determine the amount each Participating Class Member is  
18 entitled to for each workweek he or she was employed by Defendant Gul Food (the “Weekly  
19 Amount”) during the Class Period. The Claims Administrator will multiply the Weekly Amount  
20 by the estimated total number of workweeks that each Participating Class Member worked  
21 during the Class Period. The product of each calculation represents the gross Individual Class  
22 Settlement Payment for the respective Participating Class Member. The Claims Administrator  
23 will then deduct Employee Taxes attributable to wages to arrive at the net Individual Settlement  
24 Payment for each respective Class Member.

25 3.22.1. To figure out the “Individual PAGA Settlement Payment” Formula, the  
26 Claims Administrator shall divide the PAGA Allocation to be distributed  
27 to Aggrieved Employees regardless of whether they opt-out of the Class  
28



1 Settlement in the amount of two thousand five hundred dollars  
2 (\$2,500.00) by the total number of workweeks Aggrieved Employees  
3 worked during the PAGA Period in order to determine the amount each  
4 Aggrieved Employees is entitled to for each workweek he or she was  
5 employed by Defendant Gul Food (the “Weekly Amount”) during the  
6 PAGA Period. The Claims Administrator will multiply the Weekly  
7 Amount by the estimated total number of workweeks that each  
8 Aggrieved Employees worked during the PAGA Period. The product of  
9 each calculation represents the gross Individual PAGA Settlement  
10 Payment for the respective Aggrieved Employees. Within twenty-one  
11 (21) calendar days after Preliminary Approval, Defendant Gul Food,  
12 shall provide the Claims Administrator with any information reasonably  
13 necessary to perform the calculation of number of workweeks for each  
14 Aggrieved Employees, and any other reasonably required information  
15 the Claims Administrator requests to perform the calculations required  
16 under this Settlement. Defendant shall have no responsibility for  
17 deciding the validity of any Individual Settlement Payment or any other  
18 payments made pursuant to this Settlement, shall have no involvement  
19 in or responsibility for the determination or payment of Employee Taxes,  
20 and shall have no liability for any errors made with respect to such  
21 Employee Taxes.  
22

23 3.23. Settlement Class Members are not eligible to receive any compensation other than  
24 the Individual Settlement Payment, and they may only receive an Individual Class Settlement  
25 Payment if they do not submit a valid and timely Request for Exclusion to opt out of the  
26 Settlement. Settlement Class Members who submit a valid and timely Request for Exclusion to  
27 opt out of the Settlement, shall still be entitled to receive his or her portion of the PAGA  
28

1 allocation based on a proportion of the number of workweeks during the PAGA period Plaintiff,  
2 however, is also eligible to receive a Class Representative Enhancement Award.

3 3.24. If a check for an Individual Settlement Payment is returned to the Claims  
4 Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a  
5 valid mailing address by performing a skip trace search. If another address is identified, the  
6 Claims Administrator shall mail the check to the newly identified address. If an Individual  
7 Settlement Payment check is returned to the Claims Administrator a second time as  
8 undeliverable, the Claims Administrator shall not attempt any further re-mailing of that check.  
9 Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days  
10 after issuance shall be voided. The Claims Administrator shall inform the Parties the amount of  
11 funds left as a result of uncashed checks. The Parties will discuss and inform the Court. If it  
12 makes economical sense to re-distribute the funds as a result of the uncashed checks, the Parties  
13 will have such funds re-distributed to those Class Members who cashed their checks. If the  
14 amount does not make economic sense to re-distribute the funds to Class Members who  
15 participated in the Settlement by cashing their checks, the Parties agree that all voided settlement  
16 checks will be forwarded to Bet Tzedek or any other cy pres entity as approved by the Court. In  
17 such event, the Participating Class Member shall nevertheless remain bound by the Settlement.  
18 The Parties agree that good cause exists for the Court to approve this distribution Bet Tzedek or  
19 any other cy pres recipient approved by the Court pursuant to Code Civil Procedure §384.  
20

21 3.25. Class Representative Enhancement Award. Defendant agrees not to oppose or  
22 object to any application or motion by Plaintiff for a Class Representative Enhancement Award,  
23 not to exceed seven thousand five hundred dollars (\$7,500.00) for Plaintiff Antonio Montejano,  
24 as consideration for Plaintiff's time and effort in bringing and prosecuting this matter. The Class  
25 Representative Enhancement Award shall be paid to Plaintiff from the Gross Settlement Amount  
26 no later than fifteen (15) calendar days after the Gross Settlement Amount is fully funded. The  
27 Claims Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class  
28

1 Representative Enhancement Award. Plaintiff shall be solely and legally responsible for  
2 payment of all applicable taxes on their Class Representative Enhancement Award and shall  
3 hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a  
4 result of the Class Representative Enhancement Award. The Class Representative Enhancement  
5 Award shall be in addition to Plaintiff's Individual Settlement Payment as a Participating Class  
6 Member. In the event that the Court awards lesser amounts than the Class Representative  
7 Enhancement Awards requested, then any portion of the requested amounts not awarded to  
8 Plaintiff shall be added to the Net Settlement Amount. Plaintiff shall not have the right to revoke  
9 their agreement to the Settlement on the grounds the Court did not approve any or all of his  
10 request for a Class Representative Enhancement Award.

11 3.26. Class Counsel Award and Costs. Defendant agrees not to oppose or object to any  
12 application or motion by Class Counsel for a Class Counsel Award not to exceed Two Hundred  
13 Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$206,666.67) and Class  
14 Counsel Costs not to exceed Twenty Thousand Dollars (\$20,000.00) from the Gross Settlement  
15 Amount. The Class Counsel Award and Class Counsel Costs shall be paid no later than fifteen  
16 (15) calendar days after the Gross Settlement Amount is fully funded. Class Counsel shall be  
17 solely and legally responsible to pay all applicable taxes on the payments made pursuant to this  
18 paragraph. The Claims Administrator shall issue an IRS Form 1099 — MISC to Class Counsel  
19 for the payments made pursuant to this paragraph. This Settlement is not contingent upon the  
20 Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount  
21 requested by Class Counsel for the Class Counsel Award and Class Counsel Costs and not  
22 granted by the Court shall be part of the Net Settlement Amount.

23 3.27. PAGA Allocation. Subject to Court approval, the Parties shall allocate a total of  
24 ten thousand dollars (\$10,000.00) from the Gross Settlement Amount for the compromise of  
25 claims for civil penalties pursuant to PAGA (the "PAGA Allocation"). Per California Labor  
26 Code section 2699(i), seven thousand five hundred dollars (\$7,500.00), representing 75% of the  
27  
28

1 PAGA Allocation, will be paid to California's Labor Workforce Development Agency. The  
2 remaining two thousand five hundred dollars (\$2,500.00), representing 25% of the PAGA  
3 Allocation, shall be distributed to Aggrieved Employees pursuant to the formula set forth in  
4 Paragraph 3.22.1 above.

5 3.28. Defendant's Option to Terminate Settlement. If, after the Response Deadline and  
6 before the Final Approval Hearing, five percent (5%) or more of the number of Settlement Class  
7 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant Gul  
8 Food shall have, in its sole discretion, the option to terminate this Settlement. Defendant Gul  
9 Food shall exercise its option to terminate, if it wishes, prior to the Final Approval Hearing. If  
10 Defendant Gul Food decides to void the Settlement, then the Settlement and conditional class  
11 certification shall be considered void, and neither the Settlement, conditional class certification,  
12 nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties  
13 shall stand in the same position, without prejudice, as if this Settlement had been neither entered  
14 into nor filed with the Court. Should Defendant Gul Food void the Settlement under this  
15 paragraph, it shall be responsible for all Claims Administration Costs.

16 3.29. Claims Administration Costs. The Claims Administrator shall be paid for the costs  
17 of administration of the Settlement from the Gross Settlement Amount. Such costs of  
18 administration are not to exceed Twenty Thousand Dollars (\$20,000.00), unless the court  
19 approves a higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing,  
20 the Claims Administrator shall provide the Parties with a statement detailing the costs of  
21 administration. The Claims Administrator, on Defendants' behalf, shall have the authority and  
22 obligation to make payments, credits and disbursements, including payments and credits in the  
23 manner set forth in this Settlement, to Participating Class Members, calculated in accordance  
24 with the methodology set out in this Settlement and orders of the Court. The Parties agree to  
25 cooperate in the administration of the Settlement and to make all reasonable efforts to control  
26 and minimize the costs and expenses incurred in administration of the Settlement. The Parties  
27  
28

1 each represent they do not have any financial interest in the Claims Administrator or otherwise  
2 have a relationship with the Claims Administrator that could create a conflict of interest. The  
3 Claims Administrator shall be responsible for: processing and mailing all court-approved  
4 payments to the Plaintiffs, Class Counsel, Participating Class Members, and the LWDA;  
5 printing and mailing the Notice Packets to the Settlement Class Members as called for in this  
6 Settlement and ordered by the Court; receiving and reporting Notice of Objections and Requests  
7 for Exclusion submitted by Settlement Class Members; providing declaration(s) as necessary in  
8 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties  
9 mutually agree or the Court orders the Claims Administrator to perform. The Claims  
10 Administrator shall keep the Parties timely apprised of the performance of all Claims  
11 Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other  
12 tax documents required by administration of this Settlement shall be prepared by the Claims  
13 Administrator. Any expenses incurred in connection with such preparation shall be Claims  
14 Administration Costs. The Claims Administrator shall be paid the Claims Administration Costs  
15 from the Gross Settlement Amount no later than fifteen (15) calendar days after the Gross  
16 Settlement Amount is fully funded.

18 3.30. Final Approval Hearing. At a reasonable time following the Response Deadline,  
19 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and  
20 the Court shall determine amounts properly payable for (i) the Class Counsel Award, (ii) the  
21 Class Counsel Costs, (iii) the Class Representative Enhancement Awards, (iv) the LWDA  
22 PAGA Allocation; and (v) the Claims Administration Costs.

24 3.31. Entry of Final Judgment. If the Court approves this Settlement at the Final  
25 Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the  
26 Gross Settlement Amount has been fully funded, with the Court retaining jurisdiction over the  
27 Parties to enforce the terms of the judgment. If the Court grants final approval to the Settlement,  
28 notice of Final Approval shall be posted on the Settlement Administrator's website, at

1 www.phoenixclassaction.com.

2 3.32. Nullification of Settlement. In the event: (i) the Court does not enter the  
3 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of  
4 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided  
5 herein; or (iv) the Settlement does not become final for any other reason, this Settlement shall  
6 be null and void and any order or judgment entered by the Court in furtherance of this Settlement  
7 shall be treated as void from the beginning. In such a case, the Parties and any funds to be  
8 awarded under this Settlement shall be returned to their respective statuses as of the date and  
9 time immediately prior to the execution of this Settlement, and the Parties shall proceed in all  
10 respects as if this Settlement had not been executed, except that any costs and fees already  
11 incurred by the Claims Administrator shall be paid jointly by the Parties. In the event an appeal  
12 is filed from the Court's Final Judgment, or any other appellate review is sought, administration  
13 of the Settlement shall be stayed pending final resolution of the appeal or other appellate review,  
14 and any other payments required hereunder by Defendant will not be paid pending the  
15 completion and final resolution of the appeal, and any payment thereafter will: (1) occur only if  
16 the Order Granting Final Approval is upheld after all appeals; and (2) be in a manner that is  
17 provided for in the Settlement and in the Order Granting Final Approval.

18  
19 3.33. No Admission by the Parties. Defendant denies any and all claims alleged in this  
20 Action and deny all wrongdoing whatsoever. This Settlement is not a concession or admission,  
21 and shall not be used against Defendant as an admission or indication, with respect to any claim,  
22 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms  
23 and conditions, nor any of the negotiations connected with it, is a concession or admission, and  
24 none shall be used against Defendant as an admission or indication with respect to any claim of  
25 any fault, concession, or omission by Defendant or that class certification is proper under the  
26 standard applied to contested certification motions. The Parties stipulate and agree to the  
27 certification of the proposed class for settlement purposes only. The Parties further agree that  
28



1 inserted for convenience of reference only and do not constitute a part of this Settlement.

2 3.37. Interim Stay of Proceedings. The Parties agree to stay all proceedings in  
3 Montejano Class Action and Montejano PAGA Action and thereafter implement and complete  
4 the Settlement. However, Defendant shall file a Notice of Related Case with respect to the  
5 Montejano PAGA Action and Montejano Class Action. Should the Court require a Motion to  
6 Consolidate, the Parties shall file a Joint Stipulated Motion to Consolidate the Montejano Class  
7 Action with the Montejano PAGA Action.

8 3.38. Amendment or Modification. This Settlement may be amended or modified only  
9 by a written instrument signed by all the Parties and counsel for all Parties or their successors-  
10 in-interest.

11 3.39. Entire Settlement. This Settlement and any attached Exhibits constitute the entire  
12 agreement among these Parties, and no oral or written representations, warranties or  
13 inducements have been made to any Party concerning this Settlement or its exhibits, other than  
14 the representations, warranties and covenants contained and memorialized in the Settlement and  
15 its exhibits. No other prior or contemporaneous written or oral agreements may be deemed  
16 binding on the Parties.

17 3.40. Authorization to Enter into Settlement. Counsel for all Parties warrant and  
18 represent they are expressly authorized by the Parties whom they represent to negotiate this  
19 Settlement and to take all appropriate actions required or permitted to be taken by such Parties  
20 pursuant to this Settlement to effectuate its terms, and to execute any other documents required  
21 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each  
22 other and use their best efforts to affect the implementation of the Settlement. In the event the  
23 Parties are unable to reach agreement on the form or content of any document needed to  
24 implement the Settlement, or on any supplemental provisions that may become necessary to  
25 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve  
26 such disagreement. The person signing this Settlement on behalf of Defendant Gul Food  
27  
28



1 represents and warrants that he or she is authorized to sign this Settlement on behalf of  
2 Defendant Gul Food. Plaintiff Antonio Montejano represents and warrants that he is authorized  
3 to sign this Settlement and that he has not assigned any claim, or part of a claim, covered by this  
4 Settlement to a third-party.

5 3.41. Binding on Successors and Assigns. This Settlement shall be binding upon, and  
6 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

7 3.42. No Prior Assignments. The Parties and their counsel represent, covenant, and  
8 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported  
9 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,  
10 demand, action, cause of action or right herein released and discharged.

11 3.43. California Law Governs. All terms of this Settlement and the exhibits hereto shall  
12 be governed by and interpreted according to the laws of the State of California.

13 3.44. This Settlement is Fair, Adequate and Reasonable. The Parties believe this  
14 Settlement is a fair, adequate, and reasonable settlement of the Montejano Class Action and the  
15 Montejano PAGA Action and have arrived at this Settlement after extensive arms-length  
16 negotiations, taking into account all relevant factors, present and potential.

17 3.45. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),  
18 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,  
19 implementation, and enforcement of the terms of this Settlement and all orders and judgments  
20 entered in connection therewith, and the Parties and their counsel hereto submit to the  
21 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this  
22 Settlement and all orders and judgments entered in connection therewith.

23 3.46. Invalidity of Any Provision. Before declaring any provision of this Settlement  
24 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent  
25 possible, consistent with applicable precedents.

26 3.47. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to  
27  
28

1 class certification for purposes of this Settlement only.

2 3.48. Cooperation. The Parties agree to cooperate fully with one another to accomplish  
3 and implement the terms of this Settlement. Such cooperation shall include, but not be limited  
4 to, execution of such other documents and the taking of such other action as may be reasonably  
5 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their  
6 best efforts, including all efforts contemplated by this Settlement and any other efforts that may  
7 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

8 3.49. Publicity. Plaintiff and Class Counsel agree that they will not issue any press  
9 releases, initiate any contact with the press, respond to any press inquiry, or have any  
10 communication with the press about the Montejano Class Action, the Montejano PAGA Action  
11 and/or the fact, amount, or terms of the Settlement. However, for marketing purposes, Class  
12 Counsel may refer to the settlement amount and the nature of the case without identifying any  
13 of the Parties directly or indirectly. Before the date of the filing of the motion for preliminary  
14 approval of the Settlement, Plaintiff and Class Counsel will not initiate any contact with  
15 Settlement Class Members about the Settlement, except that: (a) Class Counsel, if contacted by  
16 a Settlement Class Member, may respond that a settlement has been reached and that the details  
17 will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by  
18 a Settlement Class Member, may respond only that the Settlement Class Member should contact  
19 Class Counsel. Neither Plaintiff nor Class Counsel shall hold a press conference or otherwise  
20 seek to affirmatively contact the media about the Settlement. If contacted by the media regarding  
21 the Settlement, Class Counsel shall state, "It is a fair settlement, and we are happy with the  
22 results." Additionally, no Party or their counsel shall disparage the Settlement. Nothing in this  
23 paragraph shall prevent Class Counsel from carrying out their duties.  
24

25 3.50. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms  
26 and conditions of this Settlement. Accordingly, this Settlement will not be construed more  
27 strictly against one party than another merely by virtue of the fact that it may have been prepared  
28

1 by counsel for one of the Parties, it being recognized that, because of the arm's-length  
2 negotiations between the Parties, all Parties have contributed to the preparation of this  
3 Settlement.

4 3.51. Representation by Counsel. The Parties acknowledge that they have been  
5 represented by counsel throughout all negotiations that preceded the execution of this  
6 Settlement, and that this Settlement has been executed with the consent and advice of counsel,  
7 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are  
8 no liens on the Settlement Agreement.

9 3.52. All Terms Subject to Final Court Approval. All amounts and procedures described  
10 in this Stipulation are subject to final Court approval.

11 3.53. Notices. Unless otherwise specifically provided, all notices, demands or other  
12 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given  
13 on the third business day after mailing; and (3) sent via United States registered or certified mail,  
14 return receipt requested, addressed as follows:  
15

16 **To Plaintiffs:**

17 Kevin Mahoney, Esq.  
18 [kmahoney@mahoney-law.net](mailto:kmahoney@mahoney-law.net)  
19 Berkeh Alemzadeh, Esq.  
20 [balem@mahoney-law.net](mailto:balem@mahoney-law.net)  
21 MAHONEY LAW GROUP, APC  
22 249 East Ocean Boulevard, Suite 814  
23 Long Beach, CA 90802  
24 Telephone: (562) 590-5550  
25 Facsimile: (562) 590-8400

16 **To Defendants:**

17 Ilya Filmus, Esq.  
18 [ifilmus@infinitylawca.com](mailto:ifilmus@infinitylawca.com)  
19 S. Ashar Ahmed, Esq.  
20 [aahmed@infinitylawca.com](mailto:aahmed@infinitylawca.com)  
21 INFINITY LAW GROUP, LLP  
22 1020 Aileen St.  
23 Lafayette, CA 94549  
24 Telephone: (415) 426-3580  
25 Facsimile: (415) 426-3581

26 3.54. Execution by Settlement Class Members. It is agreed that it is impossible or  
27 impractical to have each Settlement Class Member execute this Settlement. The Notice of  
28 Settlement will advise all Settlement Class Members of the binding nature of the release and  
such shall have the same force and effect as if each Settlement Class Member executed this  
Settlement.

1           3.55. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this  
2 Settlement, are bound by the terms herein.

3           3.56. Fair, Adequate and Reasonable Settlement. The Parties hereto agree that the terms  
4 and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations  
5 between the Parties and that this Settlement shall not be construed in favor of or against any of  
6 the Parties by reason of their participation in the drafting of this Settlement.

7           3.57. Binding Agreement. The Parties warrant that they understand and have full  
8 authority to enter into this Settlement, and further intend that this Settlement will be fully  
9 enforceable and binding on all Parties, and agree that it will be admissible and subject to  
10 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality  
11 provisions that otherwise might apply under federal or state law.

12           3.58. Counterparts. This Settlement shall become effective upon its execution by all of  
13 the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this  
14 Settlement in counterparts, and execution of counterparts shall have the same force and effect  
15 as if each had signed the same instrument. Copies of the executed Settlement shall be effective  
16 for all purposes as though the signatures contained therein were original signatures.

17  
18  
19 Dated: DATE 12 / 09 / 2021, 2021

20 By: 

21 Antonio Montejano

22  
23 Dated: DATE 12 / 09 / 2021, 2021

24 By: 

25 Defendant Gul Foods Management Inc. dba  
26 Jack in the Box  
27  
28