

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Maria Del Consuelo Martinez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant K&S Food Management, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Edward W. Suh of Suh Law Group, APC.

On July 30, 2019, Plaintiff filed a class action complaint against Defendant in Los Angeles County Superior Court titled *Maria Del Consuelo Martinez*, Case No. 19STCV26488 (the “Action”). On October 8, 2019, Plaintiff filed the operative First Amended Complaint (the “Complaint”). The Complaint alleges that Defendant: (i) failed to pay all overtime wages; (ii) failed to provide all meal periods; (iii) failed to authorize and permit rest periods; (iv) failed to issue accurate, itemized wage statements; (v) failed to pay all final wages at termination; (vi) engaged in unfair unlawful business practices; and (vii) is liable for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”).

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class and Aggrieved Employees Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who performed work for Defendant in California from July 30, 2015 to December 7, 2021 (the “Class Period”).

Defendant represents there are approximately 117 Settlement Class members.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Additionally, the “Aggrieved Employees” shall be defined as:

All current and former non-exempt employees who performed work for Defendant in California from July 31, 2018 to December 7, 2021 (the “PAGA Period”).

2. **Release by Settlement Class Members, Aggrieved Employees, and Plaintiff.** Plaintiff, every member of the Settlement Class (except those who opt out), and Aggrieved Employees will release and discharge Defendant, as follows:

- A. Release by Settlement Class Members. Upon the occurrence of the Effective Date and the Settlement being fully funded, all Settlement Class members who do not opt-out will release and discharge Defendant from any and all claims that were pled in the Complaint, or which could have been pled in the Complaint based on the factual allegations in the Complaint, including but not limited to claims for (i) failure to pay overtime wages (Cal. Labor Code §§ 204, 510, 1194, 1198); (ii) meal period violations (Cal. Labor Code §§ 226.7, 512); (iii) rest period violations (Cal. Labor Code §§ 226.7, 516); (iv) wage statement violations (Cal. Labor Code § 226); (v) waiting time penalties (Cal. Labor Code §§ 201-203); and (vi) claims for unfair competition (Cal. Bus. & Prof. Code § 17200 et seq.) based on alleged violations of (i)-(v) above, that arose during the Class Period (the “Class Released Claims”).
- B. Release by Aggrieved Employees. Upon the occurrence of the Effective Date and the Settlement being fully funded, Plaintiff and all Aggrieved Employees (regardless whether they opt-out) will release and discharge Defendant from any and all claims under the PAGA premised on the facts and/or theories alleged in Plaintiff’s letter to the LWDA dated July 31, 2019, that arose during the PAGA Period (the “PAGA Release”). It is understood and acknowledged that Aggrieved Employees who are issued a share of the PAGA Amount as set forth in Paragraph 4.B.iv. will not have the opportunity to opt out of, or object to, the PAGA Release as set forth in this Paragraph.
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff has agreed to release, as an individual and in addition to the Released Claims and PAGA Release described above, all claims, whether known or unknown, under federal law or state law against Defendant (“Plaintiff’s Released Claims”). The Parties understand and agree that Plaintiff’s Released Claims do not include any claims for or related to workers compensation, unemployment insurance, or any other claims that cannot be released as a matter of law. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Nothing contained herein shall be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

3. **Effective Date.** The term “Effective Date” means: (i) the date on which the Settlement Agreement has received Final Approval by the Court and there were no timely objections or intervener requests filed, or that any timely objections and/or interveners have been

withdrawn; or (ii) in the event that one or more timely objections or interventions has/have been filed and not withdrawn, the date immediately following the passage of the applicable date for an objector or intervener to seek appellate review of the Court's order of Final Approval, without a timely appeal having been filed; or (iii) in the event that a timely appeal of the Court's order of Final Approval has been filed, then the Effective Date shall occur when the applicable appellate court has rendered a final decision or opinion affirming the Court's Final Approval order without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

4. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Gross Settlement Amount" of \$200,000.00 in full and complete settlement of the Action, as follows:

A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.

B. Defendant will fund the Gross Settlement Amount in two equal installments. The first installment, equal to 50% of the Gross Settlement Amount (i.e., \$100,000), shall be deposited by Defendant with the Settlement Administrator within 45 calendar days after this Settlement Agreement is executed by the Parties. The second installment, equal to 50% of the Gross Settlement Amount (i.e., \$100,000), shall be deposited by Defendant with the Settlement Administrator within 45 calendar days of the Effective Date.

C. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
- (2) All costs of the Settlement Administrator which are anticipated to be no greater than \$8,500.00;
- (3) Up to \$5,000.00 for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and Plaintiff's service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
- (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$66,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$20,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and

(5) \$20,000.00 of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$15,000.00, will be payable to the California Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or \$5,000.00, will be payable to the Aggrieved Employees as the “PAGA Amount,” as described below.

D. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.

E. **Escalator Clause.** Defendant represents that there are an estimated 117 total Settlement Class members. If the number of Settlement Class members, as reported to the Settlement Administrator, following preliminary approval, is more than 10% greater than 117 (i.e., if there are 129 or more Settlement Class members), Defendant shall increase the Gross Settlement Amount on a proportional basis (i.e., if the number of Settlement Class members is 12% greater than 117, Defendant shall increase the Gross Settlement Amount by 12%).

F. **Employer Payroll Taxes.** The Gross Settlement Amount does not include employer-side payroll taxes, which shall be paid by Defendant separate and apart from, and in addition to, the Gross Settlement Amount.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Individual Settlement Awards will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties. The remaining amount shall be known as the “Net Settlement Amount” or “NSA.”

B. Calculation of Settlement Awards. The Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:

i. Wage Statement Amount: 10% of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time between July 30, 2018 to the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked during the aforementioned time period.

ii. Waiting Time Amount: 10% of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time from July 30, 2016 through the end of the Class Period.

- iii. Remainder of Net Settlement Amount. The remaining 80% of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying 80% of the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
 - iv. Payments from PAGA Amount. In addition to the NSA, 25% of the amount set aside as PAGA civil penalties (i.e., \$5,000.00) has been set aside as the "PAGA Amount," as mentioned above. The PAGA Amount shall be paid to all Aggrieved Employees (regardless whether they opt out), based on their proportional number of pay periods worked for Defendant in California during the PAGA Period. Specifically, each Aggrieved Employee's payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee's number of pay periods worked during the PAGA Period, and the denominator of which is the total pay periods worked by all Aggrieved Employees during the PAGA Period.
- C. Within 10 business days following (i) final approval of the Settlement and (ii) Defendant's deposit of the full Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member's Settlement Award as well as the employer-side taxes on the wage portion of the Settlement Award, and obtain approval from the Parties' counsel of its calculations. Within seven (7) business days of the Settlement Administrator providing this information to the Parties' counsel, Defendant will deposit the employer-side taxes with the Settlement Administrator. Within five (5) business days of the receipt of the employer-side taxes, the Settlement Administrator will prepare and mail Settlement Awards to Settlement Class members, less applicable taxes and withholdings. The Settlement Administrator shall mail the Court-approved amounts for attorneys' fees and costs to Class Counsel, Class Representative Enhancement Award to Plaintiff, and LWDA's portion of PAGA civil penalties to the LWDA, at the same time as it mails Settlement Awards to Settlement Class members.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: for amounts paid from the PAGA Amount, the Wage Statement Amount, and Waiting Time Amount, 100% penalties; for the 80% remaining amounts paid from the Net Settlement Amount, one-third wages, one-third penalties, and one-third interest. The Settlement Administrator will be responsible for issuing to Settlement Class members IRS Forms W-2 (for amounts paid as wages) and an IRS Forms 1099 (for amounts paid as penalties and interest). As stated above, Defendant is responsible for the employer's share of payroll taxes on the wage portion of Settlement Award, and such taxes will not be deducted from the Gross Settlement Amount.

- E. Each member of the Settlement Class who is mailed a Settlement Award check must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not cashed within 180 days of mailing to a Settlement Class member shall be made payable to Kind, Inc., which is a 501(c)(3) organization dedicated to promoting the well-being of children.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be \$66,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00 from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$5,000.00 for Plaintiff's time in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$8,500.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the various payments from Defendant comprising the Gross Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating individual Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Awards have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Tuvia Korobkin, and Alexandra McIntosh of Haines Law Group, APC as Class Counsel;

- C. Appointing Plaintiff Maria Del Consuelo Martinez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (comprised of the Class Notice and Notice of Estimated Settlement Award, attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 15 business days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, dates of employment, and workweek and pay period data for the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period and the number of pay periods worked during the PAGA Period.
- B. Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the class portion of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the class portion of the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion is a letter or postcard prepared by the Settlement Class member that must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the

Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will still be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the class portion of the Settlement will not be entitled to any recovery from the class portion of this Settlement Agreement and will not be bound by the terms of the class portion of the Settlement or have any right to object, appeal or comment thereon. No Aggrieved Employee may opt out of the PAGA portion of the Settlement. All Aggrieved Employees, regardless whether they opt out of the class portion of the Settlement, shall be mailed a portion of the PAGA Amount and shall release the claims encompassed by the PAGA Release.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
- iii. If more than 15% of the Settlement Class opts-out, Defendant shall have the option of voiding this Settlement by providing written notice to Class Counsel within 10 days of first being notified by the Settlement Administrator that more than 15% of the Settlement Class has opted-out of the Settlement Class. In the event Defendant elects to void the Settlement under this provision, Defendant will be responsible for all costs of administration incurred by the Settlement Administrator until the date that Defendant provides notice of revocation.

D. Objections. Members of the Settlement Class who do not opt-out may object to the class portion of this Settlement Agreement as explained in the Class Notice by either submitting a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, who shall file all such objections with the Court) within the Response Deadline, and/or appear at the Final Approval Hearing to orally object. Defendant's counsel and Class Counsel shall file any responses to written objections no later than 5 days prior to the Final Approval Hearing. Any written objection must (1) contain the full name, address, phone number, and e-mail address of the objecting Settlement Class member, as well as the contact information for any attorney representing the objecting Settlement Class member of purposes of the objection; (2) include all objections and the factual and legal bases for same, as well as any and all briefs, written evidence, declarations, and/or other evidence supporting the objection; and (3) be postmarked on or before the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise

an objection at the Final Approval Hearing. A Settlement Class member need not submit a written objection in order to object orally at the Final Approval Hearing.

- E. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as the information that was used to calculate the estimated Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 3 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have until 14 calendar days after re-mailing, or until the Response Deadline, whichever is later, to opt-out, object, or dispute their estimated Settlement Award. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;

- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of PAGA civil penalties; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and/or by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Edward W. Suh of Suh Law Group, APC
3810 Wilshire Boulevard, Suite 1212, Los Angeles, CA 90010
edward@suhlawgroup.com

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

15. **Construction.** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Settlement Agreement is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in the Settlement Agreement fall on a weekend or Court holiday, the time to act shall be extended to the next day that is not a weekend or Court holiday.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Confidentiality.** Plaintiff, Defendant and Class Counsel will keep the settlement confidential through preliminary approval and will not make any public disclosures of the settlement, except as required to obtain preliminary approval from the Court. Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage her to adhere to, the restrictions against any public disclosure of the settlement until after the settlement is preliminarily approved by the Court. Thereafter, the Parties will agree not to have any communications with the media, make any comments to the media, or otherwise publicize the terms of the settlement. Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage her to adhere to, the restriction against any media comment on the settlement and its terms.

18. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Class Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by court order or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

19. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret, and enforce this Settlement Agreement, to supervise all notices, the administration of the Settlement Agreement, and to hear and adjudicate any dispute arising from or related to the Settlement Agreement. The Parties agree that the Court has jurisdiction over the Settlement Agreement pursuant to California Code of Civil Procedure, Section 664.6.

20. **Enforcement Action.** In the event either Party brings an action to enforce the terms of this Settlement Agreement, the prevailing party in such action shall be entitled to recover his/her/its reasonable attorneys' fees and costs incurred.

DATED:

06/02/2022

DEFENDANT K&S FOOD MANAGEMENT, INC.

By:

Name:

John T. Kim

Title:

President

DATED: 05/27/2022

PLAINTIFF MARIA DEL CONSUELO MARTINEZ

Bv:


Maria del Consuelo Martinez (May 27, 2022 13:43 PDT)

Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 6/6/2022


SUH LAW GROUP, APC

By: 

Edward W. Suh
Attorneys for Defendant

DATED: 5/27/22

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARIA DEL CONSUELO MARTINEZ, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

K&S FOOD MANAGEMENT, INC., a California corporation; and DOES 1 through 100,

Defendants.

Case No. 19STCV26488

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees who performed work for Defendant K&S Food Management, Inc. (“K&S”) in California between July 30, 2015 and December 7, 2021 (the “Class Period”). Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Maria Del Consuelo Martinez v. K&S Food Management, Inc.*, Los Angeles County Superior Court, Case No. 19STCV26488 (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. K&S’s records show that you were employed by K&S as a non-exempt employee in California between July 30, 2015 and December 7, 2021 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the class portion of the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If the Court finally approves the Settlement and enters judgment, the judgment will be posted to the Settlement Administrator’s website, www.phoenixclassaction.com.

What is this case about?

Plaintiff Maria Del Consuelo Martinez (“Plaintiff”) brought this lawsuit against K&S, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleges that K&S: (1) failed to pay all overtime wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to maintain accurate records and issue accurate, itemized wage statements; (5) failed to timely pay all final wages at separation of employment; (6) engaged in unfair unlawful business practices; and (7) is liable for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”).

K&S denies that it has done anything wrong. K&S denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of K&S, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the best interests of all Settlement Class Members and K&S to settle the Lawsuit on the terms summarized in this Notice. After K&S provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to K&S, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by K&S, your decision about whether to participate in the Settlement will not affect your employment. California law and K&S’s policy strictly prohibit unlawful retaliation. K&S will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

<p>Attorneys for Plaintiff / Settlement Class Members:</p> <p>HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Tuvia Korobkin (SBN 268066) tkorobkin@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com</p>	<p>Attorneys for K&S:</p> <p>SUH LAW GROUP, APC Edward W. Suh (SBN 265356) edward@suhlawgroup.com 3810 Wilshire Boulevard, Suite 1212 Los Angeles, CA 90010 Tel: (213) 385-7347 Fax: (213) 383-3323 suhlawgroup.com</p>
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who worked for K&S in California during the Class Period.

K&S agreed to pay \$200,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,500.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount (currently estimated to be \$66,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 for verified costs incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for her service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$20,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$15,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$5,000.00) will be payable to certain Settlement Class Members as the “PAGA Amount,” as described below.

Calculation of Settlement Class Members’ Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be distributed as follows:

- (i) Wage Statement: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class Member who was employed by K&S at any time from July 30, 2018 to December 7, 2021 shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked for K&S during the aforementioned time period.
- (ii) Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class Member who separated their employment from K&S at any time between July 30, 2016 and December 7, 2021.
- (iii) The remaining 80% of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked for K&S during the Class Period.

Payment from PAGA Amount: In addition to the Net Settlement Amount, \$3,750.00 of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above, and will be allocated to all Settlement Class Members who worked for K&S in California at any time from July 31, 2019 to December 7, 2021 (the “PAGA Period”), in proportion to the number of pay periods that each Settlement Class member worked for K&S in California during that time period.

K&S’s Deposit of the Gross Settlement Amount. K&S will deposit the Gross Settlement Amount with the Settlement Administrator in two equal installments. The first half (50%) of the Gross Settlement Amount will be deposited on or before <<FIRST INSTALLMENT DUE DATE>> and the second half (50%) of the Gross Settlement Amount will be deposited within 45 days after the Settlement is approved by the Court and becomes final.

Settlement Awards to Settlement Class Members and Disposition of Uncashed Checks. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to Settlement Class Members. Each Settlement Class Member who receives a Settlement Award must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be distributed by the Settlement Administrator to Kind, Inc., a 501(c)(3) charitable organization dedicated to promoting the well-being of children.

Allocation and Taxes. For tax purposes, each Settlement Award will be allocated as follows: for amounts paid from the PAGA Amount, the Wage Statement Amount, and the Waiting Time Amount, 100% penalties; for the 80% remainder amounts paid from the Net Settlement Amount, one-third wages, one-third penalties, and one-third interest. The Settlement Administrator will issue IRS Forms W-2 for amounts designated as wages, and IRS Forms 1099 for amounts designated penalties and interest. Settlement Class Members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, K&S and its counsel, and Plaintiff and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who does not opt-out will release and discharge K&S from any and all claims that were pled in the operative Complaint in the Lawsuit, or which could have been pled in the Complaint based on the factual allegations in the Complaint, including but not limited to claims for (i) failure to pay overtime wages (Cal. Labor Code §§ 204, 510, 1194, 1198); (ii) meal period violations (Cal. Labor Code §§ 226.7, 512); (iii) rest period violations (Cal. Labor Code §§ 226.7, 516); (iv) wage statement violations (Cal. Labor Code § 226); (v) waiting time penalties (Cal. Labor Code §§ 201-203); and (vi) claims for unfair competition (Cal. Bus. & Prof. Code § 17200 et seq.) based on alleged violations of (i)-(v) above, that arose during the Class Period. In addition, all Settlement Class Members (whether or not they opt out) who worked for K&S in California at any point during the PAGA Period shall release K&S from any and all claims under the PAGA premised on the facts and/or theories alleged in Plaintiff’s letter to the LWDA dated July 31, 2019, that arose during the PAGA Period (the “PAGA Release”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Settlement Award which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Award. As noted above, your estimated Settlement Award is based on the proportionate number of workweeks or pay periods that you worked during the relevant time periods and whether your employment separated during the relevant time period. The information contained in K&S’s records regarding this information, along with your estimated Settlement Award, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class portion of the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed “Request for Exclusion,” which is a letter or postcard including with your name, address, telephone number, last four digits of your social security number, and your signature, and a statement that you wish to be excluded from the class Settlement. Any Request for Exclusion must be postmarked no later than **<<RESPONSE DEADLINE>>**.

Send the Request for Exclusion directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a valid and timely Request for Exclusion shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member with respect to the class portion of the Settlement, shall be barred from participating in the class portion of the Settlement, and shall receive no benefits from the class portion of the Settlement. However, to the extent you are eligible to receive a portion of the PAGA Payment, you will still receive that amount whether or not you submit a Request for Exclusion. This is because, if the Court approves the PAGA Settlement, there is no right to be excluded from the PAGA Release that is part of this Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by all terms of the Settlement.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the class Settlement. However, if the Court rejects your objection, you will still be bound by all terms of the Settlement. If you wish to object to the class Settlement, or any portion of it, you may mail a written objection to the Settlement

Administrator. Any written objection must (i) include your name, address, phone number, and e-mail address, as well as contact information for any attorney representing you regarding your objection; (ii) include the case name and number; (iii) include each specific reason in support of your objection, and any legal or factual support for each objection together with any documents, declarations, or other evidence in support of your objection; and (iv) be postmarked by <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Maria Del Consuelo Martinez v. K&S Food Management, Inc.*, Los Angeles County Superior Court, Case No. 19STCV26488.

You may also object orally by appearing at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. If you hire an attorney to represent you in your objection, you must pay that attorney at your own expense.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing**, although any Settlement Class Member is welcome to do so.

If you intend to attend the Final Approval Hearing or otherwise visit the Court, please visit the Court's website, <https://www.lacourt.org>, for information regarding Court operations during COVID-19, as well as instructions on how to appear remotely if you so desire.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Los Angeles County Courthouse, located at 312 N. Spring Street, Los Angeles, California 90012, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, K&S, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

MARIA DEL CONSUELO MARTINEZ v. K&S FOOD MANAGEMENT, INC.
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 19STCV26488

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> ONLY IF (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Settlement Award:

According to K&S's records:

- (a) You worked _____ workweeks for K&S from July 30, 2015 to December 7, 2021 (Class Period);
- (b) You worked _____ pay periods for K&S from July 30, 2018 to December 7, 2021 (Wage Statement Period);
- (c) You worked _____ pay periods for K&S from July 31, 2018 to December 7, 2021 (PAGA Period); and
- (d) Your employment with K&S <<DID/DID NOT>> end between July 30, 2016 and December 7, 2021 (Waiting Time Period).

Based on the above, your Settlement Award is estimated to be \$_____.

(IV) If you disagree with items (a) - (d) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from K&S's records, those records will control unless you are able to provide documentation that establishes that K&S's records are mistaken. If there is a dispute about whether K&S's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

Signature: _____

Date: _____