

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (hereinafter the “Agreement”) is made by Plaintiffs Jeremiah Brooke and Juan Estrada (“Plaintiffs”) and Defendant Lusamerica Foods, Inc. (“Defendant” or “Lusamerica”). Plaintiffs and Defendant will, at times, be collectively referred to herein as “the Parties.”

I. THE LITIGATION

1. On November 7, 2019, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code section 2689 *et seq.*, (“PAGA”) Plaintiff Brooke notified Defendant and the Labor and Workforce Development Agency (“LWDA”) of alleged violations of the Labor Code and relevant sections of the IWC Wage Order. Plaintiff Brooke did not receive notice from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of Brooke’s PAGA letter. On January 14, 2020, Brooke initiated an action in the Santa Clara County Superior Court entitled *Jeremiah Brooke v. Lusamerica Foods, Inc., et al.*, case number 20CV361692 (the “Litigation”), by filing a Class Action and PAGA Representative Complaint for (1) Failure to Pay Minimum Wages (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Timely Pay All Wages Due Upon Termination; and (7) Unlawful Competition pursuant to Bus. & Prof. Code section 17200, et al (“Brooke lawsuit”).

2. On March 9, 2020, pursuant to Labor Code section 2699.3, Plaintiff Estrada first notified Defendant and the LWDA of alleged violations of Labor Code sections 512, 226.7 and Section 11 of IWC Wage Order 9-2001. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), Plaintiff did not receive notice from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of Estrada’s PAGA letter. On May 19, 2020, Estrada initiated a PAGA-only complaint in Santa Clara County Superior Court entitled *Estrada v.*

Lusamerica Foods, Inc. et al, case number 20CV366851, seeking recovery of civil penalties under the PAGA for the violations alleged in his PAGA letter.

3. On July 14, 2021, Plaintiffs consolidated their cases by filing a First Amended Class Action and PAGA Representative Complaint in the Brooke lawsuit. Specifically, the operative complaint alleged the following Class and PAGA causes of actions for 1) Failure to Pay Minimum Wages; 2) Failure to Pay Overtime Wages; 3) Failure to Pay all Meal Period Premium Wages; 4) Failure to Pay Rest Period Premium Wages; 5) Failure to Provide Accurate Itemized Wage Statements; 6) Failure to Pay Wages Timely to Terminated Employees; 7) Failure to Reimburse Expenses; 8) Unfair Competition Claims for the alleged unlawful practices; 9) Civil Penalties Under The PAGA For Failure To Pay Minimum Wages And /Or Overtime Wages; 10) Civil Penalties Under The PAGA For Failure to Pay Meal Period Premium Wages; 11) Civil Penalties Under The PAGA For Failure to Pay Rest Period Premium Wages; 12) Civil Penalties Under The PAGA For To Provide Accurate Itemized Wage Statements; 13) Civil Penalties Under The PAGA For Failure To Timely Pay All Wages Due Upon Termination Of Employment; 14) Civil Penalties Under The PAGA For Failure To Record Hours Worked; 15) Civil Penalties Under the PAGA for Failure to Reimburse Expenses.

4. On February 4, 2021, the Parties attended a full day of mediation with mediator Tripper Ortman. The Parties were not able to reach a settlement on the day of mediation. However, after months of continued negotiations with the assistance of Mr. Ortman, the Parties agreed to the settlement described herein.

5. This Agreement concerning the settlement is made in compromise of disputed claims. The payment by Defendant required by this Agreement shall satisfy all class and PAGA representative claims alleged in the Litigation, including but not limited to claims for wages,

penalties, and interest, and shall include payment for PAGA penalties, individual settlement awards to Settlement Class Members, attorneys' fees, litigation costs and expenses, Plaintiffs' Class Representative Service Award, and settlement administration expenses.

6. Because the purpose of this Agreement is to settle a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. In the event the Court does not enter Final Judgment, or in the event such Final Judgment does not become Final for any reason, or is modified in any material respect, or in the event the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose. Defendant denies all of Plaintiffs' claims as to liability and damages as well as their class and PAGA allegations, and does not waive, but rather expressly reserves all rights to challenge all such claims and allegations upon all procedural and factual grounds including the assertion of any and all defenses, if the Final Judgment does not become Final for any reason, or in the event that the Effective Date does not occur.

II. DEFINITIONS

The following are certain definitions applicable to this Agreement. Definitions contained elsewhere in the body of this Agreement shall also be effective.

1. "Agreement" or "Settlement" means this Settlement Agreement and settlement of the Litigation and related claims effectuated by this Agreement.

2. "Class" means all individuals employed by Defendant in the State of California as non-exempt employees and who were paid on an hourly, piece-rate, per-mile basis, or combination therein at any point during the Class Period. "Class Member" shall mean all individuals who are members of the Class.

3. "Class Counsel" means Cohelan Khoury & Singer and Moss Bollinger, LLP.

4. “Class Counsel Attorneys’ Fees” refers to the amount awarded to Class Counsel by the Superior Court for the County of Santa Clara for prosecuting and obtaining a Settlement of the Litigation.

5. “Class Period” means the period from January 14, 2016 to November 15, 2021.

6. “Class Representative Service Awards” means the sums to be paid to Plaintiffs as service for their role as Class Representatives, which shall be paid from the Gross Settlement Amount.

7. “Defendant” or “Lusamerica” means Defendant Lusamerica Foods, Inc.

8. “Effective Date” means the date by which both of the following have occurred:
(a) this Settlement is finally approved by the Superior Court for the County of Santa Clara; and
(b) the Court’s Order Approving Class Settlement (“Final Judgment”) becomes Final.

9. “Final” means the latest of: (a) if there is an appeal of the Superior Court’s Final Judgment in the Litigation, the date of final affirmance on an appeal or the date of dismissal of such appeal; or (b) if one or more objections are submitted and not withdrawn, the expiration date of the time for filing or noticing any appeal of the Final Judgment; or (c) if no objections are made, the date the Court enters the Final Judgment.

10. “Final Approval Hearing” means the hearing to be conducted by the Superior Court for the County of Santa Clara to determine whether to grant Final Approval of the Settlement and to enter the Final Judgment finally approving and implementing the terms of this Agreement.

11. “Final Judgment” refers to the Final Judgment and Order Approving Class Settlement.

12. “Gross Settlement Amount” refers to Seven Hundred Thousand Dollars (\$700,000), which is the maximum amount Defendant shall be required to pay under this Agreement, except as otherwise provided with respect to the employer’s share of payroll taxes (as stated in Section III, Paragraph 2). The Gross Settlement Amount is non-reversionary and shall consist of the following elements: (a) Class Counsel Attorneys’ Fees; (b) Litigation Costs and Expenses; (c) Class Representative Service Awards; (d) Settlement Administration Expenses; (e) PAGA Payment; and (f) Net Settlement Amount, as defined below.

13. “Litigation” means the consolidated action entitled *Jeremiah Brooke, et al. v. Defendant Lusamerica Foods, Inc.*, pending in the Santa Clara County Superior Court as case number 20CV361692, and all causes of action, claims and allegations contained therein.

14. “LWDA” means the California Labor and Workforce Development Agency.

15. “Motion for Preliminary Approval” refers to the Motion for Preliminary Approval of the Settlement and its supporting papers.

16. “Net Settlement Amount” means the Gross Settlement Amount, less all of the following: (a) Class Counsel Attorneys’ Fees; (b) Litigation Costs and Expenses; (c) Class Representative Service Awards; (d) Settlement Administration Expenses; and (e) PAGA Payment.

17. “Notice” refers to the Notice of Proposed Class Action Settlement and Change of Address Form substantially in the form attached hereto as Exhibit A. The Notice shall be sent in both English and Spanish.

18. “Order Granting Preliminary Approval” refers to the order or statement of decision preliminarily approving the Settlement.

19. “PAGA Payment” means the portion of the Gross Settlement Amount in the total amount of Fifty Thousand Dollars (\$50,000) that the Parties have designated as representing the recovery of civil penalties on behalf of the Settlement Class under the Labor Code Private Attorneys General Act of 2004.

20. “PAGA Members” means all Class Members who were employed at any time during the PAGA Period.

21. “PAGA Period” means the period from November 7, 2018 to November 15, 2021.

22. “Parties” means Plaintiff Jeremiah Brooke, individually and in his capacity as Class Representative; Juan Estrada, individually and in his capacity as Class Representative; and Defendant Lusamerica Foods, Inc.

23. “Plaintiffs” means Jeremiah Brooke and Juan Estrada, individually and in their capacities as Class Representatives.

24. “Preliminary Approval Hearing” means the hearing to be conducted by the Superior Court for the County of Santa Clara to determine whether to conditionally certify the Class, approve the proposed Notice and direct distribution of the Notice to all members of the Class, appoint Plaintiffs as the Class Representatives, and Plaintiffs’ attorneys as Class Counsel.

25. “Release Claims” means all claims and/or causes of action arising from or related to this case under any federal, state, or local law or administrative order that were pled or could have been pled in this case based on the facts alleged in the operative class action complaint or notices to the LWDA including but not limited to the failure to pay minimum wages, the failure to pay overtime wages, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to maintain records, the failure to provide

accurate itemized wage statements, the failure to reimburse, and other claims whatsoever that were alleged in this case or which arise out of such facts actually pled in the complaint, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code section 17200 *et seq.*, conversion, liquidated damages, punitive damages, penalties, statutory penalties, civil penalties under the Labor Code Private Attorneys General Act of 2004 for violations of Labor Code 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, and 2802.

26. “Released Parties” means Defendant, its parents, subsidiaries, predecessors, successors, and affiliates, and all of its respective shareholders, officers, directors, employees, administrators, fiduciaries, attorneys, insurers, trustees, agents, and benefit plans.

27. “Settlement Administration Expenses” means those expenses of effectuating and administering the Settlement, which include costs incurred by the Settlement Administrator to mail the Court-approved Notice to the Class; update Class Member mailing addresses prior to the initial mailing via a search of the National Change of Address database of the U.S. Post Office; skip-tracing bad addresses through reasonable means with the use of the Class Member’s social security number and re-mailing the Class Notices; setting up a post office box and toll free number for receipt of Class Member communications, which may include requests for exclusion, disputes as to the estimated payments, or objections, if any; weekly status reports; and declarations as needed by the Parties; calculating and distribution settlement payments to Settlement Class Members, tax reporting as required, etc.

28. “Settlement Administrator” means or refers to Phoenix Settlement Administrators, or other third-party administrator jointly selected by the Parties, to effectuate and administer the Settlement.

29. “Settlement Class” means all those persons who are members of the Class and who do not properly and timely opt out of the Litigation.

30. “Settlement Class Member(s)” means any person who is included in the Settlement Class.

31. “Settlement Payments” means the amounts to be paid from the Net Settlement Amount and the 25% of the PAGA Payment to individual Settlement Class Members.

32. “Work Week” means any seven (7) consecutive days, starting with Sunday and ending on Saturday, in which a Class Member worked at least one (1) day in that week.

a. “Driver Work Week” means any Work Week a Class Member worked in the position of a Driver for at least one day at any point during the Class Period.

b. “Non-Driver Work Week” means any Work Week in which a Class Member worked in a non-Driver position during the Class Period.

III. SETTLEMENT TERMS

The Parties agree as follows:

1. **Scope of Settlement:**

The Settlement described herein will resolve fully and finally all Settlement Class Members’ Released Claims as described in Section III, Paragraph 6.

2. **Maximum Potential Consideration:**

Subject to Court approval, and in consideration for the release described in this Agreement, Defendant shall pay the Gross Settlement Amount to the Settlement Class Members, the PAGA Members, Plaintiffs, Class Counsel, the Settlement Administrator, and the LWDA in the manner specified in this Agreement. Payment of the Gross Settlement Amount under the terms described in this Agreement shall be the sole financial obligation of Defendant under this Agreement. The Gross Settlement Amount is non-reversionary and shall be used: (1) to satisfy

the claims of all Settlement Class Members, as specified herein; (2) to satisfy the award of Class Counsel Attorneys' Fees; (3) to satisfy the award of Litigation Costs and Expenses; (4) to satisfy the Class Representative Service Awards; (5) to satisfy Settlement Administration Expenses incurred in this action; and (6) to satisfy the PAGA Payment. The Gross Settlement Amount does not include the employer's share of payroll taxes on the portion of payments to Settlement Class Members allocated as wages, which Defendant shall be responsible for paying separately. The Gross Settlement Amount plus the employer's share of payroll taxes on the portion of payments to Settlement Class Members allocated as wages shall constitute the maximum amount that Defendant shall be required to pay under this Agreement.

3. Approval of Settlement:

(a) Plaintiffs shall apply for approval of the Settlement as described in Section III, Paragraph 13 of this Agreement for purposes of effectuating this Settlement. Plaintiffs agree not to request more than \$10,000 per plaintiff as a Class Representative Service Award. Plaintiffs agree not to seek more than thirty-five percent (35%) of the Gross Settlement Amount, or Two Hundred, Forty-Five Thousand Dollars (\$245,000) for Class Counsel Attorneys' Fees, and further agree not to seek more than Twenty-Three Thousand Dollars and No Cents (\$23,000.00) for Litigation Costs and Expenses. Defendant shall not oppose any application by Plaintiffs or Class Counsel for Class Representative Service Awards equal to or less than Ten Thousand Dollars (\$10,000) per plaintiff, Class Counsel Attorneys' Fees equal to or less than Two Hundred, Forty-Five Thousand Dollars (\$245,000), and Litigation Costs and Expenses equal to or less than Twenty-Three Thousand Dollars and No Cents (\$23,000.00).

(b) Should the Superior Court for the County of Santa Clara decline to approve all material aspects of the Settlement or make rulings substantially altering the fundamental terms of

this class settlement, except for the awards of the Class Representative Service Award, Class Counsel Attorneys' Fees, and Litigation Costs and Expenses (which shall be decided by the Court), Defendant shall have no obligation to make any payment, including payment of the Gross Settlement Amount, and the Settlement is void.

4. Allocation of Net Settlement Amount and PAGA Payment:

(a) The Net Settlement Amount will be allocated among Settlement Class Members on a proportional basis based on the number of Work Weeks worked during the Class Period as follows: Class Members shall be allocated two (2) points of credit for each Driver Work Week they worked within the Class Period and one (1) point of credit for each Non-Driver Work Week they worked within the Class Period. One day worked in a given week will be credited as a Work Week for purposes of these calculations. To calculate each Class Member's proportional share:

- (i) Add all points for all Settlement Class Members to obtain the Denominator;
- (ii) Divide the number of points for each Settlement Class Member by the Denominator to obtain each Class Member's portion of the Net Settlement Amount;
- (iii) Multiply each Settlement Class Member's portion of the Net Settlement Amount by the Net Settlement Amount to determine each Class Member's estimated individual settlement payment of the Net Settlement Amount.

(b) Seventy-five percent of the PAGA Payment (\$37,500) shall constitute the 75% of the PAGA Payment that shall be distributed to the LWDA.

(c) The remaining twenty-five percent (\$12,500) of the PAGA Payment will be allocated among PAGA Members on a proportional basis based on the number of Work Weeks worked during the PAGA Period as follows: PAGA Members shall be allocated two (2) points of credit for each Driver Work Week they worked within the PAGA Period and one (1) point of credit for each Non-Driver Work Week they worked within the PAGA Period. One day worked in a given week will be credited as a Work Week for purposes of these calculations. To calculate each PAGA Member's proportional share:

- (i) Add all points for all PAGA Members to obtain the Denominator;
- (ii) Divide the number of points for each PAGA Member by the Denominator to obtain each PAGA Member's portion of the Workweek Fund;
- (iii) Multiply each PAGA Member's portion of the Workweek Fund by the Workweek Fund to determine each PAGA Member's estimated individual settlement payment of the PAGA Payment.

5. Tax Treatment of Payments to Settlement Class Members and PAGA Members:

Of the Settlement Payments to individual Settlement Class Members, one-third shall be designated as wages subject to payroll taxes and withholding to be reported on IRS Form W-2s, one-third shall be designated as interest to be reported on IRS Form 1099s, and the remaining one-third shall be designated as penalties to be reported on IRS Form 1099s. Outside of the Gross Settlement Amount, Defendant shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which

may be owed on the portion of his/her/their Settlement Payment. Payments to PAGA Members shall be designated as penalties to be reported on IRS Form 1099s where required by law. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

6. Release of Claims by Settlement Class Members:

Upon the Court's final approval of the Settlement, entry of final judgment, and payment of required funds to Settlement Class Members, each Settlement Class Member shall be deemed to have fully released and forever discharged Released Parties from the Release Claims for the Class Period.

7. Release of Claims by Plaintiffs:

In addition to the Settlement Class Members' Released Claims described above, in exchange for the consideration recited in this Agreement, including the consideration to be paid to Plaintiff Brooke and the Class Representative Service Awards, and upon the Court's final approval of the Settlement, entry of final judgment, and payment of required funds to Settlement Class Members and the Service Awards to Plaintiffs, Plaintiffs Jeremiah Brooke and Juan Estrada release, acquit, and discharge all of the Released Parties for any claim, whether known or unknown, which Plaintiffs have ever had, or hereafter may claim to have, arising on or before the date that they sign this Agreement, including without limitation to, any claims relating to or arising out of any aspect of their employment, or the termination of their employment, with Defendant, any claims for unpaid compensation, wages, reimbursement for business expenses, penalties, or waiting time penalties under the California Labor Code, the California Business and Professions Code, the federal Fair Labor Standards Act, 29 U.S.C. section 201, *et seq.*, or any state, county, or city law or ordinance regarding wages or compensation; any claims for

employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974; any claims of employment discrimination, harassment, and/or retaliation on any basis (except as described herein), including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code, or any other state, county, or city law or ordinance regarding employment discrimination. In addition, Plaintiffs and the State of California release claims for civil penalties asserted in the Litigation under the Labor Code Private Attorneys General Act of 2004 (Labor Code Section 2698 *et seq.*). Plaintiffs acknowledge and agree that the foregoing general release is given in exchange for the consideration provided to them under this Agreement. However, this release shall not apply to claims for workers' compensation benefits, any claims for unemployment insurance benefits, Plaintiff Brooke's individual claims for retaliation and/or wrongful termination, or any other claim or right of either Plaintiff that as a matter of law cannot be waived or released.

Except as described herein and specifically excluding Plaintiff Brooke's claims for retaliation and/or wrongful termination, Plaintiffs expressly waive any rights or benefits available to them under the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Plaintiffs understand fully the statutory language of Civil Code section 1542 and, with this understanding, nevertheless elect to, and do, assume all risks for claims that have arisen, whether known or unknown, which each has ever had, or hereafter may claim to have, arising on or before the date of their respective signatures to this Agreement, and specifically waive all rights each may have under California Civil Code section 1542.

8. Opt-Outs:

Individuals who fall within the definition of the Class may choose to opt out of the Class under such procedures specified in Section III, Paragraph 13(c)(iii) of this Agreement. Any such persons who opt out of the Class (“Opt-Outs”) will receive no part of the Net Settlement Amount and will only receive his/her/their share of the PAGA Payment as explained in Section III, Paragraph 4(c). Every individual who falls within the definition of the Class who does not validly and timely opt out shall be deemed a Settlement Class Member. The Settlement Administrator shall provide copies of all written requests for exclusion from the Class to the Parties’ counsel within ten (10) calendar days following the final date to opt out. All signatories and their counsel agree not to encourage opt-outs. Opt-Outs who qualify as PAGA Members shall maintain their status as PAGA Members and shall remain eligible to receive payments allocated to them as PAGA Members.

9. Denial of Liability:

DEFENDANT DENIES THAT IT OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATES, OR SUCCESSORS OR ANY OTHER RELEASEE HAS ENGAGED IN ANY UNLAWFUL ACTIVITY, HAS FAILED TO COMPLY WITH THE LAW IN ANY RESPECT, OR HAS ANY LIABILITY TO ANYONE UNDER THE CLAIMS ASSERTED IN THE LITIGATION. The Parties expressly acknowledge that this Agreement is entered into for the

purpose of compromising highly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant or any of the Releasees. Neither the Agreement nor any document prepared in connection with the Settlement may be admitted in any proceeding as an admission by Defendant, or any of the Releasees, Plaintiffs, or any person within the definition of the Class. However, this paragraph and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

10. **PAGA Payment Allocation:** Fifty Thousand Dollars (\$50,000) of the Gross Settlement Amount shall be designated as the PAGA Payment. Of that amount, 75% (\$37,500) shall be distributed to the California Labor and Workforce Development Agency (LWDA). The remaining 25% (\$12,500) shall be distributed to PAGA Members based on the number of Work Weeks worked during the PAGA Period according to the allocation formula set forth in Section III, Paragraph 4(c).

11. **Distribution of Net Settlement Amount:**

The Net Settlement Amount shall be distributed by the Settlement Administrator in accordance with the following eligibility requirements:

(a) Those persons who timely submit written requests for exclusion from the class pursuant to the Notice (“Opt-Outs”) are not entitled to any Settlement Payments, except for his/her/their share of the PAGA Payment as explained in Section III, Paragraph 4(c).

(b) Defendant, through the Settlement Administrator, shall make payments to Settlement Class Members as set forth in Section III, Paragraphs 4-5, above.

12. **Settlement Administration:**

Settlement Administration Expenses, upon order of the Court, shall be paid from the Gross Settlement Amount and shall not exceed \$15,000 based on 1,286 putative class members. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court if they cannot be resolved by the Parties. The Settlement Administrator shall regularly and accurately report to the Parties, in written form when requested, the substance of the work performed, including the amounts payable to individual Settlement Class Members and PAGA Members, and the total amounts to be paid to all Settlement Class Members and all PAGA Members.

13. **Preliminary Approval of Settlement:**

The Parties agree to the following procedures for obtaining preliminary approval of the Settlement, certifying a conditional Settlement Class, notifying Settlement Class Members, and obtaining final court approval of the Settlement:

(a) **Class Certification for Settlement Purposes Only:** The Parties stipulate to certification of the Class for purposes of settlement only. If the Court does not grant either preliminary approval or final approval of this Settlement, or if Defendant elects to exercise its option to declare the Agreement void as set forth in Section III, Paragraph 18, the Parties' stipulation on class certification will be void and of no further force or effect.

(b) **Motion for Preliminary Approval:** Plaintiffs shall file the Motion for Preliminary Approval of the Settlement along with the Proposed Order Granting Preliminary Approval of the Settlement substantially in the form attached as Exhibit B to this Agreement.

(c) **Notice of Class Settlement:** Within five (5) business days of preliminary approval, Defendant shall provide the Settlement Administrator with the following data for each

Class Member and PAGA Member: name, last known mailing address, last known telephone number, Social Security number, number of Work Weeks worked during the Class Period as a Driver and/or Non-Driver, and number of Work Weeks worked during the PAGA Period as a Driver and/or Non-Driver (if any). Thereafter, the Settlement Administrator shall update the last known mailing addresses of Class Members and PAGA Members received from Defendant, with those obtained by searching the National Change of Address database (“NCOA”). The Notice shall be provided in both English and Spanish.

(i) Within ten (10) business days of receipt, the Settlement Administrator shall mail the Notice, Change of Address Form, and pre-printed return envelope (“Notice Packet”) to all identified Class Members via U.S. Mail using the most current mailing address information available for Class Members from Defendant’s records and the NCOA database. If Notice Packets are returned as undeliverable without forwarding addresses, within five business days, the Settlement Administrator shall conduct a skip trace to locate more current addresses for Class Members and re-mail the Notice Packets to new addresses obtained. If forwarding address information is obtained by return mail, the Settlement Administrator shall promptly forward the Notice Packet to the addressee via first-class regular U.S. Mail indicating in its records the date on which it was re-mailed. The Exclusion Deadline shall not be extended for Class Members who receive re-mailed Notices.

(ii) The Notice of Class Action Settlement shall provide that Class Members who wish to object to the Settlement may simply appear at the Final Approval Hearing or submit to the Settlement Administrator a written statement objecting to the Settlement. Written objections must be submitted to the Settlement Administrator or postmarked forty-five (45) calendar days following the mailing of the Notice Packet (“Response Deadline”). No individual

who excludes him/her/themself from the Settlement Class shall be entitled to object to the Settlement, because the Settlement no longer affects his/her/their individual claims.

(iii) The Notice shall inform Class Members of their right to opt out of the Class Action Settlement. Any Class Member wishing to opt out of the Class Action Settlement must comply with the deadline and procedures specified in the Notice for doing so. Class Members who fail to submit a written request for exclusion from the Class Action Settlement on or before the Response Deadline shall be bound by all terms of the Class Action and PAGA Settlement and the Final Judgment entered in the Litigation if the Settlement is approved by the Court, regardless of whether they have objected to the Settlement. Because PAGA Members have no right to opt out of a PAGA Settlement, Class Members who submit valid and timely opt out requests will be issued a check representing their share of the PAGA Payment, if any, and mailed at the same time the Class Action Settlement Payments are mailed to Settlement Class Members. Within ten (10) calendar days after the Response Deadline, the Settlement Administrator shall provide the Parties with a complete and accurate list of all Class Members who have validly and timely requested exclusion from the Class Action Settlement.

(iv) The Notice mailed to each Class Member shall state the Class Member's number of Driver Work Weeks and Non-Driver Work Weeks within the Class Period, and the number of Driver Work Weeks and Non-Driver Work Weeks within the PAGA Period (if any), according to the records of Defendant. The Notice will also include the approximate amount of each Class Member's Settlement Payment and share of the PAGA Payment.

(v) The Notice shall inform Class Members that they may challenge or dispute the information on which their Settlement Payment (as shown in the Notice), by providing appropriate documentation supporting the information they believe to be correct. Any

such challenge must be mailed to the Settlement Administrator and postmarked by the Response Deadline. Any such challenge shall be resolved by the Settlement Administrator, whose decision shall be final, binding, and non-appealable.

(d) **Non-Solicitation of Opt-Outs / Objections:** The Parties agree that neither they nor their counsel will solicit or otherwise encourage directly or indirectly Class Members to request exclusion from the Class, object to the Settlement, or appeal the Final Judgment.

(e) **Final Approval Hearing:** A Final Approval Hearing to determine final approval of the Settlement shall be conducted subject to the calendar of the Court no sooner than thirty days after the Response Deadline.

(i) No later than sixteen (16) court days before the Final Approval Hearing, or upon such other schedule as may be directed by the Court, Plaintiffs shall file a Motion for Final Approval of Class Action Settlement, and Memorandum of Points and Authorities in Support of the Settlement, which will include Plaintiffs' Counsels' application for Attorneys' Fees and Costs and Class Representative Service Awards. The Motion for Final Approval will request an Order Granting Final Approval of Class Action Settlement and Entering Judgment, in a form substantially similar to Exhibit "C". After entry of the Final Judgment, the Court retains continuing jurisdiction over the Litigation under California Rule of Court 3.769(h) for purposes of (i) enforcing this Settlement Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Final Judgment matters as may be appropriate under court rules or applicable law. No judgment shall be entered unless it is consistent with the terms of this Agreement.

(ii) The Notice will inform Class Members where they may locate the Order Granting Final Approval of Class Action Settlement and Entering Judgment following the Final Approval Hearing, i.e., posted on a website set up by the Settlement Administrator.

14. **Funding and Distribution of Gross Settlement Amount:**

(a) **Funding and Distribution Timelines.** Defendant shall pay the Gross Settlement Amount no later than 15 business days after the Effective Date.

(b) **Distribution.** The Settlement Administrator shall distribute the entire Gross Settlement Amount within 15 business days of the Effective Date.

(c) **Payment of Class Counsel Attorneys' Fees.** Class Counsel shall apply to the Court for approval of Class Counsel Attorneys' Fees. Class Counsel anticipate requesting that the Court approve up to \$245,000 as Class Counsel Attorneys' Fees. As set forth above, Class Counsel Attorneys' Fees shall come exclusively from the Gross Settlement Amount. The amount of Court-awarded Class Counsel Attorneys' Fees shall be paid by the Settlement Administrator to Plaintiffs' Attorneys as follows: 50% of the amount awarded as Class Counsel Attorneys' fees shall be paid to Cohelan Khoury & Singer and 50% of the amount awarded as Class Counsel Attorneys' fees shall be paid to Moss Bollinger LLP within 15 business days of the Effective Date. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the payments.

(d) **Payment of Litigation Costs and Expenses.** Class Counsel shall apply to the Court for approval of Litigation Costs and Expenses. Class Counsel anticipate requesting that the Court approve no more than Twenty-Three Thousand Dollars and No Cents (\$23,000.00) as Litigation Costs and Expenses. As set forth above, Litigation Costs and Expenses shall come exclusively from the Gross Settlement Amount. The amount of court-awarded Litigation Costs

and Expenses shall be paid by the Settlement Administrator to Class Counsel within 15 business days of the Effective Date. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the payment.

(e) **Payment of Class Representative Service Awards and Compensation for General Release.** Upon court approval, Plaintiffs shall be paid Class Representative Service Awards. Plaintiffs intend to request that the Court approve a payment in the amount of \$10,000 per plaintiff as Class Representative Service Awards, and Defendant agrees not to object to Class Representative Service Awards of not more than \$10,000 for each Plaintiff. The Settlement Administrator shall make payment of the Class Representative Service Awards to each Plaintiff within 15 business days of the Effective Date. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs for the payment.

(f) **Payment of Settlement Administration Expenses.** The Settlement Administrator shall receive such amount approved by the Court, which is estimated to be \$15,000 based on 1,286 putative class members, from the Gross Settlement Amount. The Settlement Administration Expenses shall not exceed \$15,000 unless the Settlement Administrator obtains prior approval from the Parties.

(g) **Payments to Settlement Class Members and PAGA Members.** After deducting Class Counsel Attorneys' Fees, Litigation Costs and Expenses, the Class Representative Service Award, Settlement Administration Expenses, and the 75% portion of the PAGA Payment to the LWDA from the Gross Settlement Amount, the Settlement Administrator shall distribute the entire Net Settlement Amount to the Settlement Class Members according to the allocation formula described in Section III, Paragraph 4(a), and shall distribute 25% of the PAGA Payment to the PAGA Members according to the allocation formula described in Section

III, Paragraph 4(c). The Settlement Administrator shall mail a check to each Settlement Class Member and PAGA Member via U.S. Mail using the most current mailing address information available, including any address updates obtained through NCOA searches, Social Security Number searches, address changes self-reported by Settlement Class Members, or any other source. After the Settlement Administrator mails the Settlement Payments, Settlement Class Members and PAGA Members shall have one-hundred and eighty (180) calendar days to cash the checks that were mailed to them. After one-hundred and eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the benefit of those Settlement Class Members and PAGA Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amount.

15. Approval of Class Counsel Attorneys’ Fees, Litigation Costs and Expenses and Class Representative Service Awards:

Recovery of Class Counsel Attorneys’ Fees, Litigation Costs and Expenses and the award of Class Representative Service Awards are not conditions to this Agreement and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement. Any order or proceeding relating to the application by Class Counsel of an award of attorneys’ fees, costs, expenses, or Class Representative Service Awards, or any appeal

from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment. To the extent the Court does not approve the full amount of Class Counsel Attorneys' Fees, Litigation Costs and Expenses, Settlement Administration Expenses, or the Class Representative Service Awards described above, the non-approved amounts will be allocated to the Net Settlement Amount for distribution to the Settlement Class Members according to the allocation formula set forth herein.

16. Notices:

Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the fifth day after mailing by United States mail, addressed as follows:

To Counsel for Plaintiffs

Michael D. Singer
Kristina De La Rosa
COHELAN KHOURY & SINGER
605 C Street
San Diego, CA 92101
Tel: (619) 595-3001
kdelarosa@ckslaw.com

Dennis F. Moss, Esq.
Jeremy F. Bollinger, Esq.
Ari E. Moss, Esq.
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, CA 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
dennis@mossbollinger.com
jeremy@mossbollinger.com
ari@mossbollinger.com

To Counsel for Defendant

Sarju Naran, Esq.
Jenn M. Protas, Esq.
Maysa Saeed, Esq.
HOGE FENTON JONES & APPEL, INC.
55 South Market Street, Suite 900
San Jose, CA 95113-2324
Telephone: (408) 947-2435
Facsimile: (408) 287-2583
sarju.naran@hogefenton.com
jenn.protas@hogefenton.com
maysa.saeed@hogefenton.com

17. Escalator:

The settlement negotiations are premised on the representation that 1,286 putative class members worked a total of 81,364 workweeks during the time period of January 14, 2016 to November 15, 2021. If the Administrator determines that either a) the total number of pay periods during the Covered Period exceeds 81,364 Work Weeks by more than 10%, or b) the total number of Class Members during the Covered Period exceeds 1,286 by more than 10% during the Class Period, then Defendant will increase the Gross Settlement Amount proportionally by the amount over 10% (e.g., if the number of Work Weeks increases by 11%, the Gross Settlement Amount will increase by 1%). If the Administrator makes such a determination, it shall notify PAGA Counsel and Defendant's counsel at the same time it sends out the notice to the Class Members.

18. Defendant's Option to Void Agreement:

Defendant also shall have the option to void this Agreement if more than ten percent (10%) of the Class Members exercise their right to opt out of this Agreement. If Defendant elects to exercise this option, it must serve written notice on Class Counsel of its election to void this Agreement within 20 calendar days following the expiration of the last time period in which to opt out. If Defendant voids this Agreement, or if the Court fails to approve this Agreement, the Releases described herein shall not become effective, and neither Defendant nor any other Releasee shall have any obligation to make any payments under this Agreement and Defendant shall receive a return of any funds already paid. Defendant agrees to pay to the Settlement Administrator directly all the Settlement Administration expenses under those circumstances.

19. No Effect on Employee Benefit Plans:

Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours, days, or weeks of service under any employee benefit plan, policy, or bonus program sponsored by Releasees. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Releasees' sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Releasees' benefit plan, policy, or bonus program. Releasees retain the right to modify the language of any benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement. Releasees do not consider any payments under this Agreement "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Releasees.

20. Entire Agreement:

After this Agreement is fully executed by all Parties and their attorneys of record, this Agreement and its Exhibits shall constitute the entire agreement relating to settlement of this Litigation and the causes of action and defenses asserted therein, and it shall then be deemed that no oral representations, warranties, or inducements have been made to any party concerning this

Agreement other than the representations, warranties, and covenants expressly stated in this Agreement.

21. Authorization:

Class Counsel warrant and represent that they are authorized by Plaintiffs, for whom they are the attorneys of record, and the attorneys of record for Defendant warrant and represent that they are authorized by Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties agree to seek the assistance of the Court, and in all cases all such documents, supplemental provisions and assistance of the Court shall be consistent with this Agreement.

22. Jurisdiction:

The Court shall have continuing jurisdiction to resolve any dispute which may arise regarding the terms and conditions of this Agreement, subject to approval by the Court, pursuant to Code of Civil Procedure section 664.6. Except where the context indicates otherwise, references to the court shall also include any other courts that take jurisdiction of the Litigation, or any to whom the court has referred the matter. This Agreement and the rights and obligations of the Parties shall be construed and governed by the laws of the State of California.

23. Modification:

This Agreement, and any and all parts of it, may be amended, modified, changed, or

waived only by an express written instrument signed by all Parties or their successors-in-interest or their counsel.

24. Successors:

This Agreement shall be binding upon, and inure to the benefit of, the successors of each of the Parties.

25. California Law:

All terms of this Agreement and its Exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

26. Representation by Counsel:

The Parties have each been represented by counsel and have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any party on the basis that the party was the drafter or participated in the drafting.

27. Counterparts:

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this Agreement.

28. Incorporation of Exhibits:

All exhibits attached hereto are incorporated by reference and are a material part of this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration from its current form for this Agreement to become effective.

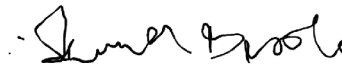
29. **Reasonableness of Settlement:**

The Parties believe that this is a fair, reasonable, and adequate Settlement and have arrived at this Settlement through arms-length negotiations, considering all relevant factors, present and potential.

30. **Headings:**

The headings contained in this Agreement are for reference only and are not to be construed as a part of the Agreement.

Dated: 4/5/2022



Jeremiah Brooke
Plaintiff

Dated: 03-20-22



Juan Estrada
Plaintiff

Dated: 4/5/2022

COHELAN KHOURY & SINGER

By 

Michael D. Singer
Kristina De La Rosa
Attorneys for Plaintiff Jeremiah Brooke

Dated: 3-28-22

MOSS BOLLINGER LLP

By 

Dennis Moss, Esq.
Jeremy F. Bollinger, Esq.
Attorneys for Plaintiff Juan Estrada

Dated: 3/23/2022

LUSAMERICA FOODS, INC.

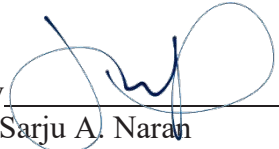
By  _____
926B755955B1473

Name: Fernando Frederico

Position: President

Dated: March 28, 2022

HOGE FENTON JONES & APPEL, INC.

By  _____

Sarju A. Naran

Jenn M. Protas

Attorneys for Defendant LUSAMERICA FOODS, INC.

Exhibit A

to

**Class Action and PAGA
Settlement Agreement**

NOTICE OF CLASS ACTION SETTLEMENT

Brooke, et al. v. Lusamerica Foods, Inc.

Santa Clara County Superior Court, Case No. 20CV361692

This Notice was authorized by the Court. This is not a solicitation from a lawyer.

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

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

TO: All individuals employed by Lusamerica Foods, Inc. in the State of California as non-exempt employees and who were paid on an hourly, piece-rate, per-mile basis, or combination therein, at any point during the time period of January 14, 2016 to November 15, 2021 (“Class Member(s)”).

If you are a Class Member, as described above, you are eligible for a payment from the Class Action Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING TO RECEIVE A PAYMENT	To receive your Settlement Payment, you do not need to do anything. Your estimated Settlement Payment will be automatically mailed to you after the Court grants final approval of the Settlement. [<i>You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your award</i>].
UPDATE YOUR ADDRESS	Update your personal information with the Settlement Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and return envelope are enclosed with this Notice.)
EXCLUDE YOURSELF	You may ask to exclude yourself from the Settlement (to opt out), if you do not wish to participate in the Settlement. See Paragraph 15. If you exclude yourself, you will not receive any payment for individual claims under the Settlement. This is the only option that allows you to pursue your own claims (in your own lawsuit) against the same Defendant about the legal claims in this case.
OBJECT	You may also object and tell the Court why you don't like the Settlement. See Paragraph 18. If the Court approves the Settlement despite your objection, you will still be bound by the terms of the Settlement, and a Settlement Payment will be mailed to you. Your objection may be submitted in writing, or you may appear at the time of the Final Approval Hearing to comment upon the Settlement.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **LUSAMERICA FOODS, INC. SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE IN ANY WAY AGAINST ANY CLASS MEMBER FOR EXERCISING ANY OF THE RIGHTS AND OPTIONS DESCRIBED IN THIS NOTICE.**

BASIC INFORMATION

1. Why did I receive this Notice?

You received this notice because company records of Lusamerica Foods, Inc. (“Defendant” or “Lusamerica”) show you were employed by Lusamerica as a non-exempt hourly employee and were paid on an hourly, piece-rate, per-mile basis, or combination thereof at some point between January 14, 2016 and November 15, 2021.

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your rights, the benefits available, and how to get them.

2. What is this Lawsuit about?

This lawsuit, entitled *Brooke, et al. v. Lusamerica Foods, Inc.*, was filed on January 14, 2016 by Plaintiff Jeremiah Brooke (“Brooke”) on behalf of himself and all members of the Class in the Superior Court for the County of Santa Clara, Case No. 20CV361692, (the “Lawsuit” or “Action”). Plaintiff Juan Estrada (“Estrada”) filed a similar case on March 9, 2020 in the Superior Court for the County of Santa Clara Case No. 20CV366851. Plaintiff Estrada’s claims were consolidated into the Brooke lawsuit by way of an amended complaint. That is, all of Plaintiff Estrada’s claims are now included within this lawsuit.

The Plaintiffs have alleged in the Lawsuit that Lusamerica failed to pay Class Members all wages due for all hours worked, including all minimum and overtime wages, failed to provide legally compliant meal and rest breaks, and failed to reimburse all costs and expenses. Based on these alleged violations, Plaintiffs alleged derivative claims for issuing inaccurate wage statements and failure to timely pay all wages due upon separation from employment. On the basis of these allegations, Plaintiffs alleged that Lusamerica violated California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 and California’s Unfair Competition Law, Business & Professions Code sections 17200 *et seq.* Plaintiffs have claimed entitlement to civil penalties under the California Labor Code Private Attorneys General Act, California Labor Code sections 2698, *et seq.* (“PAGA”), (“the Lawsuit”).

Lusamerica has denied and continues to deny all the claims and contentions alleged in the Lawsuit and maintains it has fully complied with the law at all times. The Settlement is not an admission that Lusamerica did anything wrong or an indication any law was violated, and the Court has not ruled on whether Lusamerica violated the law.

3. What is a Class Action?

In a class action, a person called a Class Representative (here, Jeremiah Brooke and Juan Estrada) sue on behalf of themselves and other people who may have similar claims. The group of people with similar claims is called a “Class.” Each person covered by the Class definition is a “Class Member.” One court decides the

issues for all Class Members. California Superior Court Judge Patricia M. Lucas is in charge of this class action.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant Lusamerica. Instead, both sides agreed to a settlement of the Lawsuit (“Settlement”). That way, they avoid the cost of a trial, and members of the Class get compensation from the Settlement. Brooke and Estrada who were appointed the Class Representative by the Court, and their attorneys, believe the Settlement is best for all Class Members.

5. Who are the Parties in this Lawsuit?

Plaintiff Brooke was employed by Lusamerica as a driver from approximately March 2016 to November 2019. Plaintiff Estrada was employed by Lusamerica in the warehouse as a packer from approximately XXX until March 2020. Lusamerica Foods, Inc. is the Defendant.

Class Members include all individuals employed by Lusamerica Foods, Inc. in the State of California as non-exempt employees and who were paid on an hourly, piece-rate, per-mile basis, or combination therein, at any point during the time period of January 14, 2016 to November 15, 2021.

6. Who are the Attorneys for Plaintiffs and the Class?

The Court appointed Cohelan Khoury & Singer and Moss Bollinger LLP as Class Counsel and found they are competent and experienced and will adequately represent the Class. Their addresses are:

COHELAN KHOURY & SINGER

Isam C. Khoury/Diana M. Khoury/Kristina De La Rosa
605 C Street, Suite 200
Santa Clara, California 92101
(619) 595-3001

MOSS BOLLINGER LLP

Dennis Moss/Jeremy Bollinger
15300 Ventura Blvd.
Sherman Oaks, California 91403
(310) 982-2984

7. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of \$700,000 to fully and finally resolve all claims in the Action (referred to as the “Gross Settlement Amount”). Out of this amount, Class Counsel will apply to the Court for: (1) attorneys’ fees not to exceed \$245,000; (2) litigation costs not to exceed \$25,000.00; (3) Class Representative service payments not to exceed \$10,000.00 to each Plaintiff for their work and efforts in prosecuting the class action, for undertaking the risks of payment of costs in the event of an unsuccessful outcome, and a general release of all claims; (4) Settlement Administration expenses not to exceed \$xxx and (5) a payment to the California Labor Workforce and Development Agency, under California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) in the sum of \$37,500.00 (75% of \$50,000) to cover the government’s share of all applicable civil penalties implicated or raised by the allegations of the Action. The exact amount of attorneys’ fees and litigation costs, Class Representative service payment, and Settlement Administration expenses will be determined by the Court at a Final Approval hearing. The remaining portion of the Settlement, the Net Settlement Amount, is estimated at \$xxxx. A portion of the Net Settlement Amount allocated for PAGA penalties (\$12,500) will be distributed to Class Members regardless of whether or not they request to be excluded from the Settlement. The remaining amount of the Net Settlement Amount will be apportioned and paid entirely to all Class Members who do not request to be excluded from (or “opt out” of) the Settlement. **A claim form is not required.** Any portion of the Net Settlement Amount which would otherwise have been paid to Class Members who opt out of the Settlement will be redistributed and paid to the Class Members who participate in the

Settlement. In other words, other than the \$12,500 allocated as PAGA penalties, the entire amount of the Net Settlement Amount will be paid to Class Members who do not opt out of the Settlement.

8. How will Settlement Payments be Calculated?

Class Members who do not submit a timely written request for exclusion from the settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount. The Net Settlement Amount will be paid to the Settlement Class Members based on their workweeks worked in Driver and Non-Driver positions. Class Members shall be allocated two (2) points of credit for each Work Week in which they worked as a Driver during the Class Period and one (1) point of credit for each Work Week in which they performed work in any other non-driver position during the Class Period. The number of points of all Class Members are added together, then divided by the number of points for each Class Member, to determine each Class Member’s percentage share of the Net Settlement Amount. Each Class Member’s percentage is then multiplied by the Net Settlement Amount to determine each Class Member’s estimated individual settlement payment.

The portion of the PAGA Payment allocated to PAGA Members will be divided in a similar manner among PAGA Members based on the number of workweeks worked in Driver and Non-Driver positions. PAGA Members shall be allocated two (2) points of credit for each Work Week in which they worked as a Driver during the PAGA Period and one (1) point of credit for each Work Week in which they performed work in any other non-driver position during the PAGA Period. The number of points of all PAGA Members are added together, then divided by the number of points for each PAGA Member, to determine each PAGA Member’s percentage share of the portion of the PAGA Payment allocated to PAGA Members. Each PAGA Member’s percentage is then multiplied by the portion of the PAGA Payment allocated to PAGA Members to determine each PAGA Member’s estimated individual settlement payment.

One day worked in a given week will be credited as a Work Week for purposes of these calculations. If at least one day in a Work Week was worked as a Driver, that entire work week will be designated as a Driver Workweek for purposes of these calculations.

9. How much will my Settlement Payment be?

Lusamerica’s business and personnel records reflect that you were employed as a non-exempt employee in California sometime during the Class Period, and have [redacted] Work Weeks employed during the Class Period and [redacted] Work Weeks employed during the PAGA Period. Based on this information, you will *automatically* be mailed a Settlement Payment estimated at approximately \$xx.xx, less payroll taxes. The actual amount you receive may be more or less than the estimated amount shown, depending on a number of factors including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys’ fees, litigation expenses, and other costs of suit.

HOW TO GET A SETTLEMENT PAYMENT

10. How can I get my Settlement Payment?

You do not need to do anything to receive your Settlement Payment. If the Court approves the Settlement at the scheduled Final Approval Hearing, your Settlement Payment will be mailed to the address this Notice was mailed to, unless you have updated your address with the Administrator. **It is your responsibility to keep the Administrator informed of any change in your mailing address, as your Settlement Payment will be mailed to the last known address it has on file for you.** A Change of Address form is enclosed with this Notice for your convenience. It is strongly recommended you retain a copy of any completed Change of Address form until you receive your entire Settlement Payment.

11. What if the number of Work Weeks Shown in this Notice is Wrong?

If you believe the number of Work Weeks shown in Paragraph 9 is wrong, send a letter addressed to the *Brooke, et al. v. Lusamerica Class Action Administrator*, c/o P. O. Box _____, City 9 _____, stating what you believe is correct. Your letter must be postmarked on or before _____, 2022. [45 days from mailing the Notice Packet]

Include any documents or other information which supports what you believe to be the correct number of Work Weeks working in the position of a Class Member during the Class Period. The number of Work Weeks, as shown in Lusamerica’s records, is presumed correct unless you provide actual records showing otherwise. The Administrator will resolve any work week disputes using Lusamerica’s records and any information you provide. If the Parties disagree with the Administrator’s determination, the Court will resolve the issue.

12. When can I expect to receive my Settlement Payment?

If no Class Member objects to the Settlement, and no appeal is sought, and the Court finally approves the Settlement, your share of the Settlement will be mailed to you approximately two months after the Court grants final approval of the Settlement.

13. What am I giving up to get my Settlement Payment?

You will give up or “release” the following claims described below:

Released Claims:

Participating Class Members (those who do not return a request to be excluded from the Settlement) will all claims and/or causes of action arising from or related to this case under any federal, state or local law or administrative order that were pled or could have been pled in this case based on the facts alleged in the operative class action complaint including but not limited to the failure to pay minimum wages, the failure to pay overtime wages, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to maintain records, the failure to provide accurate itemized wage statements, the failure to reimburse, and other claims whatsoever that were alleged in this case or which arise out of such facts actually pled in the complaint, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code § 17200 et seq., conversion, liquidated damages, punitive damages, penalties, statutory penalties, civil penalties under the Labor Code Private Attorneys General Act of 2004 for violations of Labor Code 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 2802.

Class Members who do not exclude themselves from the Settlement will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties. The Released Parties are defined as Lusamerica their respective parents, subsidiaries, predecessors, successors, and affiliates, and all of their respective shareholders, officers, directors, employees, administrators, fiduciaries, trustees, agents, and benefit plans.

14. Will I be Subject to Discipline based on Whether I Participate in the Settlement?

No. California law protects individuals and employees from retaliation based on their decision to participate or not participate in a class action settlement. Lusamerica is prohibited by law from retaliating in any way based on your decision to participate or not participate in the settlement. Your decision to participate, not participate, or object to this Settlement will not impact your employment with Lusamerica or Lusamerica’s treatment of you as a former employee in any manner.

EXCLUDING YOURSELF FROM THE SETTLEMENT?

15. How do I get out of the Class Action?

If you wish to pursue your own separate lawsuit against Lusamerica for the claims alleged in the Action, or if you otherwise wish to not participate in the Settlement for whatever reason, you should exclude yourself from this case (that is, “opt out” of the Settlement). To opt out and exclude yourself from the Settlement, you must submit a timely written request for exclusion. Your request for exclusion must include (a) the case name and case number; (b) your full name, current address, telephone number, and last four digits of your social security number; and (c) your signature. The request for exclusion should state in substance:

“I wish to be excluded from the case entitled *Brooke, et al. vs. Lusamerica Foods, Inc.*, Case No. 20CV361692 in the Superior Court of California, County of Santa Clara and the Settlement. I understand by requesting to be excluded from the Action and Settlement, I will receive no money for my individual claims from the Settlement described in this Notice.”

Your request for exclusion letter must be mailed to the Settlement Administrator postmarked no later than _____, 2022 (45 days of the initial mailing) in the envelope provided or in a separate envelope addressed to:

Brooke, et al. v. Lusamerica Foods, Inc.
c/o xxxx.
P. O. Box _____
City, California _____

16. If I do not exclude myself, can I sue Lusamerica for the same thing later?

No. Unless you exclude yourself from the Lawsuit, you give up any right to sue Lusamerica for the claims raised in this Lawsuit and which this Settlement resolves. ***If you have a claim or lawsuit already filed against Lusamerica, you must speak to your lawyer in that case immediately.*** You may need to opt out of this Lawsuit to continue your own lawsuit. Remember, the deadline to postmark a valid request for exclusion is _____, 2022.

17. If I exclude myself from the Class Action Lawsuit and Settlement, can I still get a Settlement Payment?

Yes and No. Class Members who choose to exclude themselves from the settlement will retain their individual claims but still release their claims under the Private Attorneys General Act of 2004 (“PAGA”). If you exclude yourself from the Class Action, you will not receive any money from this Settlement for any individual claims. However, you will receive your portion of the \$12,500.00 allocated for PAGA penalties, which is based on the number of Work Weeks worked during the PAGA period. Your share of the PAGA penalties is estimated to be \$_____. The portion Settlement Payment you would have been entitled to receive will be redistributed to those Class Members who did not exclude themselves. No portion of the Settlement Payment will go back to Lusamerica as a result of any person excluding themselves from the Lawsuit.

OBJECTING TO THE SETTLEMENT

18. How do I object if I don't think the Settlement is fair?

If you don't think the Settlement is fair, you can object to the Settlement and tell the Court you don't agree with the Settlement or some part of it. The Court will consider your views. You must state what your objection(s) are to the Settlement and include the case name and number: *Brooke, et al. vs. Lusamerica Foods, Inc.*, Case No. 20CV361692. Be sure to include your full name, current address and telephone number, and the specific reasons you object to the Settlement. Mail your written objection to the address listed below, on or before _____, 2022.

Brooke, et al. v. Lusamerica Foods, Inc.

c/o xxx.

P. O. Box _____

City, California 9____

THE COURT'S FINAL FAIRNESS HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing in Department 3 of the Superior Court for the State of California, County of Santa Clara, located at the 191 North First St, San Jose, CA 95113 on xxxxxx, 2022 at xxxx. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's service payment, and the Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. You may also hire and pay your own lawyer to attend.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing.

THE COURT'S FINAL FAIRNESS HEARING

22. Who may I contact if I have questions about the Settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may review the Settlement pleadings in this case, including the Settlement Agreement, at any time during regular business hours in the Superior Court of California, County of Santa Clara located at the 191 North First St, San Jose, CA 95113. You may also examine case records online on the Santa Clara County Superior Court's website, <https://portal.sccourt.org/search>. The documents filed in this case are listed in the Register of Actions, some may be available to view at a charge.

You may also contact the attorneys for the Plaintiffs and the Class, whose contact information is included in Paragraph 6 above for more information or if you have specific questions. You may also contact the Administrator by calling toll free 1-_____, or writing to: Administrator,

4891-3646-5675v2

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NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Settlement Administrator at [insert]

Brooke, et al. v. Lusamerica Foods, Inc.

c/o **XXXXX.**

P. O. Box _____

City, California 9____

Fax: xxx-xxx-xxxx

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR ANY OF LUSAMERICA'S MANAGERS OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

- A. It is your responsibility to ensure that the Administrator has your current mailing address and telephone number on file. It is the address to which your Settlement Payment will be mailed.

Settlement Payment checks must be cashed soon after receipt. Proceeds of checks which remain uncashed 180 days after the date of issuance will be transmitted to the State of California, Controller's Office, Unclaimed Property Division. Additional information for the State of California, Controller's Office, Unclaimed Property Division can be found at: https://www.sco.ca.gov/upd_msg.html or by calling, toll free, (800) 992-4647. If you lose or misplace a check, you should contact the Administrator immediately to request a replacement.

Brooke, et al. v. Lusamerica Foods, Inc.
Santa Clara County Superior Court
Case No. 20CV361692

CHANGE OF ADDRESS FORM

I wish to change my name and/or mailing address and/or other contact information, for purposes of receiving communications related to this Lawsuit, to the following:

Name (First, Middle, Last): _____

Former Names (if any): _____

Home Street Address: _____

City, State, Zip Code: _____

Telephone Number(s): Home: _____ Work: _____

Email: _____

Last 4 digits of Social Security Number: _____ **[Required]**

I understand all future correspondence in this Lawsuit, including but not necessarily limited to important notices or settlement payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: _____, 2022

Signature **[Required]**

**PLEASE RETURN THIS FORM VIA UNITED STATES FIRST
CLASS MAIL TO:**

Brooke, et al. v. Lusamerica Foods, Inc.
c/o Administrator
P. O. Box _____
City, California _____

Exhibit B

to

**Class Action and PAGA
Settlement Agreement**

1 **COHELAN KHOURY & SINGER**
2 Michael D. Singer (SBN 115301)
3 msinger@ckslaw.com
4 Kristina De La Rosa (SBN 279821)
5 kdelarosa@ckslaw.com
6 605 C Street, Suite 200
7 San Diego, California 92101
8 Telephone: (619) 595-3001/Facsimile: (619) 595-3000
9 Attorneys for Plaintiff Jeremiah Brooke, on behalf of himself
10 and other similarly-situated and aggrieved employees
11

12 **MOSS BOLLINGER LLP**
13 Dennis F. Moss, Esq. (SBN 77512)
14 dennis@mossbollinger.com
15 Jeremy F. Bollinger, Esq. (SBN 240132)
16 jeremy@mossbollinger.com
17 15300 Ventura Blvd., Ste. 207
18 Sherman Oaks, CA 91403
19 Telephone: (310) 982-2984/Facsimile: (818) 963-5954
20 Attorneys for Plaintiff Juan Estrada, on behalf of himself
21 and other similarly-situated and aggrieved employees
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JEREMIAH BROOKE, on behalf of
himself and other similarly-situated and
aggrieved employees,

Plaintiff,

vs.

LUSAMERICA FOODS, INC., a
California Corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 20CV361692
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Patricia M. Lucas
Department 3

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Complaint filed: January 14, 2020
Trial date: Not set

1 This matter came on for hearing on ___ in Department 3 of the above-captioned Court on
2 Plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement
3 ("Motion").

4 The Court, having fully reviewed the Motion, the supporting memorandum of Points and
5 Authorities, Declarations of Class Counsel, and Declarations of Plaintiffs Jeremiah Brooke and
6 Juan Estrada, filed in support of Motion, the Joint Stipulation of Class Action and PAGA
7 Settlement and Release (hereinafter "Settlement Agreement"), the proposed Notice of Class
8 Action Settlement ("Class Notice") and Change of Address Form attached as Exhibit "A" to the
9 Settlement Agreement, having carefully analyzed the Settlement Agreement and its Exhibits, and
10 in recognition of the Court's duty to make a preliminary determination as to the reasonableness of
11 any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure
12 proper notice is provided to all Class Members in accordance with due process requirements, and
13 to set a Final Approval Hearing to consider the proposed Settlement as to the good faith, fairness,
14 adequacy, and reasonableness of any proposed Settlement,

15 THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND
16 ORDERS:

17 1. The Court conditionally finds that, for the purposes of approving this settlement
18 only, the proposed Class meets the requirements for certification under section 382 of the
19 California Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that
20 joinder of all members of the class is impracticable; (b) there are questions of law or fact common
21 to the proposed Class, and there is a well-defined community of interest among members of the
22 proposed Class with respect to the subject matter of the class action; (c) the claims of the Class
23 Representatives are typical of the claims of the members of the proposed Class; (d) the Class
24 Representatives have and will fairly and adequately protect the interests of the Members of the
25 Class; (e) a class action is superior to other available methods for an efficient adjudication of this
26 controversy in the context of settlement; and (f) the counsel of record for the Class
27 Representatives are qualified to serve as counsel for them as well as in their representative
28 capacities and for the Class.

1 2. The Court finds on a preliminary basis that the Settlement Agreement, attached to
2 the Declaration of Kristina De La Rosa as Exhibit “A,” incorporated herein by this reference in
3 full, and made a part of this Order of preliminary approval, appears to be within the range of
4 reasonableness of a settlement which could ultimately be given final approval by this Court.

5 3. Further, it appears to the Court on a preliminary basis that: (a) the settlement
6 amount is fair and reasonable to the Class Members when balanced against the probable outcome
7 of further litigation relating to class certification, liability, and damages issues and potential
8 appeals; (b) significant investigation, research, and informal discovery have been conducted such
9 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
10 (c) settlement at this time will avoid substantial costs, delay, and risks that would be presented by
11 the further prosecution of the litigation; and (d) the proposed Settlement has been reached as the
12 result of intensive, serious, and non-collusive negotiations facilitated by an experienced mediator
13 at mediation and between the Parties.

14 4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
15 Approval of Class Action Settlement is hereby GRANTED, and as a part of said preliminary
16 approval, the Court accepts and incorporates the Settlement Agreement and orders that the Class
17 be conditionally certified for settlement purposes only pursuant to the terms and conditions
18 contained in the Settlement Agreement.

19 5. For purposes of the settlement of the Lawsuit, the Class is defined as:

20 “All individuals employed by Defendant in the State of California as non-exempt
21 employees and who were paid on an hourly, piece-rate, per-mile basis, or
22 combination therein at any point during the January 14, 2016 to November 15,
2021.”

23 6. The Court further finds that the proposed Notice of Class Action Settlement
24 (“Notice”) fairly and adequately advises Class Members of a) the pendency of the Class Action; b)
25 the conditional certification of the Class for settlement purposes only; c) preliminary Court
26 approval of the proposed Settlement; d) the date of the Final Approval Hearing; e) the terms of the
27 proposed Settlement and the benefits available to Class Members thereunder; f) their right to
28 receive their proportionate share of the Net Settlement amount without the need to return a claim

1 form; g) their right to request exclusion from the settlement and the procedures and deadline for
2 doing so; h) their right to object to the Settlement, and the procedure for doing so; and i) their right
3 to file documentation in support of or in opposition to, and to appear in connection with, said
4 hearing. The Court further finds that the Class Notice clearly comports with all constitutional
5 requirements, including those of due process. Accordingly, good cause appearing, the Court
6 hereby APPROVES the Class Notice.

7 7. The Court further finds that the mailing of the Class Notice, Change of Address
8 Form, and pre-printed return envelope, (collectively, the “Notice Packet”), to the last known
9 address of Class Members as specifically described within the Settlement Agreement, with
10 measures taken for verification of an address and skip tracing set forth therein constitutes an
11 effective method of notifying Class Members of their rights with respect to the class action and
12 Settlement. Accordingly, it is hereby ORDERED, that:

13 A. xxxxxx be appointed the Settlement Administrator to administer the
14 settlement of this matter as more specifically set forth in the Settlement Agreement.

15 B. The law firms Cohelan Khoury & Singer and Moss Bollinger LLP be
16 appointed as Class Counsel.

17 C. Plaintiff Jeremiah Brooke and Juan Estrada be appointed as the Class
18 Representatives.

19 D. Within five (5) business days after entry of a Preliminary Approval Order,
20 Defendant shall transmit to the Settlement Administrator in a readable, ready to use electronic
21 excel format spreadsheet, a list containing, for each Class Member, (1) the name; (2) most current
22 mailing address; (3) telephone number(s) and email address as indicated in Defendant’s records;
23 (4) social security number; (5) dates of employment; and (6) the aggregate number of Work
24 Weeks as a Driver and/or Non-Driver during the Class Period and during the PAGA Period
25 (“Class Data List”).

26 E. Within ten (10) business days after receipt of the Class Data List, the
27 Settlement Administrator shall mail the Notice Packet to each Class Member. The Notice Packet
28 shall be mailed by first class, regular U.S. mail, using the most current mailing address

1 information available, with measures taken for updating an address as provided by the terms of the
2 Settlement Agreement.

3 F. Within 45 calendar days from the initial date the Settlement Administrator
4 first mails the Notice Packet to Class Members (the “Response Deadline”), Class Members who
5 wish to exclude themselves from the Class must submit a written request for exclusion in the
6 manner set forth in the Class Notice and such request must be postmarked by the Response
7 Deadline.

8 G. On or before the Response Deadline, Class Members who dispute the
9 number of Work Weeks must postmark and submit a written explanation to the Settlement
10 Administrator describing why the Work Weeks are incorrect, with any supporting information or
11 documents, as set forth in the Class Notice.

12 H. Class Members who wish to object to the Settlement should submit to the
13 Settlement Administrator a written Notice of Objection. Class Members may also appear at the
14 time of the Final Approval Hearing to comment upon the Settlement.

15 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
16 the undersigned at ____ a.m./p.m. on _____, 2022, in Department 3 of the Superior Court for
17 the State of California, County of Santa Clara, located at the Santa Clara County Superior Court
18 Courthouse located at 191 North First St, San Jose, CA 95113 to consider the fairness, adequacy,
19 and reasonableness of the proposed Settlement preliminarily approved by this Order of
20 Preliminary Approval, and to consider the application for service payment awards to the named
21 Plaintiffs/Class Representatives, for Settlement Administration expenses and for Class Counsel’s
22 attorneys’ fees and litigation expenses incurred. All briefs and materials in support of an Order
23 Granting Final Approval, the service payment, Settlement Administration expenses, and Class
24 Counsel’s attorneys’ fees and litigation costs shall be filed with this Court on or before
25 _____, 2022.

26 9. IT IS FURTHER ORDERED that if for any reason the Court does not sign and file
27 an Order Granting Final Approval, the Settlement Agreement shall be treated as if it had not been
28 entered, and the Parties shall be restored without prejudice to their status quo ante rights, as

1 specifically set forth in the Settlement Agreement.

2 10. All proceedings in this matter, except those contemplated by the Settlement
3 Agreement or this Order, are stayed.

4 11. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to Class Members.

6
7 IT IS SO ORDERED.

8
9 Date: _____

The Honorable Patricia M. Lucas

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Exhibit C

to

**Class Action and PAGA
Settlement Agreement**

1 **COHELAN KHOURY & SINGER**
2 Michael D. Singer (SBN 115301)
3 msinger@ckslaw.com
4 Kristina De La Rosa (SBN 279821)
5 kdelarosa@ckslaw.com
6 605 C Street, Suite 200
7 San Diego, California 92101
8 Telephone: (619) 595-3001/Facsimile: (619) 595-3000
9 Attorneys for Plaintiff Jeremiah Brooke, on behalf of himself
10 and other similarly-situated and aggrieved employees
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12 **MOSS BOLLINGER LLP**
13 Dennis F. Moss, Esq. (SBN 77512)
14 dennis@mossbollinger.com
15 Jeremy F. Bollinger, Esq. (SBN 240132)
16 jeremy@mossbollinger.com
17 15300 Ventura Blvd., Ste. 207
18 Sherman Oaks, CA 91403
19 Telephone: (310) 982-2984/Facsimile: (818) 963-5954
20 Attorneys for Plaintiff Juan Estrada, on behalf of himself
21 and other similarly-situated and aggrieved employees
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JEREMIAH BROOKE, on behalf of
himself and other similarly-situated and
aggrieved employees,

Plaintiff,

vs.

LUSAMERICA FOODS, INC., a
California Corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 20CV361692
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Patricia M. Lucas
Department 3

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

Complaint filed: January 14, 2020
Trial date: Not set

1 This matter came on for hearing on ____ in Department 3 of the above-captioned Court on
2 Plaintiff's Motion for Order Granting Final Approval of Class Action Settlement and Entering
3 Judgment ("Motion") pursuant to California Rule of Court 3.769, and the Court's Order Granting
4 Preliminary Approval and the Joint Stipulation of Class Action and PAGA Settlement and Release
5 filed on _____("Settlement Agreement").

6 Having received and considered the Settlement Agreement, the supporting papers filed by
7 the Parties, and the evidence and argument received by the Court in conjunction with the Motion
8 for Preliminary Approval of Class Action Settlement, and the supporting papers, and evidence and
9 argument received by the Court in conjunction with the Motion for Order Granting Final Approval
10 of Class Action Settlement, the Court grants final approval of the Settlement and HEREBY
11 ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 1. Pursuant to the Preliminary Approval Order filed on ____, 2022, a Notice of Class
13 Action Settlement, Change of Address form, and pre-printed return envelope ("Notice Packet")
14 were sent to each Class Member by first-class United States mail. The Notice informed the Class
15 of the terms of the Settlement, their right to receive a Settlement Payment without any required
16 action, their right to comment upon or object to the Settlement, and their right to appear in person
17 or by counsel at the final approval hearing and to be heard regarding approval of the Settlement.
18 Adequate periods of time were provided for each of these procedures.

19 2. No member of the Class filed a request to be excluded from the Settlement or a
20 written objection to the proposed Settlement as part of this notice process or stated an intention to
21 appear at the final approval hearing.

22 3. The Court finds and determines this notice procedure afforded adequate protections
23 to Class Members and provides the basis for the Court to make an informed decision regarding
24 approval of the Settlement based on the responses of the Class. The Court finds and determines
25 that the notice provided in this case was the best notice practicable, which satisfies the
26 requirements of law and due process.

27 4. With respect to the Class and for purposes of approving this Settlement only, this
28

1 Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous
2 that joinder of all members is impracticable; (b) there are questions of law or fact common to the
3 Class, and there is a well-defined community of interest among members of the Class with respect
4 to the subject matter of the Action; (c) the claims of the Class Representatives are typical of the
5 claims of the members of the Class; (d) the Class Representatives have fairly and adequately
6 protected the interests of the members of the Class; (e) a class action is superior to other available
7 methods for an efficient adjudication of this controversy; and (f) the counsel of record for
8 Plaintiffs, the Class Representatives, Cohelan Khoury & Singer and Moss Bollinger LLP (“Class
9 Counsel”), are qualified to serve as counsel for Plaintiff in their individual and representative
10 capacities for the Class.

11 5. The Court confirms certification, for settlement purposes only, of the Class:

12 “All individuals employed by Defendant in the State of California as non-
13 exempt employees and who were paid on an hourly, piece-rate, per-mile
14 basis, or combination therein at any point during the time period of
15 January 14, 2016 to November 15, 2021.”

16 6. The Court finds and determines the terms set forth in the Settlement Agreement,
17 including but not limited to the Gross Settlement Amount of Seven Hundred Thousand Dollars
18 (\$700,000), are fair, reasonable, and adequate and, having found that the Settlement was reached
19 as a result of informed and non-collusive arms’-length negotiations facilitated by a neutral and
20 experienced mediator, directs the Parties to effectuate the Settlement according to the terms set
21 forth in the Settlement Agreement. The Court further finds the Parties conducted extensive
22 investigation, research, and informal discovery, and that their attorneys were able to reasonably
23 evaluate their respective positions. The Court also finds that Settlement will enable the Parties to
24 avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties
25 were to continue to litigate the case. The Court has reviewed the monetary recovery and
26 recognizes the significant value provided to the Class.

27 7. The Court further finds and determines that the terms of the Settlement are fair,
28 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
finally approved, and that all terms and provisions of the Settlement Agreement should be and

1 hereby are ordered to be consummated.

2 8. The Court finds and determines that the Settlement Payments to be paid to
3 Participating Settlement Class Members as provided for by the Settlement are fair and reasonable.
4 The Court hereby grants final approval to and orders the payment of those amounts be made to the
5 Participating Class Members in accordance with the Agreement.

6 9. The Court finds and determines that the fees and expenses in administrating the
7 Settlement incurred by _____ in the amount of \$_____ are fair and reasonable. The Court hereby
8 grants final approval to and orders that the payment of that amount in accordance with the
9 Settlement Agreement.

10 10. The Court finds and determines the Class Representatives' Service Payments of
11 \$10,000 to each Plaintiff are fair and reasonable. The Court hereby orders the Administrator to
12 make these payments to the Plaintiffs, in accordance with the terms of the Settlement Agreement.

13 11. The Court finds and determines the payment of PAGA penalties in the amount of
14 \$37,500 to the California Labor and Workforce Development Agency ("LWDA") representing the
15 LWDA's 75% share of the \$50,000 allocated to the PAGA claim is fair and reasonable. The
16 Court hereby orders the Administrator to make this payment to the LWDA, in accordance with the
17 terms of the Settlement Agreement.

18 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence
19 and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees
20 of \$245,000 and litigation costs of \$_____. The Court finds such amounts to be fair and reasonable.
21 The Court hereby orders the Administrator to make these payments in accordance with the terms
22 of the Settlement Agreement.

23 13. Without affecting the finality of this Order or the entry of judgment in any way, the
24 Court retains jurisdiction of all matters relating to the interpretation, administration,
25 implementation, effectuation, and enforcement of this Order and the Agreement.

26 14. Neither Defendant nor all of its parents, subsidiaries, predecessors, successors, and
27 affiliates, and all of their respective shareholders, officers, directors, employees, administrators,
28

1 fiduciaries, trustees, agents, and benefit plans, except as provided for by the Settlement
2 Agreement.

3 15. The Settlement is not an admission of liability by Defendant or any of the other
4 Released Parties, nor is this Judgment a finding of the validity of any claims in the Actions or of
5 any wrongdoing by Defendant or any of the other Released Parties. Neither this Judgment, the
6 Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement
7 is, may be construed as, or may be used as an admission by or against Defendant or any of the
8 other Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or
9 carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any
10 event be construed as, or deemed to be evidence of, an admission or concession with regard to the
11 denials or defenses by Defendant or any of the other Released Parties and shall not be offered in
12 evidence against Defendant or any of the Released Parties in any action or proceeding in any
13 court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the
14 provisions of this Judgment, the Settlement, or any related agreement or release. Notwithstanding
15 these restrictions, any of the Released Parties may file in the Action or in any other proceeding this
16 Judgment, the Settlement, or any other papers and records on file in the Action as evidence of the
17 Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other
18 theory of claim preclusion, issue preclusion or similar defense as to the released claims.

19 16. Nothing in this Order shall preclude any action to enforce the Parties' obligations
20 under the Settlement Agreement or under this Order, including the requirement that Defendant
21 make payments to the Participating Class Members in accordance with the Settlement.

22 17. The Court hereby enters final judgment in accordance with the terms of the
23 Settlement Agreement, the Court's Preliminary Approval Order, and this Order.

24 18. The Parties will bear their own costs and attorneys' fees except as otherwise
25 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

26 IT IS SO ORDERED.

27 Date: _____

The Honorable Patricia M. Lucas