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on behalf of himself and all others similarly situated

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Attorneys for Defendant  
Q & B FOODS, INC., a California corporation

*[additional counsel on the next page]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

USA CORRALES-ROJAS, on behalf of himself  
and all others similarly situated,

Plaintiffs,

vs.

Q & B FOODS, INC., a California corporation;  
ESG EMPLOYER RESOURCES INC., an  
Indiana corporation; and DOPES 1 through 100  
inclusive,

Defendants.

Case No. 20STCV40885

CLASS ACTION

*Assigned for All Purposes to Hon. Elihu M.  
Berle in Department 6*

**SECOND AMENDED STIPULATION TO  
SETTLE CLASS ACTION**

Complaint Filed: October 26, 2020  
Trial Date: None Set

**FISHER & PHILLIPS LLP**

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Attorneys for Defendant

ESG Employer Resources, Inc.

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval  
2 of the Court pursuant to section 382 of the California Code of Civil Procedure, that the  
3 settlement of this Litigation shall be effectuated upon and subject to the following terms and  
4 conditions. Capitalized terms used herein shall have the meanings set forth in Article I or  
5 elsewhere in this Stipulation and Agreement to Settle Class Action.

6 This Agreement is made by Defendants Q & B Foods, Inc., ESG Employer Resources,  
7 Inc. and Plaintiff and Class Representative Usa Corrales-Rojas.

8 The Parties agree that the Litigation shall be ended, settled, resolved, and concluded by  
9 agreement of Defendants to pay the Gross Settlement Amount of One Million, One Hundred and  
10 Fifty Thousand Dollars and Zero Cents (\$1,150,000.00), unless it is escalated at Defendant  
11 Q&B's option pursuant to Paragraph IV(D)(3) of this Agreement, upon the terms and conditions  
12 of this Agreement and for the consideration set forth herein, including but not limited to a release  
13 of claims by Participating Class Members.

14 **I. DEFINITIONS.**

15 Unless otherwise defined herein, the following terms used in this Agreement shall have  
16 the meanings ascribed to them as set forth below:

17 **A. "Alleged Aggrieved Employees"** refers to all Settlement Class Members working  
18 in Covered Job Positions during any portion of the PAGA Period.

19 **B. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation and**  
20 **Agreement"** means this Stipulation and Agreement to Settle Class Action, including the attached  
21 Exhibits.

22 **C. "First Amended Complaint"** means the First Amended Class Action Complaint  
23 filed in the Lawsuit.

24 **D. "Class Counsel"** shall mean and refer to David D. Bibiyan of Bibiyan Law  
25 Group, P.C.

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1           **E.**     “**Class Period**” shall mean the period between October 26, 2016 and May 15,  
2 2022.

3           **F.**     “**Class Representative**” or “**Plaintiff**” refers to Plaintiff Usa Corrales-Rojas.

4           **G.**     “**Covered Job Position**” means any California non-exempt, hourly-paid position  
5 for Q&B employees and all positions occupied by non-exempt, hourly-paid temporary workers  
6 assigned to work at Q&B by any staffing agency at any time during the Class Period.

7           **H.**     “**Court**” means the California Superior Court, Los Angeles County, 312 North  
8 Spring Street, Los Angeles, CA 90012.

9           **I.**     “**Defendants**” refers to Q & B Foods, Inc. and ESG Employer Resources, Inc.,  
10 collectively.

11          **J.**     “**Defendants’ Counsel**” refers to Defense Counsel for ESG and Defense Counsel  
12 for Q&B collectively.

13          **K.**     “**Defense Counsel for ESG**” or “**Counsel for Defendant ESG**” is:

14           **FISHER & PHILLIPS LLP**  
15           BORIS SORSHER, SBN 251718  
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22          **L.**     “**Defense Counsel for Q&B**” or “**Counsel for Defendant Q&B**” is:

23           PILLSBURY WINTHROP SHAW PITTMAN LLP  
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Telephone: 213.488.7100  
Facsimile: 213.629.1033

**M. “Effective Date”** shall be the date that is the later of (1) sixty days after the Court’s entry of Judgment and Final Order Approving Settlement of Class Action have expired without a notice of appeal having been timely filed under California Rules of Court 8.104, 8.108, and 8.60; and (2) the date on which any appeal from the Court’s Judgment and Final Order Approving Settlement of Class Action has been fully and finally resolved.

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

**O. “ESG”** refers to Defendant ESG Employer Resources, Inc.

**P. “Individual PAGA Payment”** means a payment to an Alleged Aggrieved Employee of his or her share of the PAGA Payment.

**Q. “Individual Payment Amount”** is the amount of money, inclusive of any taxes withheld, that shall be paid to each Settlement Class Member who does not timely request exclusion and opt out of this Settlement.

**R. “Litigation”** means the lawsuit *entitled Usa Corrales-Rojos v. Q & B Foods, Inc. and ESG Employer Resources, Inc.*, Los Angeles Superior Court Case No 20STCV40885.

**S. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid from the Gross Settlement Amount.

**T. “Objection”** refers to a written objection that complies with the process set forth in Section III(C)(2) of this Agreement.

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**U. “PAGA Group”** means all individuals who worked in a Covered Job Position at any time between September 16, 2019, and May 15, 2022 (the “PAGA Period”).

**V. “PAGA Payment”** is the 25% portion of the amount attributed to PAGA civil penalties that is payable to Alleged Aggrieved Employees in addition to their Individual Payment Amount if they do not submit a timely and valid Request for Exclusion.

**W. “PAGA Period”** means the period from September 16, 2019 through the date on which the Class Period ends.

**X. “Participating Class Members”** refers to all Settlement Class Members who do not timely and validly request exclusion from the Settlement.

**Y. “Parties” are Defendants and Plaintiff collectively.**

**Z.** “Q&B” refers to Defendant Q & B Foods, Inc.

**AA. “Qualifying Work Week”** refers to any week within the Class Period wherein a Settlement Class Member worked any portion of that week in a Covered Job Position based on hire dates, termination dates, and re-hire dates provided by Defendants to the Settlement Administrator.

**BB. "Released Claims"** shall refer collectively to the Released Class Claims and Released PAGA Claims.

CC. **“Released Class Claims”** means all claims, actions or causes of action during the Class Period, alleged in the First Amended Complaint, or that could have been alleged or raised in the First Amended Complaint based upon or arising out of the facts alleged therein, as well as any claims for interest or attorney’s fees and costs thereon, including, without limitation: failure to pay wages, including overtime wages and minimum wages, including any claim for unpaid wages, unpaid penalties, failure to pay overtime or other hours worked, “off-the-clock” claims, “rounding” claims, and failure to pay overtime wages due based on the correct regular rate of pay, failure to provide compliant meal or rest periods, along with failure to make penalty payments or premium pay in lieu of providing meal or rest periods; failure to reimburse reasonable business expenses, failure to pay wages timely during employment, failure to pay due wages upon termination of employment, failure to provide accurate wage statements, failure to maintain adequate payroll records; and any other corresponding claims under the Fair Labor

Standards Act (“FLSA”); and Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and 2802; applicable portions of the Code of Regulations, Title 8, section 11040, applicable portions of the applicable California Wage Order, or federal law; and any claim under Business and Professions Code section 17200 *et seq.* predicated on the above claims which were alleged or could have been alleged based upon the facts pled in the First Amended Complaint at any time during the Class Period. Settlement Class members will opt-in to a release of the FLSA claims included in the Released Class Claims by endorsing or negotiating their settlement checks.

**DD. “Released Parties”** means Defendants Q & B Foods, Inc., ESG Employer Resources, Inc. and their respective present and former parents, owners, subsidiaries, and any affiliated or related persons or entities and each of their respective officers, directors, employees, partners, shareholders, attorneys and agents and any other successors, assigns or legal representatives. Released Parties shall also include any and all other temporary agencies (including without limitation, Aerotek, Inc., SkillSet Group, LLC, Randstad, Express Services, Inc., EmployBridge Holding Company (ResourceMFG), Priority Business Services, Inc. (Priority Workforce), Approved Staffing Services LLC, Reliant HR, LLC (Center Staffing Network LLC), Allegis Group Holdings, Inc. (Actalent, Inc.) and Premium Transport Staffing, Inc.) solely in relation to their placement of temporary workers at Q&B during the respective Class or PAGA Period and their respective present and former parents, owners, subsidiaries, and any affiliated or related persons or entities and each of their respective officers, directors, employees, partners, shareholders, attorneys and agents and any other successors, assigns or legal representatives regarding such Q&B placements.

**EE. “Response Deadline”** means the deadline for Settlement Class Members to mail any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by the Settlement Administrator. However, if a Settlement Class Member’s notice is re-mailed, the Response Deadline for the Settlement Class Member shall be the later of

1 fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial mailing,  
2 whichever is later. The date of the postmark shall be the exclusive means for determining  
3 whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the  
4 Response Deadline.

5 **FF. “Service Award”** is the amount that shall be paid to Plaintiff and Class  
6 Representative Usa Corrales-Rojas pursuant to Section III(D)(4) below.

7 **GG. “Settlement Administrator”** means Phoenix Settlement Administrators, or such  
8 other third-party administrator that the Court approves for purposes of administering the notice  
9 and/or settlement.

10 **HH. “Settlement Class,” “Settlement Class Members” or “Class Members”** means  
11 all individuals who worked in a Covered Job Position at any time during the Class Period.

12 **II. “Settlement Class Counsel” is:**

13 **BIBIYAN LAW GROUP, P.C.**

14 David D. Bibiyan (SBN 287811)

15 *david@tomorrowlaw.com*

16 Diego Aviles (SBN 315533)

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21 Beverly Hills, California 90211

22 Tel: (310) 438-5555; Fax: (310) 300-1705

23 **JJ. “Weekly Recovery”** refers to the amount computed by the Settlement  
24 Administrator to be recovered by Settlement Class Members for each Qualifying Work Week.

25 **KK. “Workweek Dispute”** refers to a dispute by a Settlement Class Member and/or  
26 Alleged Aggrieved Employee regarding the number of Qualifying Work Weeks attributed to him  
27 or her in the Class Notice, be it in the Class Period or PAGA Period.

28 **II. BACKGROUND.**

1. On September 16, 2020, in accordance with the Private Attorneys General Act of  
2004 (“PAGA”), Usa Corrales-Rojas filed a Notice with the California Department of Industrial  
Relations (“PAGA Notice”) alleging that Defendants had violated California Labor Code



sections 201, 202, 203, 204, 226, 226.7, 227.3, 246 *et seq.*, 404, 432, 510, 512, 1174, 1194, 1194.2, 1197, 1198.5, 2810.5, 2802, and the California Wage Orders and sought penalties under California Labor Code sections 226.3, 210, 558, 1174.5, 1197.1, 2699, and 2810.3.

2. On October 26, 2020, Plaintiff filed a lawsuit in the Los Angeles County Superior Court on behalf of himself and “all others similarly situated” alleging eight causes of action against Defendants: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to indemnify; and (8) unfair competition in violation of Business and Professions Code section 17200 *et seq.* The matter was stayed by order of the Court and no answer was filed by Defendants.

3. On January 27, 2021, Plaintiff filed a First Amended Complaint, adding six more causes of action: (1) civil penalties under Labor Code section 210; (2) civil penalties under Labor Code section 226.3; (3) violation of Labor Code section 558; (4) violation of Labor Code section 1174.5, (5) violation of Labor Code section 1197.1 and (6) civil penalties under Labor Code section 2699 (i.e., PAGA).

4. On December 6, 2021, after the exchange of informal discovery, the Parties participated in a mediation with mediator Deborah C. Saxe, Esq. After extensive negotiations, the Parties reached this Settlement following a mediator’s proposal. The settlement negotiations included discussion and examination of the Parties’ respective positions regarding the legal and factual issues pertaining to the claims asserted by Plaintiff.

5. Plaintiff and Class Counsel concluded, after taking into account the sharply disputed factual and legal issues involved in this Lawsuit, the risks attendant to further prosecution, the informal discovery conducted to date, and the substantial benefits received and to be received pursuant to the compromise and settlement of the Litigation, that settlement on the terms hereinafter set forth was in the best interest of Plaintiff and the Settlement Class.

6. Class Counsel believes that the Settlement reached is fair to the Settlement Class and confers substantial benefits on the Settlement Class, offering all Settlement Class Members

1 certain and meaningful recoveries in the near term. Based on their evaluation, Class Counsel  
2 determined that the Settlement set forth in this Agreement is in the best interest of Plaintiff and  
3 the Settlement Class.

4 7. Similarly, Defendants and counsel for Q&B and ESG concluded that there were  
5 benefits associated with settling. Based on the disputed factual and legal issues involved in the  
6 Lawsuit, the risks attendant to further defense, the expense and burden of protracted litigation,  
7 and Defendants' desire to put the controversy to rest, Defendants and counsel for Defendants  
8 believe that settlement on the terms hereinafter set forth is also in Defendants' best interest.

9 8. As part the settlement of this matter, the Parties agree that Plaintiff will take all  
10 action to exhaust administrative requirements so that a PAGA claim under Labor Code section  
11 1197.5 is released and if necessary, file a Second Amended Complaint to include a claim under  
12 Labor Code section 1197.5. Defendants will not object to the exhaustion of administrative  
13 remedies or the amendment of the complaint to the extent it is for the sole purpose of  
14 effectuating this settlement. The Parties agree that Defendants do not waive any objections to  
15 this exhaustion or amendment if for any reason this settlement does not become effective.

16 9. This Settlement contemplates the (a) entry of a final order approving settlement of  
17 the class action Litigation; and (b) discharge of the Released Parties from the Released Claims.  
18 The terms of this Settlement Agreement and the anticipated Judgment and Final Order are  
19 binding on the Plaintiff and each Settlement Class Member who has not been excluded from the  
20 Settlement Class and the Parties intend that said terms shall have a res judicata and other  
21 preclusive effect to the fullest extent allowed under the law in all pending and future claims,  
22 lawsuits, or other proceedings involving the Released Class Claims, as that term is defined in  
23 Section I(R), that are brought or maintained by or on behalf of Plaintiffs and/or any Participating  
24 Class Member. The Judgment and Final Order are also intended to bind Settlement Class  
25 Members who opt in pursuant to Section III(D)(13). The Judgment and Final Order will also  
26 bind Plaintiff, the PAGA Group, and the State of California and have a res judicata and other  
27 preclusive effect to the fullest extent allowed under the law in all pending and future claims,

lawsuits, or other proceedings involving the claims covered by the Released PAGA Claims.

### **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT.**

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

#### **A. Preliminary Approval.**

Settlement Class Counsel will submit this Agreement to the Court for its preliminary approval. The Court's preliminary approval of this Agreement shall be embodied in an Order Granting Preliminary Approval of Class Action Settlement and Certification of Settlement Class for settlement purposes only, Appointing Class Counsel for settlement purposes only, and providing for Notice of Class Action Settlement. Settlement Class Counsel will take all necessary steps to ensure that there is exhaustion of PAGA claims as to Labor Code section 1197.5 to the extent required by the court and also submit the Settlement Agreement to the LWDA pursuant to the requirements of Labor Code section 2699(1).

#### **B. Notice to Settlement Class Members.**

The Settlement Administrator shall disseminate the Notice of Class Action Settlement, which the Parties will ask the Court to approve in a form substantially similar to the one attached hereto as Exhibit A ("Notice of Class Settlement" or "Notice"), by giving notice by first-class United States mail as described in Section III(B)(1).

##### **1. Class Notice.**

Notice shall be provided to Settlement Class Members in the following manner:

a. Prior to the hearing of the motion for preliminary approval, Q&B will obtain from the third party staffing agencies who assigned non-exempt employees to Q&B during the Class Period the names, social security numbers and last known home address and telephone numbers for every such staffing agency employee who provided services to Q&B during the Class Period and the dates the employee provided such services ("Staffing Agency Class Lists").

1 The Staffing Agency Class Lists will either be sent to Q&B or to the Settlement Administrator,  
2 at the discretion of the third-party staffing agency, which will verify receipt of the information.

3 b. Within twenty twenty-one (21) calendar days of receipt by Defendants' Counsel  
4 of the Court's Order re Preliminary Approval of Class Action Settlement, Defendants will  
5 provide the Settlement Administrator with a list of all Settlement Class Members ("Class List").  
6 This Class List shall state the social security number and the last known home address and  
7 telephone numbers for each Settlement Class Member. The Class List shall also state the dates  
8 worked by each such Settlement Class Member during the Class Period in a Covered Job  
9 Position as indicated in, as applicable, Defendants' records or those subpoenaed from the staffing  
10 agencies. This information shall be treated as and remain confidential, shall be used solely to  
11 manage the notice and claims process described herein, and shall not be disclosed to anyone  
12 other than the Settlement Administrator and applicable taxing authorities, or pursuant to express  
13 written authorization of Defendants, the individual in question, or by order of the Court

14 c. Within ten (10) calendar days of receipt of the Class List from Defendants, the  
15 Settlement Administrator shall mail the Notice of Class Settlement by first-class United States  
16 mail, postage prepaid, to the last known address of each Settlement Class Member, or, in the case  
17 of Settlement Class Members known to be deceased, to the legal representative of the estate. The  
18 Notice will include the estimated Individual Payment Amount for the Settlement Class Member  
19 to whom it is addressed, as well as the estimated Individual PAGA Payment amount if the  
20 Settlement Class Member is also an Alleged Aggrieved Employee. Prior to the initial mailing of  
21 the Notice of Class Action Settlement, the Settlement Administrator shall perform a NCOA  
22 ("National Change of Address") update for each Settlement Class Member.

23 d. The Class Notice shall include a Statement of Weeks Worked that states the dates  
24 that the Settlement Class Member worked during the Class Period in a Covered Position, along  
25 with the Settlement Class Member's estimated Individual Payment Amount based on the formula  
26 set forth in Section III(D)(10) below, along with, if the Settlement Class Member is also an  
27 Alleged Aggrieved Employee, the dates that the Settlement Class Member worked during the

PAGA Period in a Covered Position and the Alleged Aggrieved Employee's estimated Individual PAGA Payment based on the formula set forth below.

e. With respect to those Settlement Class Members whose Notice of Class Settlement is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by use of Equifax or another skip trace method. If another address is identified, the Settlement Administrator shall immediately thereafter send the Notice of Class Settlement by mail to the new address.

f. The Settlement Administrator shall also establish a toll-free number that Settlement Class Members can call and a website in which Court Orders regarding the Settlement are posted. All costs, including but not limited to those associated with the Notice of Class Settlement, whether foreseen or not, shall be paid from the Settlement Sum in accordance with Section III(D)(2) below.

## **2. Declaration of Compliance.**

No later than twenty-one (21) court days before the Final Fairness and Approval Hearing, the Settlement Administrator shall provide Defendants' Counsel and Class Counsel with a declaration attesting to completion of the notice process ("Declaration of Compliance"), including the steps set forth in Section III(B)(1)(a)-(f), which shall be filed with the Court by Class Counsel with the final approval motion.

Compliance with the procedures described in this section shall constitute due and sufficient notice to Settlement Class Members of this proposed Settlement and the Final Fairness and Approval Hearing. With the exception of the objection process set forth in Section III(C)(2), this proposed Settlement shall not be subject to objection or collateral attack by any person or entity and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, Defendants' Counsel, or the Settlement Administrator to provide notice of the proposed Settlement and the Final Fairness and Approval Hearing unless ordered by the Court.

## **C. Responses to Notice.**

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1 Nevertheless, even if a Participating Class Member does not submit an Objection as set forth in  
2 the manner herein, the Participating Class Member may still appear at the Final Approval  
3 Hearing to orally present any objections to the Court or otherwise comment on the Settlement.

4 **3. Responses to Objections.**

5 Counsel for the Parties shall file any response to any written objections submitted by  
6 Objecting Settlement Class Members at least five (5) court days before the date of the Final  
7 Fairness and Approval Hearing.

8 **4. Final Fairness and Approval Hearing.**

9 On the date set forth in the Order re Preliminary Approval of Class Action Settlement,  
10 which shall be approximately seventy-five (75) calendar days after the mailing of the Notice of  
11 Class Settlement, a Final Fairness and Approval Hearing shall be held before the Court in order  
12 (1) to review this Agreement and determine whether the Court should give it final approval; and  
13 (2) to consider any timely objections made pursuant to Section III(C)(2) above and all responses  
14 by the Parties to such objections; provided, however that the Final Fairness and Approval  
15 Hearing may be continued to allow notice to third party vendor Settlement Class Members, who  
16 receive late notice due to a delay in obtaining Class List information subpoenaed from third  
17 parties . At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final  
18 approval to this Agreement. If the Parties' request for final approval is granted, a Judgment and  
19 Final Order Approving Settlement of Class Action, in a form approved by the Parties, shall be  
20 entered in the Litigation. Within five (5) calendar days of receipt of the Judgment and Final  
21 Order by Class Counsel, Class Counsel shall furnish a copy of the Judgment and Final Order to  
22 the Settlement Administrator. The Settlement Administrator will give notice to the Settlement  
23 Class of the Judgment and Final Order by posting the document on its website for a period of not  
24 less than one (1) year. Settlement Class Counsel will submit the Judgment and Final Order to the  
25 LWDA pursuant to the requirements of Labor Code section 2699(1).

26 **D. Settlement Payment Procedures.**

27 **1. Gross Settlement Amount.**

1           The maximum Gross Settlement Amount for the class and the PAGA claim shall be  
2 limited to a total of One Million, One Hundred and Fifty Thousand Dollars and Zero Cents  
3 (\$1,150,000.00), or as may be escalated at Defendant Q&B’s option pursuant to Paragraph  
4 IV(D)(3) below (hereafter the “Escalator Option”). Defendant Q&B will contribute  
5 \$1,100,000.00 to the Gross Settlement Amount, and Defendant ESG will contribute \$50,000.00  
6 to the Gross Settlement Amount, and, to the extent the Escalator Option is triggered, Defendant  
7 Q&B will contribute the increase in settlement amounts that are due. Defendant ESG will not  
8 fund any employer side tax obligations that result from an increase in the settlement amount  
9 created by the trigger of the escalator, any such increase will be funded by Defendant Q&B. The  
10 Gross Settlement Amount shall be all-in with no reversion to Defendants. All amounts to be  
11 paid by Defendants from the Gross Settlement Amount shall be paid to a qualified settlement  
12 fund (“Qualified Settlement Fund”), which shall be administered by the Settlement  
13 Administrator. All amounts to be paid to anyone pursuant to this Agreement (“Settlement  
14 Amounts”) shall be paid out of the Qualified Settlement Fund. Such Settlement Amounts shall  
15 include all amounts to be paid to Plaintiffs and Settlement Class Members who do not timely  
16 request exclusion and opt out of this Settlement; all amounts to be paid to Class Counsel as Class  
17 Counsel’s Attorneys’ Fees, as set forth in Section III(D)(3) below; all amounts to be paid to  
18 Class Counsel as Class Counsel’s Litigation Costs, as set forth in Section III(D)(3) below; all  
19 amounts to be paid as a Service Award to Plaintiff as set forth in Section III(D)(4); all amounts  
20 to be paid as Settlement Administration Costs, as defined in Section III(D)(2) below, the  
21 payments to the LWDA and Alleged Aggrieved Employees for their respective portions of the  
22 amount paid to settle the PAGA claim, as set forth in Section III(D)(6) below; and any other  
23 Settlement Amounts to be paid under this Agreement. All such Settlement Amounts to be paid  
24 under this Agreement shall be paid from the Qualified Settlement Fund and Defendant shall have  
25 no obligations under this Agreement beyond its obligation to make payments to the Qualified  
26 Settlement Fund, aside from Employer Taxes. After the initial deposit of the Gross Settlement  
27 Amount by Defendants in the Qualified Settlement Fund, the Settlement Administrator shall



1 inform Defendants what additional amounts are necessary to be paid in Employer Taxes. ESG  
2 shall pay its share of Employer Taxes only in connection with the Qualifying Work Weeks that  
3 Class Members worked in a Covered Position who were employed by ESG and placed to work  
4 with Q&B during the Class Period, with Q&B paying the balance of Employer Taxes owed.

5 Consistent with the terms of this Agreement, for purposes of determining the Net  
6 Settlement Amount, the Settlement Administrator shall first deduct the Settlement  
7 Administration Costs described in Section III(D)(2); deduct the amount of Attorneys' Fees and  
8 Litigation Costs approved by the Court, described in Section III(D)(3); deduct the Service Award  
9 to Plaintiff described in Section III(D)(4); and pay the LWDA and Alleged Aggrieved  
10 Employees for their respective portions of the amount paid to settle PAGA claim, described in  
11 Section III(D)(6). Thereafter, from the remaining funds (the "Net Settlement Amount") , the  
12 Settlement Administrator shall pay the Individual Payment Amounts to Settlement Class  
13 Members who do not timely request exclusion and opt out of this Settlement as described in  
14 Section III(D)(5) below, as well as Individual PAGA Payments from PAGA Payment, which  
15 shall be paid to Alleged Aggrieved Employees on a *pro rata* basis based on the number of  
16 Qualifying Work Weeks each worked in a Covered Position as an Alleged Aggrieved Employee  
17 during the PAGA Period. Defendants shall wire their respective contributions to the Gross  
18 Settlement Amount to the Settlement Administrator for deposit into and the Qualified Settlement  
19 Fund, which shall be an interest-bearing account, no later than fourteen (14) calendar days after  
20 the Effective Date, and their respective portion of Employer Taxes no later than seven (7)  
21 calendar days after the amount owed by each Defendant is disclosed to the Parties by the  
22 Settlement Administrator, so long as that is at least fourteen (14) calendar days after the  
23 Effective Date. However, if there is no objector or intervenor to the settlement, Defendants  
24 shall wire their respective contributions to the Gross Settlement Amount to the Settlement  
25 Administrator for deposit into and the Qualified Settlement Fund, which shall be an interest-  
26 bearing account, no later than fourteen (14) calendar days after the Court signs an Order granting  
27 final approval of this Settlement ("Final Approval") and the Final Approval order is served on

1 Defendants.

2 **2. Settlement Administration Costs.**

3 Except as provided herein, all costs of administering the Settlement, including but not  
4 limited to all tax obligations, custodial fees, and accounting fees incurred by the Settlement  
5 Administrator; all costs and fees associated with preparing, translating, issuing and mailing any  
6 and all notices or reminders to Settlement Class Members, including a NCOA update of  
7 addresses and a skip trace of any undeliverable notice packets; all costs and fees associated with  
8 computing, processing, reviewing, issuing and paying the Service Award, the payment to the  
9 LWDA, Individual Payment Amounts, Individual PAGA Payments, interest, taxes, and any other  
10 payments to be made out of or into the Qualified Settlement Fund; all costs and fees associated  
11 with preparing any tax returns and any other filings required by any governmental taxing  
12 authority or agency; all costs and fees associated with preparing any other notices, reminders,  
13 reports, or filings to be prepared in the course of administering disbursements from the Gross  
14 Settlement Amount; and any other costs and fees incurred and/or charged by the Settlement  
15 Administrator in connection with the execution of its duties under this Agreement (“Settlement  
16 Administration Costs”), shall not exceed \$12,950.00, and shall also be paid from the Gross  
17 Settlement Amount.

18 ///

19 **3. Attorneys’ Fees and Costs.**

20 Subject to Court approval, Class Counsel will be paid up to thirty-five percent (35%) of  
21 the Gross Settlement Amount, which, unless escalated pursuant to the Escalator Option, equals  
22 Four Hundred and Two Thousand, Five Hundred Dollars and Zero Cents (\$402,500.00) for their  
23 reasonable attorneys’ fees (“Attorneys’ Fees”). Subject to Court approval, Class Counsel will  
24 also be paid reasonable and actual costs in prosecuting this Litigation from the Gross Settlement  
25 Amount (“Litigation Costs”) in an amount not to exceed Thirty Thousand Dollars and Zero  
26 Cents (\$30,000.00). The Attorneys’ Fees and Litigation Costs shall be paid out of the Gross  
27 Settlement Amount. Class Counsel shall aim to provide Defendants’ Counsel with copies of the

1 motion and declarations to be submitted in support of their fee request at least five (5) business  
2 days before such documents are filed with the Court. Defendants agree not to oppose Class  
3 Counsel's proposed fee request provided it comports with the terms of this Settlement  
4 Agreement. Any amount not approved by the Court will revert to the Net Settlement Amount for  
5 distribution among Class Members. The Settlement Administrator shall pay Class Counsel's  
6 court approved Attorneys' Fees and Litigation Costs no later than seven (7) calendar days after  
7 Defendants have wired their respective contributions to the Gross Settlement Amount and  
8 Employer Taxes to the Settlement Administrator in accordance with Section III(D)(1).

9 **4. Service Award Payable to Plaintiff.**

10 Subject to Court approval, Plaintiff and Class Representative Usa Corrales-Rojas shall  
11 receive a Service Award of up to five thousand dollars and zero cents (\$5,000.00). Plaintiff shall  
12 provide the Released Parties a broader release than those provided by Class Members and  
13 Alleged Aggrieved Employees, as further set out in Section V(D)(3). The Service Award shall  
14 be paid out of the Gross Settlement Amount. The Service Award shall be payable no later than  
15 seven (7) calendar days after Defendants pay the Gross Settlement Amount and Employer Taxes  
16 to the Settlement Administrator. The Settlement Administrator will report the Service Award on  
17 a Form 1099, which it will provide to Plaintiff and to the pertinent taxing authorities as required  
18 by law.

19 **5. Individual Payment Amounts Payable to Settlement Class Members.**

20 In accordance with the procedures set forth in Sections III(D)(10)-(12), the Settlement  
21 Administrator shall pay each Settlement Class Member who does not timely request exclusion  
22 and opt out of this Settlement the Settlement Class Member's Individual Payment Amount.

23 A portion of each Settlement Class Member's Individual Payment Amount shall  
24 represent wages, and a portion shall represent interest and penalties. Seventy-five percent (75%)  
25 of each Settlement Class Member's Individual Payment Amount shall represent penalties and  
26 interest. Twenty-five percent (25%) of each Settlement Class Member's Individual Payment  
27 Amount shall represent wages. That portion of each Settlement Class Member's Individual  
28

1 Payment Amount representing wages will be subject to normal employment tax withholdings  
2 (e.g., withholdings for state and federal income tax, employee FICA tax, California SDI) with  
3 the Settlement Administrator remitting all such employment tax withholdings directly to the  
4 pertinent state and federal taxing authorities.

5 That portion of each Settlement Class Member's Individual Payment Amount  
6 constituting interest or penalties will be reported on a Form 1099 provided to each Settlement  
7 Class Member, with the required copies of the Form 1099 provided to the pertinent taxing  
8 authorities.

9 The Settlement Administrator shall be responsible for calculating such taxes owed by  
10 Defendants and by the Qualified Settlement Fund (including any employer FICA or FUTA  
11 taxes) and providing Defendants with a statement of all amounts due, which shall be due within  
12 seven (7) calendar days of receiving the Gross Settlement Amount from Defendants. Defendants  
13 shall then have an additional seven (7) calendar days to wire the amounts designated as owed for  
14 Employer Taxes to the Settlement Administrator.

15 The Parties are mindful that the total consideration payable hereunder is allocated to a  
16 number of separate and distinct claims for damages and penalties by Plaintiff and the Settlement  
17 Class Members. Accordingly, having considered the matter in detail, having performed their  
18 own separate and independent computations and estimations of the damages and penalties  
19 potentially awardable at trial or arbitration, the Parties mutually consent and agree that the  
20 Settlement Class Members' Individual Payment Amounts be apportioned among the Settlement  
21 Class Members' various wage and non-wage claims in this Litigation as set forth above.  
22 Moreover, the Parties mutually consent and agree, and hereby represent to the Court in this  
23 judicially supervised settlement transaction, that the apportionment of the Settlement Class  
24 Members' Individual Payment Amounts as stated above is a reasonable and arm's length  
25 determination of the character of the Individual Payment Amounts for all purposes, including for  
26 tax purposes. Defendants' Counsel and Class Counsel make no representations as to the tax  
27 treatment or legal effect of the payments called for hereunder, and Class Members are not relying

on any statement or representation by Defendants' Counsel or Class Counsel in this regard. Class Members understand and agree that they will be solely responsible for the payment of their portion of any taxes and penalties assessed on their Individual Payment Amounts today and in the future.

**6. Payment of PAGA Penalties to the LWDA and Alleged Aggrieved Employees.**

The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) to the settlement of PAGA penalties sought in the Lawsuit, which the Parties believe in good faith is a fair and reasonable apportionment. The Settlement Administrator shall pay seventy-five percent (75%), or \$37,500.00, of this amount to the LWDA and twenty-five percent (25%), or \$12,500.00, of this amount to Alleged Aggrieved Employees, with each Alleged Aggrieved Employee's share determined by multiplying \$12,500.00 by a fraction, the numerator of which is the number of Qualifying Work Weeks worked in a Covered Position by that Alleged Aggrieved Employee during the PAGA Period, and the denominator of which is the total number of Qualifying Work Weeks worked in a Covered Position by all Alleged Aggrieved Employees during the PAGA Period. Payment shall be made to the LWDA no later than seven (7) calendar days after Defendants have wired their respective contributions to the Gross Settlement Amount to the Settlement Administrator in accordance with Section III(D)(1). Payment to Alleged Aggrieved Employees shall be made at the same time as Individual Payment Amounts are paid to Settlement Class members in accordance with Section III(D)(12) below. All Alleged Aggrieved Employees will receive their proportional share of the Settlement amount allocated to PAGA penalties whether or not they timely and properly request exclusion from the Settlement Class as provided by Section III(C)(1). The PAGA penalty payments will be reported on a Form 1099 provided to each Alleged Aggrieved Employee, with the required copies of the Form 1099s provided to the pertinent taxing authorities.

**7. No Spillover of Residuals.**

To the extent there are any payments made to Settlement Class Members or Alleged

Aggrieved Employees that remain uncashed one hundred and eighty (180) days after mailing, all such uncashed payments and interest from the date of entry of judgment shall be paid to Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use in Los Angeles County, subject to Court approval. Pursuant to Code of Civil Procedure section 384, the Settlement Administrator is ordered to submit a report to the court stating the total amount that was actually paid to Class Members thirty (30) calendar days after the 180th day following the mailing. After the report is received, the Parties shall request that the Court amend the Judgment to direct the Settlement Administrator to pay the sum of the unpaid residue or unclaimed or abandoned funds, plus any interest that has accrued thereon, to the *cy pres* recipient designated herein.

**8. No Additional Contribution by Defendants.**

Defendants' monetary obligations under this Agreement are limited to the amount defined in the Gross Settlement Amount, as the same may be escalated pursuant to the Escalator Option, along with Employer Taxes. Defendants may not be called upon or required to contribute additional monies above their respective shares of the Gross Settlement Amount, except as may be escalated pursuant to the Escalator Option, as well as their share of Employer Taxes, under any circumstances whatsoever. Payment and/or receipt of any Individual Payment Amount, or PAGA penalty allocation shall not trigger any other obligation, right, or entitlement. The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by either Defendant. Neither any Individual Settlement Payment or Individual PAGA Payment shall form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by either Defendant. Any 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 either Defendant's benefit plans, paid vacation policy, calculations, other policy, or bonus program. Each Defendant retains the right to modify the language of its benefit plans,

1 policies, and bonus programs to effect this intent and to make clear that any amounts paid  
2 pursuant to this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any  
3 similar measuring term as defined by applicable plans, policies, and bonus programs for purpose  
4 of eligibility, vesting, benefit, accrual, or any other purpose, and that additional contributions or  
5 benefits are not required by this Agreement.

6 In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified,  
7 however that may occur, or the Settlement of the Litigation is barred by operation of law, or  
8 invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants will  
9 cease to have any obligation to pay any portion of the Gross Settlement Amount to the Qualified  
10 Settlement Fund, or any other party under the terms of this Agreement, and all previous  
11 disbursements made from Defendants to the Qualified Settlement Fund will immediately revert  
12 back to Defendants, less any Settlement Administration Costs incurred, which shall be borne  
13 equally by the Parties.

14 **9. The Settlement Administrator.**

15 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement  
16 and to act as the Settlement Administrator. The Settlement Administrator will administer  
17 disbursements from the Gross Settlement Amount paid by Defendants into the Qualified  
18 Settlement Fund, including, but not limited to, distributing the Notice of Class Settlement;  
19 calculating claims against the Qualified Settlement Fund; calculating interest owed providing a  
20 calculation of Employer Taxes; preparing and issuing all disbursements of the Settlement  
21 Amounts required to be paid to the Settlement Class Members who do not timely request  
22 exclusion and opt out of this Settlement, Plaintiff, Class Counsel the LWDA, and the local state  
23 and federal payroll tax authorities; tracking whether Settlement Class Members have cashed  
24 issued checks; and handling inquiries about the calculation of the Individual Payment Amounts  
25 and Individual PAGA Payments. The Settlement Administrator shall be responsible for the  
26 timely filing of all federal, state and local tax returns of the Qualified Settlement Fund and  
27 making the timely payment of any and all taxes and withholdings required with such returns.

1 The Settlement Administrator shall provide an address and toll-free telephone number to respond  
2 to Settlement Class Members' inquiries about the Notice of Class Settlement and determination  
3 of the Individual Payment Amounts and/or Individual PAGA Payments. All questions by  
4 Settlement Class Members shall be directed to the Settlement Administrator.

5 All Settlement Administration Costs associated with administering disbursements from  
6 the Qualified Settlement Fund, including, but not limited to, the fees and costs of the Settlement  
7 Administrator and the cost of the Notice of Class Settlement, shall be paid entirely from the  
8 Gross Settlement Amount paid by Defendants into the Qualified Settlement Fund. The  
9 Settlement Administrator shall conduct all administration of all disbursements of the Gross  
10 Settlement Amount.

11 **10. Calculation of Individual Payment Amounts.**

12 The Settlement Administrator shall determine the total number of Qualifying Work  
13 Weeks worked by all Settlement Class Members by determining, for each Settlement Class  
14 Member, the number of Qualifying Work Weeks worked in a Covered Job Position during the  
15 Class Period. The Settlement Administrator shall compute the value of a Qualifying Work Week  
16 ("Base Value") by dividing the amount of the Net Settlement Fund by the total number of  
17 Qualifying Work Weeks worked by all Settlement Class Members. The Settlement  
18 Administrator shall compute each Participating Class Member's Weekly Recovery by  
19 multiplying the Base Value by the number of Qualifying Work Weeks worked by the  
20 Participating Settlement Class Member.

21 Prior to distribution of the settlement checks, the Individual Payment Amounts based on  
22 amounts attributed to any Settlement Class Members who timely Request Exclusion from the  
23 Class in accordance with Section III(C)(1) will be allocated on a *pro rata* basis, using the  
24 methodology set forth herein, to the Settlement Class Members who do not timely Request  
25 Exclusion from the Class.

26 **11. Resolution of Disputes.**

27 Any Settlement Class Member who disputes the information shown on his or her  
28



Statement of Weeks Worked may indicate and explain such disagreement on the Statement of Weeks Worked form, to be returned to the Settlement Administrator postmarked by the Response Deadline. Any such Settlement Class Member may submit any documentation in his or her possession relating to his or her dispute along with his or her completed Statement of Weeks Worked form. The Settlement Administrator shall notify Defendants' Counsel and Class Counsel of any such dispute no later than five (5) calendar days after receiving notice of the dispute. The Settlement Administrator shall attempt to resolve the disagreement and may request any information or assistance from Defendants' Counsel and/or Class Counsel that the Settlement Administrator, in its sole discretion, believes may assist it in resolving the disagreement. The Settlement Administrator shall have final and binding authority to resolve any disputes based on the records of Defendants and any staffing agency records. The Parties and their counsel shall use their best efforts to ensure that any and all such disputes are resolved.

**12. Payment of Individual Payment Amounts.**

The Settlement Administrator shall calculate the final Individual Payment Amount to be paid to each Settlement Class Member and the proportional share of the PAGA Payment for each Aggrieved Employee. The Settlement Administrator shall prepare a Final Statement of Individual Payment Amount ("Final Statement") for each Settlement Class Member. For Settlement Class Members who are also Alleged Aggrieved Employees, the Final Statement shall also set forth that Settlement Class Member's proportional share of the PAGA Payment. Alleged Aggrieved Employees who timely and properly requested exclusion from the Settlement Class will receive a similar statement ("PAGA Statement") that reflects only their proportional share of the PAGA Payment. Within seven (7) calendar days after Defendants have wired their respective contributions to the Gross Settlement Amount and Employer Taxes to the Settlement Administrator in accordance with Section III(D)(1), the Settlement Administrator shall issue and mail Class Members' Individual Payment Amounts and/or Alleged Aggrieved Employees' Individual PAGA Payments, in each case along with the Final Statement or PAGA Statement, as applicable. The mailing shall be by first-class United States mail to the last known mailing

address of each Settlement Class Member or Alleged Aggrieved Employee (as updated, if applicable, during the Notice mailing process as set forth in Section III(B)(1)(e)).

**13. Opt-In for FLSA Claims.**

The cashing of the settlement check referred to in Section III(D)(12) by the Settlement Class Member shall be deemed to be an opt-in for purposes of the FLSA claims referred to in the Released Class Claims. The Settlement Administrator shall include a legend on the settlement check stating, “By cashing this check, I am opting into *Usa Corrales-Rojas v. Q & B Foods, Inc. and ESG Employer Resources, Inc.*, Los Angeles Superior Court Case No. 20STCV40885, under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released Class Claims described in the Settlement Agreement.”

**14. Extension of Time to Pay and/or Process Claims.**

Should the Settlement Administrator need more time than is provided under this Agreement to complete any of its obligations as set forth in this Agreement, the Settlement Administrator may request such additional time in writing (including an explanation of the need for additional time) from the Court and/or the Parties.

**15. Public Statements.**

Plaintiff and Settlement Class Counsel shall not hold any press conferences, issue any press releases, seek any publicity or publish any announcements on any website with respect to this matter at any time in any fashion that may reasonably identify Defendants. Until the Parties submit a request for preliminary approval from the Court, Plaintiff and Settlement Class Counsel will keep the terms of this Agreement confidential. Prior to final approval of this Settlement, Plaintiff and Class Counsel will not discuss this Litigation or Settlement or otherwise disclose the terms of this Agreement with third parties other than Settlement Class Members, except (1) as necessary to effectuate this Agreement and (2) to the Parties’ tax advisors. After final approval of this Settlement, Plaintiff, Defendants, and their respective Counsel shall not issue any public statements with respect to the Litigation or Settlement, except as required by law or expressly permitted by this Agreement. Upon such final approval, Plaintiff, Defendants and their

1 respective Counsel may issue, if at all, only a mutually agreeable joint press release, although  
2 neither Party is required to agree to any press release of any kind. Unless otherwise agreed by  
3 Plaintiff, Defendants, and their respective Counsel, any oral or written disclosure of information  
4 related to the Settlement shall be restricted to the material discussed in this Stipulation and  
5 Agreement. Plaintiff, Defendants, and their respective Counsel agree and acknowledge that the  
6 phrase “material discussed in this Stipulation and Agreement” shall be narrowly construed.  
7 Notwithstanding the specific limitations on public disclosure identified herein, neither  
8 Defendants nor Class Counsel shall be precluded from disclosing the Parties to the lawsuit, and  
9 the fact that the matter settled, to a Court or other tribunal. Furthermore, nothing herein limits  
10 Plaintiff or any Settlement Class Member’s ability to communicate with any government agency  
11 or otherwise participate in any investigation or proceeding that may be conducted by any  
12 government agency. This provision shall not prohibit Class Counsel from communicating with  
13 Settlement Class Members after preliminary approval is granted for the sole purpose of  
14 administering the Settlement or from otherwise ensuring that Class Members have notice of the  
15 Settlement and any Judgment entered in connection therewith. This provision also does not limit  
16 Class Counsel from complying with ethical obligations or from posting court-filed documents on  
17 their website for viewing by Settlement Class Members.

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19 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT.**

20 **A. No Admission.**

21 Neither the acceptance nor the performance by Defendants of the terms of this  
22 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be,  
23 construed as, or deemed to be an admission by Defendants of the truth of any of the allegations  
24 in the Lawsuit, the representative character of the Litigation, the validity of any of the claims that  
25 were or could have been asserted by Plaintiff and/or Settlement Class Members in the Litigation,  
26 or of any liability or guilt of Defendants in the Litigation.

27 **B. Non-Evidentiary Use.**

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, Settlement Class Members, or their respective counsel in the Litigation or in any other action or proceeding either as evidence or in discovery; provided, however, that nothing contained in this Section IV(B) shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement or to establish its preclusive effect as to a claim asserted by Plaintiff, any Settlement Class Member, any Alleged Aggrieved Employee, or the State of California.

**C. No Collateral Attack.**

This Agreement shall not be subject to collateral attack by any Defendant, Plaintiff, Settlement Class Member or any recipient of the Notice of Class Settlement after the Judgment and Final Order described in Section III(C)(4) is entered. Such prohibited collateral attacks shall include but not be limited to claims by Defendants regarding the escalation of the Gross Settlement Amount, claims that the *pro rata* method of allocation for payment to the Settlement Class Member was erroneous or that the Settlement Class Member failed for any reason to receive timely notice of the Settlement or the procedure for disputing the calculation of his or her Individual Payment Amount.

**D. Nullification.**

1. If (a) the Court should for any reason fail to certify a class for settlement; or (b) the Court should for any reason fail to approve the material terms of this Settlement in a form agreed to by the Parties; or (c) the Court should for any reason fail to enter the Judgment and Final Order; or (d) the Judgment and Final Order is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void, (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court, and (iv) Settlement Class Counsel shall make repayment of any disbursements it received from the Gross Settlement Amount.

2. If ten percent (10%) or more of the Settlement Class Members request exclusion

1 and opt out of this Settlement, then Q&B in its sole discretion may nullify and void this  
2 Agreement in its entirety. Q&B shall have ten (10) calendar days after expiration of the opt-out  
3 period, or ten (10) calendar days after notice from the Settlement Administrator, whichever is  
4 later, to inform the Parties of its decision to nullify and void this Agreement if ten percent (10%)  
5 or more of the Settlement Class has requested exclusion. Defendant Q&B shall pay all costs  
6 incurred by the Settlement Administrator should it exercise its rights under this Section IV(D)(2).

7 3. If it is determined that the number of Qualifying Work Weeks between October  
8 26, 2016 and May 15, 2022 exceeds 46,653 Workweeks (42,412, plus 10% of 42,412), then, ,  
9 Defendant Q&B shall increase the Gross Settlement Amount in proportion to the increased  
10 percentage – for example, if such increase in workweeks is 15% over 42,412 workweeks, the  
11 Gross Settlement Amount will increase by 5%, The additional value of each Qualifying Work  
12 Week shall be calculated by dividing \$1,150,000 by 42,412, which amounts to \$27.12. Thus, for  
13 example, should there be 47,000 Qualifying Work Weeks between October 26, 2016 and May  
14 15, 2022, then Defendant Q&B shall pay an additional \$9,410.64 as part of the Gross Settlement  
15 Amount.  $((47,000 \text{ Qualifying Work Weeks} - 46,653 \text{ Qualifying Work Weeks}) \times \$27.12 /$   
16  $\text{Qualifying Work Week.})$

17 4. Invalidation of any material term of this Agreement shall invalidate this  
18 Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining  
19 provisions shall remain in full force and effect.

20 5. In the event that for any reason final distribution of the Gross Settlement Amount  
21 does not occur (for example, because this Agreement and/or the Judgment and Final Order is  
22 modified or reversed on appeal), the entire Settlement Sum shall remain the sole property of  
23 Defendants (minus any administrative expense and fees incurred by the Settlement  
24 Administrator).

25 6. In the event of a timely appeal from the Judgment and Final Order, the Judgment  
26 and Final Order shall be stayed, and the Settlement Sum shall not be distributed to Settlement  
27 Class Members pending the completion of the appeal.

1 **V. RELEASE.**

2 **A. Release by Settlement Class Members**

3 Upon entry of the Judgment and Final Order in the Litigation and payment to the  
4 Settlement Administrator of the Gross Settlement Amount (as the same may be escalated  
5 pursuant to the Escalator Option) by Defendants, as well as the Employer's Taxes, Plaintiff and  
6 each and every Participating Class Member shall have fully, finally, and forever released,  
7 relinquished, and discharged each and all of the Released Parties in accordance with the  
8 definition of the Released Class Claims in Section I(R) of this agreement. With respect to FLSA  
9 claims, by negotiating the settlement check referred to in Section III(D)(12) and (13), a  
10 Participating Class Member shall be deemed to have opted in and to have fully, finally, and  
11 forever released, relinquished, and discharged each and all of the Released Parties from any and  
12 all FLSA claims included in the Released Class Claims.

13 Each and every Participating Class Member shall be deemed to have acknowledged that  
14 this Agreement is intended to include in its effect all Released Class Claims.

15 Plaintiff and each and every Participating Class Member shall be deemed to have  
16 acknowledged and agreed that: (1) their claims for missed meal and rest breaks, overtime  
17 compensation, minimum wages, wages for all hours worked, statutory and civil penalties, and  
18 any other payments and/or penalties sought in the Litigation are disputed; and (2) the payments  
19 set forth in Section III(D)(5) above constitute full payment of any amounts allegedly due to them  
20 in connection with the Released Class Claims. In light of the payment by Defendants of all  
21 amounts due to them in connection with the Released Class Claims, Plaintiff and Class Members  
22 shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 is  
23 not applicable to the Parties hereto. That section provides in pertinent part as follows:

24 An employer shall not require the execution of any release of a claim or right  
25 on account of wages due, or to become due, or made as an advance on wages to be earned, unless  
26 payment of those wages has been made.

27 Each Participating Class Member shall be deemed to have made the foregoing release as  
28

1 if by manually signing it.

2 **B. PAGA Release**

3 Upon entry of the Judgment and Final Order in the Litigation and, payment to the  
4 Settlement Administrator of the Gross Settlement Amount (as the same may be escalated  
5 pursuant to the Escalator Option) and Employer's Taxes by Defendants, Plaintiff, each Alleged  
6 Aggrieved Employee, and the State of California (to the extent permitted by law) shall have,  
7 fully, finally, and forever released, relinquished, and discharged each and all of the Released  
8 Parties of and from any and all claims, actions or causes of action under PAGA arising at any  
9 time during the PAGA Period that were alleged in the Lawsuit and the PAGA Notice, or that  
10 could have been alleged or raised in the Lawsuit based upon or arising out of the facts alleged  
11 therein and in the PAGA Notice, as well as any claims for attorney's fees and costs thereon. The  
12 claims released by this Section V(B) include any claim for civil penalties under PAGA for  
13 alleged unpaid wages, failure to pay overtime or other hours worked, "off-the-clock" claims,  
14 "rounding" claims, failure to pay overtime wages due based on the correct regular rate of pay,  
15 failure to provide compliant meal or rest periods, failure to make penalty payments or premium  
16 pay in lieu of providing meal or rest periods, failure to provide pay minimum wages, failure to  
17 reimburse reasonable business expenses, failure to pay wages timely during employment and  
18 upon termination of employment, failure to provide accurate wage statements, failure to maintain  
19 adequate payroll records, and for civil penalties under Labor Code sections 210, 226.3, 558,  
20 1174.5, 1197.1 and 2699, any alleged violation of California Labor Code sections alleged to have  
21 been violated in the First Amended Complaint, which includes, without limitation, Labor Code  
22 sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 246, 404, 432, 510, 512, 1174, 1194, 1194.2,  
23 1197, 1197.5, 1198, 1198.5, 2800, and 2802, 2810.3 and/or 2810.5 ("Released PAGA Claims").

24 **C. Release by Plaintiff**

25 In addition to the releases provided above in Section V(A) and (B), and for a valuable  
26 consideration, the receipt and adequacy of which is hereby acknowledged and except as  
27 specifically provided below, Plaintiff on behalf of himself, and each of his heirs, executors,  
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1 administrators, attorneys, devisees, successors, and assigns, upon entry of the Judgment and  
2 Final Order in the Litigation and payment to the Settlement Administrator of the Gross  
3 Settlement Amount (as the same may be escalated pursuant to the Escalator Option), and  
4 Employer's Taxes, by Defendants, does hereby release and forever discharge the Released  
5 Parties of and from any and all claims, causes of action, suits, debts, liens, contracts, judgments,  
6 agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses of any  
7 nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which  
8 Plaintiff now has against the Released Parties, or any of them, by reason of any matter, event,  
9 act, omission, cause or thing whatsoever from the beginning of time to the date of this  
10 Agreement, including but not limited to any and all Claims relating to or arising out of the hire,  
11 employment, demotion, termination or remuneration (including without limitation salary, bonus,  
12 incentive or other compensation, sick leave or medical insurance benefits), of Plaintiff by the  
13 Released Parties, including without limitation all Claims arising out of, based upon or relating to  
14 the Litigation, to the extent permitted by law.

15         Without limiting the generality of the foregoing, the Claims of Plaintiff released herein  
16 include any Claims arising out of, based upon, or in any way related to (i) claims of  
17 discrimination, and harassment; (ii) tort claims, intentional or negligent misrepresentation,  
18 invasion of privacy, loss of consortium, breach of fiduciary duty, assault, battery, sexual battery,  
19 or any other common law claim of any kind; (iii) any other violation or alleged violation of 'Title  
20 VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, as amended, the Fair Labor  
21 Standards Act, the Employee Retirement Income Security Act (to the extent permitted by law),  
22 the Americans With Disabilities Act, the Family and Medical Leave Act, the California Family  
23 Rights Act, the California Fair Employment and Housing Act, the Fair Credit Reporting Act,  
24 provisions of California Labor Code, the California Business and Professions Code, the  
25 California Industrial Wage Orders, the Civil Rights Act of 1866, and the Consolidated Omnibus  
26 Budget Reconciliation Act; and (iv) claims relating to or arising under any other local, state or  
27 federal statute, regulation or principle of common law governing the employment of individuals



1 and/or discrimination in employment, to the extent permitted by law. However, the Claims that  
2 Plaintiff releases does not include, and expressly excludes, his individual claims against the  
3 Released Parties for retaliation, wrongful termination of employment in violation of public  
4 policy, intentional infliction of emotional distress, and negligent infliction of emotional distress.

5 Plaintiff expressly waives all rights and benefits afforded by section 1542 of the Civil  
6 Code of the State of California, quoted below, with respect to all Claims contained in the release  
7 above pertaining to the Released Parties and he does so understand the significance of that  
8 waiver. Section 1542 of the Civil Code provides:

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

13 This Agreement does not release claims that cannot be released as a matter of law,  
14 including but not limited to claims for indemnity under California Labor Code section 2802,  
15 workers' compensation benefits, or any right to file an application for award for original  
16 information submitted pursuant to Section 21F of the Securities Exchange Act of 1934.

## 17 **VI. MISCELLANEOUS PROVISIONS.**

### 18 **A. Amendments.**

19 The terms and provisions of this Agreement may be amended only by a written  
20 agreement that is both (a) signed by the Plaintiff, Class Counsel, and Defendants' Counsel and  
21 (b) approved by the Court.

### 22 **B. Assignment.**

23 None of the rights, commitments, or obligations recognized under this Agreement may be  
24 assigned by any Party, Settlement Class Member, Class Counsel, or Defendants' Counsel  
25 without the express written consent of each Party and their respective counsel hereto. The  
26 representations, warranties, covenants, and agreements contained in this Agreement are for the  
27 sole benefit of the Parties under this Agreement and shall not be construed to confer any right or  
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1 to avail any remedy to any other person.

2 **C. Governing Law.**

3 This Agreement shall be governed, construed, and interpreted, and the rights of the  
4 Parties shall be determined, in accordance with the laws of the State of California, irrespective of  
5 the State of California's choice of law principles.

6 **D. Entire Agreement.**

7 This Agreement, including the Exhibits referred to herein, which form an integral part  
8 hereof, contains the entire understanding of the Parties hereto with respect to the subject matter  
9 contained herein. In case of any conflict between text contained in Sections I through VI of this  
10 Agreement and text contained in Exhibits to this Agreement, the former shall be controlling.  
11 There are no restrictions, promises, representations, warranties, covenants, or undertakings  
12 governing the subject matter of this Agreement other than those expressly set forth or referred to  
13 herein and the Memorandum of Understanding. This Agreement and the Memorandum of  
14 Understanding supersede all prior agreements and understandings among the Parties hereto with  
15 respect to the settlement of the Litigation. In case of any conflict between this Agreement and  
16 the Memorandum of Understanding, this Agreement shall control.

17 **E. Waiver of Compliance.**

18 Any failure of any Party, Defendants' Counsel, and/or Class Counsel hereto to comply  
19 with any obligation, covenant, agreement, or condition herein may be expressly waived in  
20 writing, to the extent permitted under applicable law, by the Party or Parties and their respective  
21 counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A  
22 waiver or failure to insist upon strict compliance with any representation, warranty, covenant,  
23 agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any  
24 subsequent or other failure.

25 **F. Counterparts.**

26 This Agreement, and any amendments hereto, may be executed in any number of  
27 counterparts, facsimile and/or by PDF, AdobeSign, or DocuSign signatures and any Party and/or  
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1 their respective counsel hereto may execute any such counterpart, each of which when executed  
2 and delivered shall be deemed to be an original and all of which counterparts taken together shall  
3 constitute but one and the same instrument. It shall not be necessary in making proof of this  
4 Agreement or any counterpart hereof to produce or account for any of the other counterparts.

5 **G. Attorneys' Fees and Costs.**

6 Neither Class Counsel nor any other attorneys acting for, or purporting to act for the  
7 Settlement Class, Settlement Class Members, or Plaintiff may recover or seek to recover any  
8 amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement  
9 Amount except as expressly provided herein. However, if any party brings an action to enforce  
10 this Agreement, the prevailing party shall be entitled to its/his reasonable attorneys' fees and  
11 costs.

12 **H. Meet and Confer Regarding Disputes.**

13 Should any dispute arise among the Parties or their respective counsel regarding the  
14 implementation or interpretation of this Agreement, Class Counsel and Defendants' Counsel  
15 shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to  
16 the Court.

17 **I. Jurisdiction of the Court.**


18 The Parties agree that this Settlement Agreement shall be enforceable by the Court  
19 pursuant to California Code of Civil Procedure section 664.6. The Court shall retain jurisdiction  
20 with respect to the interpretation, implementation, and enforcement of the terms of this  
21 Agreement and all orders and judgments entered in connection therewith, and the Parties and  
22 their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing,  
23 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in  
24 connection therewith.

25 **IT IS SO STIPULATED.**

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27 DATED: Nov 7, 2022, 2022

Usa Corrales-Rojas

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By: Usa Corrales-Rojas (Nov 7, 2022 11:12 PST)  
Plaintiff and Class Representative

DATED: \_\_\_\_\_, 2022

Q & B Foods, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2022

ESG Employer Resources, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1 **APPROVED AS TO FORM:**

2 Dated: 11/9, 2022

BIBIYAN LAW GROUP, P.C.

3  
4 Vedang J. Patel

5 By: DAVID D. BIBIYAN  
6 DIEGO AVILES  
7 VEDANG J. PATEL

8 Attorneys for Plaintiffs  
9 USA CORRALES-ROJAS, on behalf of  
10 himself and all others similarly situated

11 Dated: \_\_\_\_\_, 2022

PILLSBURY WINTHROP SHAW PITTMAN  
LLP

12 By: PAULA M. WEBER  
13 Four Embarcadero Center, 22<sup>nd</sup> Floor  
14 San Francisco, CA 94111-5998

15 Attorneys for Defendant  
16 Q & B FOODS, INC.

17 Dated: \_\_\_\_\_, 2022

FISHER & PHILLIPS LLP

18 BY:

19 BORIS SORSHER  
20 Attorneys for Defendant  
21 ESG EMPLOYER RESOURCES INC.