

**FILED**  
**ALAMEDA COUNTY**

MAY 05 2023

CLERK OF THE SUPERIOR COURT

By Nicole [Signature]

1 DOUGLAS HAN (SBN 232858)  
SHUNT TATAVOS-GHARAJEH (SBN 272164)  
2 HAIG HOGDANIAN (SBN 334699)  
**JUSTICE LAW CORPORATION**  
3 751 N. Fair Oaks Avenue, Suite 101  
Pasadena, California 91103  
4 Telephone: (818) 230-7502  
5 Facsimile: (818) 230-7259

6 *Attorneys for Plaintiff*

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ALAMEDA**

10 JESUS ALDANA, individually, and on behalf  
of other members of the general public similarly  
11 situated;

12 Plaintiff,

13 v.

14 LYRICAL FOODS, INC. d/b/a KITE HILL, a  
California corporation; and DOES 1 through  
15 100, inclusive;

16 Defendants.

Case No.: 22CV005107

Assigned for All Purposes to:  
Honorable Evelio Grillo  
Department 21

**CLASS ACTION**

**~~[PROPOSED]~~ ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT AND SETTING HEARING  
FOR FINAL APPROVAL OF  
SETTLEMENT**

**[Reservation ID: 431833774749]**

Hearing Date: May 5, 2023  
Hearing Time: 9:00 a.m.  
Hearing Place: Department 21

Complaint Filed: January 7, 2022  
FAC Filed: March 1, 2023  
Trial Date: None Set

Electronically Received 04/04/2023 05:30 PM

1 The Court, having read and considered the papers filed in support of the motion, the proposed  
2 settlement documents, the arguments of counsel, and good cause appearing therefore;

3 **IT IS HEREBY ORDERED:**

4 1. This Order incorporates by reference the definitions in the Joint Stipulation and  
5 Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), and all terms defined  
6 therein shall have the same meaning in this Order as set forth in the Settlement.

7 2. It appears to the Court on a preliminary basis the Settlement is fair, adequate, and  
8 reasonable. The Court recognizes the value of the monetary recovery provided to all Class Members and  
9 finds such recovery is fair, adequate, and reasonable when balanced against further litigation. It appears  
10 the Parties have conducted significant investigation, discovery, and research such that both Parties’  
11 counsel are able to reasonably evaluate their positions at this time. It further appears the Settlement, at  
12 this time, will avoid substantial additional costs by all Parties and avoid the risks and delay inherent in  
13 further prosecution. It also appears the Parties reached the Settlement as the result of intensive, serious,  
14 and non-collusive, arm’s-length negotiations facilitated by an experienced and neutral mediator. Thus,  
15 on a preliminary basis, the Court finds the Settlement appears to be within the range of reasonableness  
16 of a settlement that could be given final approval by this Court. Accordingly, the Motion for Preliminary  
17 Approval of Class Action Settlement is hereby **GRANTED**.

18 3. The following persons are conditionally certified as “Class Members” or the “Class” for  
19 settlement purposes only: all current and former hourly-paid or non-exempt employees of Defendant  
20 Lyrical Foods, Inc. d/b/a Kite Hill Co. (“Defendant”) within the State of California at any time during  
21 the period from July 12, 2017, to December 31, 2022. “Participating Class Members” means all Class  
22 Members who do not submit valid and timely requests to exclude themselves from the Class portion of  
23 the Settlement.

24 4. “Eligible Aggrieved Employees” means aggrieved employees eligible to recover the  
25 Private Attorneys General Act of 2004 (“PAGA”) Payment consisting of all current and former hourly-  
26 paid or non-exempt employees (whether hired directly or through staffing agencies) of Defendant within  
27 the State of California during the period from January 20, 2022, to December 31, 2022.  
28

1           5.     The Class satisfies the certification requirements of a class because the Class Members  
2 are readily ascertainable, and a well-defined community of interest exists in the questions of law and  
3 fact. If the Settlement Agreement does not become final and effective, the fact the Parties were willing  
4 to stipulate to certification of the Class as part of the Settlement Agreement shall have no bearing on  
5 and shall not be admissible or used in any way in connection with the question of whether the Court  
6 should certify any claims in a non-settlement context in this case or in any other lawsuit.

7           6.     Plaintiff Jesus Aldana (“Plaintiff”) is appointed as the class representative.

8           7.     Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation are appointed as  
9 Class Counsel.

10          8.     The Parties’ notice plan is constitutionally sound and hereby approved as the best notice  
11 practicable. The Court Approved Notice of Class Action and PAGA Settlement (“Notice”), attached  
12 hereto as **Exhibit A**, is sufficient to inform Class Members of the terms of the Agreement, their rights  
13 to receive monetary payments under the Agreement, and date and location of the Final Approval  
14 Hearing. The Election Not to Participate In (“Opt Out” From) Class Action Settlement (“Exclusion  
15 Form”), attached hereto as **Exhibit B**, is sufficient to inform the Class Members of their right to exclude  
16 themselves from the Class portion of the Agreement. The Notice and Exclusion Form are collectively  
17 known as the “Notice Packet”.

18          9.     The Notice Packet fairly, plainly, accurately, and reasonably informs Class Members of:  
19 (a) nature of the action, definition of the Class, identity of Class Counsel, and material terms of the  
20 Agreement; (b) application for the Attorney Fee Award, Cost Award, and Class Representative  
21 Enhancement Payment; (c) formulas used to determine each Participating Class Member’s Individual  
22 Settlement Share and Eligible Aggrieved Employee’s portion of the PAGA Payment; (d) Class  
23 Members’ right to appear through counsel if they desire; (e) how to object to or opt out from the  
24 Agreement; and (f) how to obtain additional information. The Court finds the notice requirements of  
25 California Rule of Court, rule 3.769, subdivision (f), are satisfied and that the Notice Packet adequately  
26 advises Class Members of their rights. The Parties’ counsel are authorized to correct any typographical  
27 errors in the Notice Packet and make clarifications, to the extent they are found or needed. But such  
28 corrections must not materially alter the substance of the Notice Packet and other notice documents.

1           10.    The rights of any potential dissenters to the Settlement are adequately protected in that  
2 dissenters may exclude themselves from the Settlement and, by extension, the Released Claims.

3           11.    The Court finds the notice of settlement Plaintiff provided to the California Labor and  
4 Workforce Development Agency satisfies the notice requirements of Labor Code section 2698, *et seq.*  
5 (PAGA).

6           12.    The Court preliminarily approves the settlement of claims under PAGA according to the  
7 terms and conditions in the Settlement Agreement.

8           13.    To the extent permitted by law, pending a determination as to whether the Agreement  
9 should be approved, Class Members, whether directly, representatively, or in any other capacity,  
10 whether or not such persons have appeared in this case, shall not institute or prosecute any of the  
11 Released Claims against the Released Parties.

12           14.    Phoenix Class Action Administration Solutions is appointed to act as the Settlement  
13 Administrator, pursuant to the terms set forth in the Settlement Agreement. The Settlement  
14 Administrator is ordered to carry out the settlement administration according to the terms of the  
15 Settlement Agreement and in conformity with this Order.

16           15.    Within fifteen (15) calendar days of preliminary approval by the Court of a stipulated  
17 settlement, Defendant shall provide to the Settlement Administrator the Class Data.

18           16.    The Settlement Administrator shall run all addresses contained in the Class Data through  
19 the United States Postal Service National Change of Address Database (“NCOA”) to obtain current  
20 address information. The Settlement Administrator shall mail the Notice Packet to the Class Members  
21 via first-class regular U.S. Mail using the most current mailing address information available within  
22 fourteen (14) calendar days after the receipt of the Class Data from Defendant.

23    ///

24    ///

25    ///

1           17. If a Notice Packet is returned because of an undeliverable address, the Settlement  
2 Administrator will use the NCOA to conduct one (1) skip trace search to attempt to locate the Class  
3 Member's correct address and will remail the Notice Packet to the Class Member. If the Settlement  
4 Administrator is unable to locate a better address, the Notice Packet shall be remailed to the original  
5 address. Those Class Members who receive a remailed Notice Packet, whether by skip trace or  
6 forwarded mail, will have their Response Deadline to postmark a request for exclusion from or objection  
7 to the Settlement extended by ten (10) calendar days from the original Response Deadline. The  
8 Settlement Administrator will remail the Notice Packet (or other such notice as ordered by the Court) to  
9 each Class Member whose Notice Packet is returned the Settlement Administrator only once, within  
10 five (5) calendar days of receiving the undeliverable notice.

11           18. The procedures and 45-day deadline ("Response Deadline") for Class Members to  
12 request exclusion from the Settlement, object to the Settlement, and challenge the workweeks and/or  
13 pay periods is adopted as described in the Settlement.

14           19. The request for exclusion should: (a) include the Class Member's name and address, and  
15 the last four digits of the Class Member's Social Security Number; (b) be addressed to the Settlement  
16 Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be  
17 postmarked no later than the Response Deadline. A request for exclusion will be deemed valid if it is  
18 postmarked no later than the Response Deadline and provides sufficient information to allow the  
19 Settlement Administrator to identify the Class Member and understand the request.

20           20. Objections should: (a) state the objecting Class Member's full name, address, and  
21 telephone number, as well as the name and address of counsel, if any; (b) describe, in clear and concise  
22 terms, the Class Member's reasons for objecting and the legal and factual arguments supporting the  
23 objection; (c) identify any evidence supporting the factual basis for the objection; (d) be signed by the  
24 objecting Class Member, his or her lawful representative, or his or her attorney, if any; and (e) state  
25 whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final  
26 Approval Hearing. An objection will be deemed valid if it is postmarked no later than the Response  
27 Deadline and provides sufficient information to allow the Settlement Administrator to identify the Class  
28 Member and understand the Class Member objects to the Settlement.

1           21.    Class Members may dispute the information provided in their Notice Packets. All such  
2 disputes must be in writing, postmarked by the Response Deadline, and sent via first-class regular U.S.  
3 mail to the Settlement Administrator. To the extent a Class Member disputes the number of workweeks  
4 or pay periods with which he or she has been credited or the amount of his or her Individual Settlement  
5 Share or portion of the PAGA Payment, the Class Member must produce and submit evidence to the  
6 Settlement Administrator showing that such information is inaccurate.

7           22.    At the Final Approval Hearing, the Court will determine whether the Settlement  
8 Agreement should be granted final approval as fair, reasonable, and adequate. The Court reserves the  
9 right to continue the date of the Final Approval Hearing without further notice to the Class Members.  
10 The Court also retains jurisdiction to consider all further applications arising out of or in connection  
11 with the Settlement Agreement.

12           23.    The Parties are ordered to carry out the Settlement Agreement according to the terms of  
13 the Settlement Agreement.

14           24.    Pending further orders of this Court, all proceedings in this matter, except those  
15 contemplated in this Preliminary Approval Order and in the Settlement Agreement, are stayed.

16    ///

17    ///

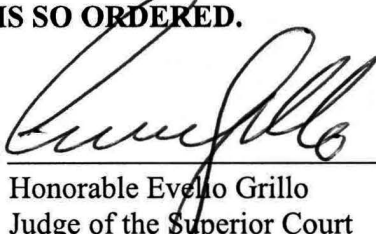
18    ///

1           25. The dates for future events contemplated herein and under the Settlement Agreement  
2 are set forth below:

3 a.	Deadline for Defendant to deliver Class Data to Settlement Administrator	Within fifteen (15) calendar days of preliminary approval by the Court of a stipulated settlement
4 b.	Deadline for Settlement Administrator to mail the Notice Packets to Class Members	Within fourteen (14) calendar days after the receipt of the Class Data from Defendant
5 c.	Deadline for Class Members to send requests for exclusion, written objections, and/or challenges to the Settlement Administrator	Within forty-five (45) calendar days from the initial mailing of the Notice Packet
6 d.	Deadline for Class Members to send requests for exclusion, written objections, and/or challenges to the Settlement Administrator if they receive remained Notice Packets	Within an additional ten (10) calendar days from the original Response Deadline
7 e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment	Within sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure section 1005
8 f.	Final Approval Hearing	_____, at _____ a.m./p.m. in Department 21

17  
18 **IT IS SO ORDERED.**

19  
20 Dated:           MAY 05 2023          

21 By:                       
22 Honorable Evello Grillo  
23 Judge of the Superior Court

# **EXHIBIT A**



## **NOTICE OF CLASS ACTION AND PAGA SETTLEMENT**

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED SETTLEMENT.  
PLEASE READ THIS NOTICE CAREFULLY.  
YOUR LEGAL RIGHTS ARE AFFECTED BY WHETHER YOU DO OR DON'T ACT.**

*A court authorized this notice. This is not a solicitation.*

- The proposed settlement (“Settlement”) of the above-captioned action (the “Action”) resolves a lawsuit over whether Lyrical Foods, Inc. d/b/a Kite Hill Co. properly paid its employees all wages owed, provided its employees with proper meal and rest breaks, and reimbursed its employees for business-related expenses, among other things.
- The two sides disagree on the merit and value of the claims alleged in the Action but have agreed to settle.
- The Settlement will provide approximately \$156,666.67 to the Class Members and \$5,000 to the Eligible Aggrieved Employees. Class Members and Eligible Aggrieved Employees are defined in Section No. 2 below. Payments will be made if the Court approves the Settlement.
- As a Class Member and/or Eligible Aggrieved Employee, you have options with respect to your involvement in the Settlement. The table below summarizes your rights with respect to each option and the steps you must take to select each option. These options are also explained in more detail later in this Notice.

**There will be no retaliation against you for exercising any of the rights set forth in this Notice.**

<b>OPTIONS</b>	<b>CLASS MEMBERS</b>	<b>ELIGIBLE AGGRIEVED EMPLOYEES</b>
<b>DO NOTHING</b>	You will become part of the Action. The Settlement Administrator will mail you your Individual Settlement Share check, and you will give up your right to pursue the Released Claims as defined in Section No. 9 below.	You will become part of the Action. The Settlement Administrator will mail you a check for your portion of the PAGA Payment.
<b>DISPUTE WORKWEEKS AND/OR PAY PERIODS</b>	You may dispute the number of workweeks with which you have been credited and/or the amount of your Individual Settlement Share. The procedure for disputing this information is described in Section No. 6 below.	You may dispute the number of pay periods with which you have been credited and/or the amount of your portion of the PAGA Payment. The procedure for disputing this information is described in Section No. 6 below.
<b>OBJECT</b>	You may object to the class portion of the Settlement. If you object and the Court approves the Settlement, you will become part of the Action. The procedure for objecting is described in Section No. 7 below.	You do not have the right to object to the PAGA portion of the Settlement.

-1-

Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

<b>REQUEST EXCLUSION</b>	You may request exclusion from the class portion of the Settlement. <b>You will not receive an Individual Settlement Share</b> , and you will not give up your right to pursue the Released Claims as defined in Section No. 9 below. The procedure for requesting exclusion is described in Section No. 7 below.	You do not have the right to request exclusion from the PAGA portion of the Settlement.
--------------------------	---	---

**WHAT INFORMATION IS IN THIS NOTICE?**

1. What Is This Case About? ..... Page 2

2. Why Have I Received This Notice? ..... Page 3

3. Who Are the Attorneys Representing Plaintiff and the Class? ..... Page 3

4. How Does This Settlement Work? ..... Page 4

5. How Do I Dispute the Information Included in This Notice? ..... Page 4

6. How Do I Object to the Settlement?..... Page 5

7. How Do I Opt Out or Exclude Myself From This Settlement? ..... Page 5

8. How Does This Settlement Affect My Rights? What Are the Released Claims and PAGA Released Claims? ..... Page 6

    a. Released Claims ..... Page 6

    b. PAGA Released Claims ..... Page 7

9. How Much Can I Expect to Receive From This Settlement? ..... Page 7

    a. How Will My Individual Settlement Share Be Calculated? ..... Page 7

    b. How Will My Portion of the PAGA Payment Be Calculated? ..... Page 8

    c. When Will My Settlement Payment Be Mailed? ..... Page 8

10. How Will the Attorneys for the Plaintiff and the Class Be Paid? ..... Page 9

11. Final Approval Hearing ..... Page 9

12. How Do I Get More Information? ..... Page 9

**The purpose of this Notice is to provide a summary of the claims alleged in the Action and the key terms of the Settlement, and to explain your rights and options with respect to the Settlement. Detailed explanations of the terms of the Settlement can be found at [URL of Settlement Website].**

**1. What Is This Case About?**

On January 7, 2022, Plaintiff Jesus Aldana (“Plaintiff”), a former employee of Lyrical Foods, Inc. d/b/a Kite Hill Co. (“Defendant”) initiated a class action lawsuit against Defendant in the Superior Court of California, County of Alameda (the “Action”). He believed Defendant was violating the California Labor Code with respect to all of Defendant’s hourly employees in California. Specifically, Plaintiff stated his belief that Defendant was violating Labor Code provisions related to properly paying employees all wages owed, including minimum and overtime wages; properly compensating employees for missed, interrupted, short, and late meal and rest breaks; paying employees all wages owed in a timely manner both during employment and upon discharge or termination; providing employees with complete and accurate wage statements; keeping complete and accurate payroll records; and reimbursing employees for all necessary business-related expenses. A copy of Plaintiff’s complaint can be found at: [URL of Settlement Website].

///

Plaintiff and Defendant (collectively, the “Parties”) attended a mediation on November 17, 2022, to attempt to resolve the claims Plaintiff made against Defendant in the Action without going to trial. With the help of the mediator, the Parties were able to reach the proposed Settlement of the Action.

On January 20, 2023, Plaintiff gave notice to the California Labor and Workforce Development Agency (“LWDA”) that he believed Defendant was violating the California Labor Code with respect to all of Defendant’s hourly employees in California. Specifically, Plaintiff stated his belief that Defendant was violating Labor Code provisions related to properly paying employees all wages owed, including minimum and overtime wages; properly compensating employees for missed, interrupted, short, and late meal and rest breaks; paying employees all wages owed in a timely manner both during employment and upon discharge or termination; providing employees with complete and accurate wage statements; keeping complete and accurate payroll records; and reimbursing employees for all necessary business-related expenses. A copy of Plaintiff’s letter to the LWDA can be found at: [URL of Settlement Website]. Plaintiff also filed a First Amended Complaint adding a cause of action for violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)).

The Court has not made any determination as to whether Plaintiff’s claims have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties avoid the risks and cost of a trial.

Defendant denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class Members, defined in Section No. 3 below. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant.

**3. *Why Have I Received This Notice?***

Defendant’s personnel records indicate that you may be a Class Member. You are a Class Member if you are currently or were formerly employed by Defendant as an hourly-paid or non-exempt employee in California at any time during the period from July 12, 2017, to December 31, 2022 (“Class Period”). In addition, you are an Eligible Aggrieved Employee if you are currently or were formerly employed by Defendant as an hourly-paid or non-exempt employee (whether hired directly or through staffing agencies) in California at any time during the period from January 20, 2022, to December 31, 2022 (“PAGA Timeframe”).

A Preliminary Approval Hearing regarding the Settlement was held on [date of preliminary approval], in the Superior Court of California, County of Alameda. At the Preliminary Approval Hearing, the Court directed that you receive this Notice.

The Court has determined only that there is enough evidence to suggest that the Settlement might be fair, adequate, and reasonable. A final determination of these issues will be made at the Final Approval Hearing.

///  
///  
///

**4. *Who Are the Attorneys Representing Plaintiff and the Class?***

**Attorneys for Plaintiff and the Class**

**JUSTICE LAW CORPORATION**

Douglas Han

Shunt Tatavos-Gharajeh

751 N. Fair Oaks Avenue, Suite 101

Pasadena, California 91103

Telephone: (818) 230-7502

Facsimile: (818) 230-7259

The Court has decided that Justice Law Corporation is qualified to represent Plaintiff, on an individual basis, and you and all other Class Members, on a class-wide basis, simultaneously. Class Counsel is working on behalf of Plaintiff and the Class at large. If you want your own attorney, you may hire one at your own cost.

**5. *How Does This Settlement Work?***

In this Action, Plaintiff sued on behalf of himself and on behalf of the Class Members and Eligible Aggrieved Employees.

The Settlement is a class and representative action settlement, meaning the Settlement resolves the Released Claims of all Class Members, except for those Class Members who exclude themselves from the class portion of the Settlement, and the PAGA Released Claims of Plaintiff as an agent and proxy of the LWDA and the LWDA.

Under the terms of the Settlement, the total maximum amount that Defendant will be required to pay is three hundred twenty-five thousand dollars (\$325,000) ("Gross Settlement Amount"). The Gross Settlement Amount will be used to pay the following amounts, subject to Court approval: (1) \$10,000 Class Representative Enhancement Payment to Plaintiff; (2) up to \$10,000 in Administration Costs to the Settlement Administrator; (3) \$20,000 PAGA Payment, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA, and twenty-five percent (25%) of which (\$5,000) will be distributed to Eligible Aggrieved Employees, on a pro-rata basis; (4) \$108,333.33 Attorney Fee Award to Class Counsel (1/3 of the Gross Settlement Amount); and (5) \$20,000 Cost Award to Class Counsel. The amount that remains after all payments are made is the Net Settlement Amount, which is currently estimated to be \$156,666.67.

**6. *How Do I Dispute the Information Included in This Notice?***

Section No. 10 below states the number of workweeks you worked during the Class Period, and, if you are also an Eligible Aggrieved Employee, the number of pay periods you worked during the PAGA Timeframe, based on Defendant's records. Section No. 10 also states the estimated amount of your Individual Settlement Share, based on this number of workweeks, and your estimated PAGA Payment, based on this number of pay periods (if applicable). If you believe the number of workweeks and/or pay periods with which you have been credited, and therefore your estimated Individual Settlement Share and/or portion of the PAGA Payment, is inaccurate, you may dispute this information.

///  
///

-4-

Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

Disputes must be in writing and must be submitted to the Settlement Administrator along with evidence showing that the disputed information is inaccurate. If the Settlement Administrator does not receive evidence from you rebutting the disputed information, the number of workweeks and/or pay periods contained in Defendant's records will be presumed correct, and your challenge will be rejected. However, if you do submit evidence rebutting the disputed information, the Parties will evaluate this evidence and make the final decision as to the number of workweeks and/or pay periods with which you will be credited. If the Parties cannot agree on the number of workweeks and/or pay periods with which you should be credited, the Court will make the final decision.

Your dispute should be signed and dated and must be mailed, along with your supporting evidence, by first-class U.S. mail, **postmarked no later than [Response Deadline]** to: **THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR C/O [ADMINISTRATOR], [INSERT ADDRESS]**. You are encouraged to keep copies of any evidence you submit to the Settlement Administrator.

#### **7. How Do I Object To The Settlement?**

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney. The written objection should be signed and dated and must be mailed by first-class U.S. mail, **postmarked no later than [Response Deadline]** to: **THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR C/O [ADMINISTRATOR], [INSERT ADDRESS]**.

The written objection should: (a) state the objecting Class Member's full name, address, and telephone number, and the name and address of counsel, if any; (b) describe, in clear and concise terms, the reasons for objecting and the legal and factual arguments supporting the objection; (c) identify any evidence supporting the factual basis for the objection; (d) be signed by the objecting Class Member, his or her lawful representative, or his or her attorney, if any; and (e) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing. You are encouraged to include all the foregoing information in your objection. However, your objection will be valid as long as it is postmarked on or before [Response Deadline] and provides enough information to allow the Settlement Administrator to identify you and understand that you object.

Class Members may also appear at the Final Approval Hearing, either in person or through their own counsel, and orally object to the Settlement. Class Members' valid written objections to the Settlement will still be considered even if the objecting Class Member does not appear at the Final Approval Hearing. If you object, and the Court approves the Settlement, you will be mailed your Individual Settlement Share and will be bound by the terms of the Settlement, meaning you will be unable to sue Defendant for the Released Claims.

You may not object to the PAGA portion of the Settlement. If the Court approves the Settlement, all Eligible Aggrieved Employees will be mailed checks for their portions of the PAGA Payment.

#### **8. How Do I Opt Out Or Exclude Myself From This Settlement?**

You may exclude yourself from the class portion of the Settlement (*i.e.*, "opt out"). A form ("ELECTION NOT TO PARTICIPATE IN ('OPT OUT' FORM) CLASS ACTION SETTLEMENT") ("Exclusion Form") has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes the same information. If you opt out of the Settlement, you will not receive an Individual Settlement Share, and you will not be releasing the Released Claims. The Exclusion Form should

-5-

Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

be signed and dated and must be mailed by first-class U.S. Mail, **postmarked no later than [Response Deadline]** to: **THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR C/O [ADMINISTRATOR], [INSERT ADDRESS]**. You cannot exclude yourself by phone.

The Exclusion Form should: (a) include the Class Member's name, address, and the last four digits of his or her Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than [Response Deadline]. You are encouraged to include all the foregoing information in your request for exclusion. However, your request for exclusion will be deemed valid as long as it is postmarked no later than the Response Deadline and provides sufficient information to allow the Settlement Administrator to identify you and understand your request.

You do not have the right to opt out of the PAGA portion of the Settlement. If you are an Eligible Aggrieved Employee and you submit a valid Exclusion Form, if the Court approves the Settlement, you will be still be mailed a check for your portion of the PAGA Payment.

If you do not submit a valid Exclusion Form, you will become part of the Action. The Settlement Administrator will mail you your Individual Settlement Share and you will be unable to sue Defendant for the Released Claims.

You are responsible for ensuring that the Settlement Administrator receives any request for exclusion you submit.

**9. *How Does This Settlement Affect My Rights? What Are the Released Claims and PAGA Released Claims?***

**A. Released Claims**

If you do not opt out of the class portion of the Settlement, and if the Court approves the proposed Settlement and after Defendant fully funds the Gross Settlement Amount, in exchange for your Individual Settlement Share, you will be releasing Defendant and its affiliated companies and their respective parent companies, subsidiaries, affiliates, shareholders (including SEMCAP and Arborview), members, owners, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties") from the Released Claims. The Released Claims are the claims contained in Plaintiff's complaint, or that could have been included in Plaintiff's complaint based on the same facts, that arose between July 12, 2017, and December 31, 2022, and that are related to unpaid wages, including minimum, overtime, and premium wages; paying employees all wages due to them in a timely manner, both during and upon termination of employment; missed, interrupted, short, and late meal and rest breaks; providing employees with complete and accurate wage statements; reimbursing employees for all necessary business-related costs and expenses; keeping complete and accurate payroll records; and properly calculating and paying sick leave pay. The Released Claims do not include the PAGA Released Claims. You will not release the PAGA Released Claims.

**B. PAGA Released Claims**

If the Court approves the proposed Settlement and after Defendant fully funds the Gross Settlement Amount, in exchange for your portion of the PAGA Payment, Plaintiff (alongside the LWDA) will be barred from seeking the PAGA Released Claims as agent and proxy of the LWDA against Defendant and the other Released Parties. The PAGA Released Claims are the claims contained in Plaintiff's letter to the LWDA, or that could have been

-6-

Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

included in Plaintiff's letter or in Plaintiff's complaint based on the same facts, that arose between January 20, 2022, and December 31, 2022, related to unpaid wages, including minimum, overtime, and premium wages; paying employees all wages due to them in a timely manner, both during and upon termination of employment; missed, interrupted, short, and late meal and rest breaks; providing employees with complete and accurate wage statements; reimbursing employees for all necessary business-related costs and expenses; keeping complete and accurate payroll records; and properly calculating and paying sick leave pay. Different from the Released Claims, the PAGA Released Claims all arise under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

**The full list of the Released Parties and the exact definitions of Released Claims and PAGA Released Claims can be reviewed at: [URL of Settlement Website].**

**10. How Much Can I Expect to Receive From This Settlement?**

**A. How Will My Individual Settlement Share Be Calculated?**

The Net Settlement Amount will be paid to the Class Members who do not opt out of the Settlement ("Participating Class Members") in the form of Individual Settlement Shares. If the Court approves any of the above-referenced payments in smaller amounts, the Net Settlement Amount will be larger. The Settlement Administrator will mail each Participating Class Member an Individual Settlement Share that is equal to: (1) the number of workweeks the Participating Class Member worked during the Class Period, (2) divided by the total number of workweeks worked by all Participating Class Members collectively during the Class Period, (3) which is then multiplied by the Net Settlement Amount. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of workweeks the Participating Class Member worked during the Class Period.

Your approximate Individual Settlement Share is \$ \_\_\_\_\_, less taxes. This is based on Defendant's records, which show you worked \_\_\_ workweeks during the Class Period. The amount of your Individual Settlement Share will change if Class Members opt out of the Settlement, if workweek estimates change, and/or if the Court does not approve all the above-referenced payments from the Gross Settlement Amount in full.

Twenty percent (20%) of your Individual Settlement Share will be treated as unpaid wages. The wages portion of your Individual Settlement Share will be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and will be reported on an IRS Form W-2. Eighty percent (80%) of your Individual Settlement Share will be treated as penalties, and interest. The penalties and interest portions of your Individual Settlement Share will be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will mail your Individual Settlement Share check to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

///  
///  
///

**B. How Will My Portion of the PAGA Payment Be Calculated?**

The Settlement Administrator will mail each Eligible Aggrieved Employee a check for the Eligible Aggrieved Employee's portion of the PAGA Payment, which will be equal to: (1) the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe, (2) divided by the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Timeframe, (3) which is then multiplied by the \$5,000 of the PAGA Payment allocated to the Eligible Aggrieved Employees. Therefore, the value of each Eligible Aggrieved Employee's portion of the PAGA Payment ties directly to the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe.

Your approximate portion of the PAGA Payment is \$ \_\_\_\_\_. This is based on Defendant's records, which show you worked \_\_\_\_\_ pay periods during the PAGA Timeframe. One hundred percent (100%) of this payment will be considered penalties, and you will be issued an IRS Form 1099 if your payment exceeds \$600. You are responsible for paying any federal, state, or local taxes owed as a result of this payment.

The Settlement Administrator will mail a check for your portion of the PAGA Payment to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

If you are not an Eligible Aggrieved Employee, this subsection B does not apply to you.

**C. When Will My Settlement Payment Be Mailed?**

No later than April 28, 2023, Defendant will fund Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the Qualified Settlement Fund ("QSF"). No later than May 26, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than June 30, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than July 28, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than August 25, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than September 29, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. No later than October 27, 2023, Defendant will fund an additional Twenty-Five Thousand Dollars and Zero Cents (\$25,000) of the Gross Settlement Fund into the QSF. Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall have deposited the remainder of the Gross Settlement into the QSF. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.

Within fourteen (14) calendar days after the Effective Final Settlement Date, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs.

It is strongly recommended that upon receipt of your Individual Settlement Share check and, if you are an Eligible Aggrieved Employee, your check for your portion of the PAGA Payment, you cash your check(s) immediately or before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200)



calendar days after the checks are initially mailed, pay the amount of the Individual Settlement Share(s) and/or portion(s) of the PAGA Payment to the *cy pres* recipient Legal Aid At Work.

**11. How Will the Attorneys for Plaintiff and the Class Be Paid?**

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed one-third (1/3) of the Gross Settlement Amount (or \$108,333.33) for attorneys' fees and up to \$20,000 for litigation costs.

Defendant has paid all its own attorneys' fees and costs.

As stated in Section No. 10 above, Plaintiff will also be paid a Class Representative Enhancement Payment, subject to Court approval.

**12. Final Approval Hearing**

The Court will hold a Final Approval Hearing regarding the Settlement on [date of final approval hearing] at [time a.m./p.m.], before the Honorable Evelio Grillo, located at 1225 Fallon Street, Oakland, California 94612, Department 21 (René C. Davidson Courthouse). You are not required to appear at this hearing. Any changes to the hearing date will be available on this website: [URL of Settlement Website]. This website will also include, among other things, the letter Plaintiff submitted to the LWDA, complaint Plaintiff filed, generic copies of this Notice, Exclusion Form, Settlement Agreement, all papers filed in connection with preliminary approval of the Settlement, all papers filed in connection with final approval of the Settlement, and, if the Settlement is approved, the Court's Final Approval Order.

**13. How Do I Get More Information?**

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the "The Lyrical Foods, Inc. d/b/a Kite Hill Co. class action and PAGA settlement."

This Notice does not contain all the terms of the proposed Settlement or all the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Alameda County Superior Court, at the René C. Davidson Courthouse located at 1225 Fallon Street, Oakland, California 94612, between 8:30 a.m. and 2:30 p.m. Records may be viewed here in person via the public terminals at the Civil Division. You can also access the Court's file online, free-of-charge by visiting the Superior Court of Alameda County Public Portal webpage: <https://eportal.alameda.courts.ca.gov/>. Once on this webpage, select "Searches." Doing so will take you to the "Search" webpage, where you can select "Case Number Search." This will take you to the "User account" webpage, where you can select the "Create new account" tab, under which you can select the bubble for "Public Users," which will then ask you to create an account using your name, email address, and phone number. After creating an account, you can use the case number of the Action (22CV005107) to search for and access the documents the Court has on file for the Action.

You may also contact Class Counsel with any questions you may have regarding the Action, the proposed Settlement of the Action, or this Notice or any other documents or information you have received pertaining to the Action and the Settlement. You may contact Class Counsel directly by visiting Justice Law Corporation at 751 North Fair Oaks Avenue, Suite 101, Pasadena, California 91103 during regular business hours, from 9:00

-9-

Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

a.m. to 6:00 p.m., or by calling (818) 230-7502. Class Counsel's contact information is also included above in Section No. 4 of this Notice. Class Counsel will provide you with an electronic copy of the Settlement documents or case documents free of charge.

**PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.**

-10-

Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

# **EXHIBIT B**

**ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT**

Superior Court of California, County of Alameda  
*Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.*  
Case No. 22CV005107

**DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT.**

**THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN [RESPONSE DEADLINE]. IT MUST BE SENT VIA REGULAR U.S. MAIL.**

PLEASE MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:  
**THE LYRICAL FOODS, INC. D/B/A KITE HILL CO. SETTLEMENT ADMINISTRATOR, C/O SIMPLURIS, INC. [INSERT ADMINISTRATOR ADDRESS]**

You are a Class Member if you are currently employed or were formerly employed by Lyrical Foods, Inc. d/b/a Kite Hill Co. as an hourly-paid or non-exempt employee in California at any time during the period from July 12, 2017, to December 31, 2022 ("Class Period"). You are an Eligible Aggrieved Employee if you are currently or were formerly employed by Lyrical Foods, Inc. d/b/a Kite Hill Co. as an hourly-paid or non-exempt employee (whether hired directly or through staffing agencies) in California at any time during the period from January 20, 2022, to December 31, 2022 ("PAGA Timeframe"). By signing and mailing this document to the Settlement Administrator at the address above, you are deciding to exclude yourself from the Class and deciding not to participate in the class portion of the proposed settlement of the action entitled *Aldana v. Lyrical Foods, Inc. d/b/a Kite Hill Co.* However, Eligible Aggrieved Employees may not exclude themselves from the PAGA portion of the proposed settlement.

**IT IS MY DECISION NOT TO PARTICIPATE IN THE ACTION REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT SHARE AND ANY CLAIMS I HAVE DURING THE CLASS PERIOD WILL NOT BE RELEASED. However, if I am an Eligible Aggrieved Employee and qualify for a payment from the PAGA Payment, I will be mailed a check for that payment regardless of whether I exclude myself from the class portion of the proposed settlement, and I will release any claims I have during the PAGA Timeframe.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Last four digits of Social Security number)

\_\_\_\_\_  
(Type or print name and former name(s))

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address continued)