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17 BLUE LINE FOODSERVICE DISTRIBUTION,  
INC.

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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **FOR THE COUNTY OF ORANGE**

21 CARLOS MUNGUIA and JOSE ESQUIVEL, as  
individuals and on behalf of all others similarly  
22 situated, and as private attorneys general,

23 Plaintiffs,

24 vs.

25 BLUE LINE FOODSERVICE DISTRIBUTION,  
INC., a Michigan corporation; and DOES 1  
26 through 50, inclusive

27 Defendant.

Case No. 30-2020-01157719-CU-OE-CXC

**SECOND AMENDED JOINT  
STIPULATION OF CLASS ACTION AND  
PAGA SETTLEMENT AND RELEASE OF  
CLAIMS**

[Assigned for all purposes to The Honorable  
Lon F. Hurwitz, Dept. CX103]

Action Filed: August 28, 2020

Trial Date: None Set

1 IT IS HEREBY STIPULATED, by and between **Plaintiffs Carlos Munguia and Jose**  
2 **Esquivel (“Plaintiffs”)**, individually and on behalf of the Settlement Class, and **Defendant Blue**  
3 **Line Foodservice Distribution, Inc. (“Defendant”)**, and subject to the approval of the Court, that the  
4 Action is hereby compromised and settled pursuant to the terms and conditions set forth in this  
5 Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Agreement”) and  
6 that the Court shall make and enter judgment subject to the definitions, recitals and terms set forth  
7 herein which by this reference become an integral part of this Agreement.

8 **I. DEFINITIONS**

- 9 1. “Action” or “Lawsuit” means the civil action entitled *Carlos Munguia et al. v. Blue*  
10 *Line Foodservice, Inc.*, filed on August 28, 2020, in the Superior Court of the State  
11 of California for the County of Orange, and assigned **Case No. 30-2020-0115719-**  
12 **CU-OE-CXC**.
- 13 2. “Agreement” means this Joint Stipulation of Class Action and PAGA Settlement  
14 and Release of Claims.
- 15 3. “Class” means all individuals who fit into either of the following subclasses, which  
16 are defined herein: the Regular Rate Subclass and the Wage Statement Subclass. **A**  
17 **Class Member could be part of either one or both subclasses. Based on Defendant’s**  
18 **records, there are approximately 137 individuals who may comprise the Class as of**  
19 **May 6, 2021.**
- 20 4. **“Class Counsel” means Diversity Law Group, P.C. and Polaris Law Group.**
- 21 5. “Class Counsel Award” means an award of attorneys’ fees and reimbursement of  
22 litigation expenses and costs granted to Class Counsel and paid from the Maximum  
23 Settlement Amount.
- 24 6. **“Class Data” means information regarding Class Members that Defendant will**  
25 **compile from its available, existing, electronic records and provide to the Settlement**  
26 **Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall**  
27 **include: (i) each Class Member’s full name; (ii) each Class Member’s last known**  
28 **address; (iii) each Class Member’s last known telephone number; (iv) each Class**

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Member’s Social Security number; (v) payroll records for each Class Member sufficient to allow the Settlement Administrator to determine whether the Class Member qualifies as a Regular Rate Class Member and/or a Wage Statement Class Member, and whether the Class Member qualifies as a PAGA Group Member; (vi) dates of employment in a non-exempt position with Defendant during the Covered Period, sufficient to allow the Settlement Administrator to calculate the number of Qualified Pay Periods for each Class Member.

- 7. “Class Member” means each person eligible to participate in this Settlement who is a member of the Class defined above.
- 8. “Class Representative Service Awards” means the amount that the Court authorizes to be paid to Plaintiffs from the Maximum Settlement Amount, in addition to their Individual Settlement Payments and Individual PAGA Payments, in recognition of their efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release of Defendant.
- 9. “Class Representatives” means the named Plaintiffs in this lawsuit, Carlos Munguia and Jose Esquivel.
- 10. “Court” means the Superior Court for the State of California, County of Orange.
- 11. “Covered Period” means April 6, 2016 through September 1, 2021.
- 12. “Defendant” means Blue Line Foodservice Distribution, Inc.
- 13. “Defense Counsel” shall mean Gregory C. Cheng and Carolyn B. Hall of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., One Embarcadero Center, Suite 900, San Francisco, California 94111.
- 14. “Effective Date” shall be the later of the following: (i) If no objections to the settlement have been filed, or the timely objections have been filed and then withdrawn, then the date the Court enters judgment granting Final Approval; (ii) If an objection to the settlement has been filed, then the date on which time expires to file an appeal of the Court’s grant of Final Approval of settlement, unless a timely appeal is filed; or (iii) if an objection was filed and a Notice of Appeal of the

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Court’s grant of Final Approval of settlement was timely filed, then the date the appeal is finally resolved, with the final approval unaffected.

- 15. “Employer’s Share of Payroll Taxes” means Defendant’s portion of payroll taxes including, but not limited to FICA and FUTA, on the portion of the Individual Settlement Payments that constitute wages, as calculated by the Settlement Administrator and to be paid from the Maximum Settlement Amount.
- 16. “Exclusion Form” means the Election Not To Participate In Class Action Settlement form, in a form substantially similar to the form attached hereto as Exhibit 2, which the Settlement Administrator will mail to Class Members as part of the Notice Packet.
- 17. “Final Approval Order” means the Court’s order granting final approval of the Settlement.
- 18. “Individual PAGA Payment” means the amount payable from the PAGA Settlement Amount to each PAGA Group Member.
- 19. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.
- 20. “Maximum Settlement Amount” means \$250,000.00, which sum includes all payments contemplated by this Agreement, including but not limited to: the Individual Settlement Payments, the Class Representative Service Awards, the Class Counsel Award, the PAGA Payment (including all Individual PAGA Payments), Employer’s Share of Payroll Taxes, and the Settlement Administration Costs. This is a non-reversionary settlement. Except as stated in this Agreement, in no event shall Defendant be liable for more than \$250,000.00 as a result of this Settlement.
- 21. “Net Settlement Amount” or “NSA” means the Maximum Settlement Amount, less the Class Counsel Award, Class Representative Service Awards, PAGA Payment, Employer’s Share of Payroll Taxes, and the Settlement Administration Costs.
- 22. “Notice Packet” means the court-approved Notice of Class Action and PAGA Settlement in a form substantially similar to the form attached hereto as Exhibit 1,

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which the Settlement Administrator shall mail to the Class Members along with the Exclusion Form and the Objection Form, in accordance with the terms of this Agreement.

23. “Objection Form” means the Notice of Objection Form, in a form substantially similar to the form attached hereto as Exhibit 3, which the Settlement Administrator will mail to Class Members as part of the Notice Packet.

24. “PAGA” means the California Labor Code Private Attorneys General Act of 2004.

25. “PAGA Payment” or “PAGA Settlement” means the amount of Twenty-Five Thousand Dollars (\$25,000.00), subject to Court approval, to be paid from the Maximum Settlement Amount for satisfaction of Plaintiffs’ and Class Members’ claims under PAGA. Pursuant to PAGA, seventy-five percent (75%), or Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) of this sum will be paid to the LWDA. The remaining twenty-five percent (25%) or Six Thousand Two Hundred Fifty Dollars (\$6,250.00) will be distributed as Individual PAGA Payments in accordance with this Settlement.

26. “Parties” means Plaintiffs and Defendant, collectively, and “Party” shall mean either Plaintiffs or Defendant, individually.

27. “Plaintiffs” shall mean the named Plaintiffs in this action, Carlos Munguia and Jose Esquivel.

28. “Preliminary Approval Date” means the date the Court enters an order granting preliminary approval of the Settlement.

29. “PAGA Group Member” means a Class Member who was employed by Defendant at any time during the PAGA Period. PAGA Members will release all of the PAGA Released Claims upon any final judgment entered in this Action.

30. “PAGA Notices” means the August 25, 2020 and August 31, 2020 letters that Plaintiff Esquivel sent to the LWDA pursuant to Labor Code §2699.3 seeking to exhaust Plaintiffs’ administrative remedies under PAGA, Cal. Lab. Code §§ 2698, *et seq.*

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- 31. "PAGA Period" means April 6, 2019 to the earlier of September 1, 2021 or the Preliminary Approval Date.
- 32. "PAGA Released Claims" means any and all claims for recovery of civil penalties and attorneys' fees and costs permissible under PAGA which Plaintiffs and/or the PAGA Group Members had, or may claim to have, against the Released Parties during the PAGA Period, arising from or related to the same set of operative facts as those alleged in the Action, or in the PAGA Notices, including: (a) failure to pay overtime; (b) failure to pay sick pay at proper rates; (c) failure to provide complete and accurate wage statements; (d) failure to timely pay wages on termination; and (e) violations of Labor Code Sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, 1198, and the applicable IWC Wage Order.
- 33. "Qualified Settlement Fund" or "QSF" means the qualified settlement fund set up by the Settlement Administrator into which Defendant shall deposit the Maximum Settlement Amount and from which the Settlement Administrator shall make the disbursements called for by the terms of this Agreement.
- 34. "Qualified Pay Periods" means the total number of pay periods actually worked by each Class Member in which the Class Member either (i) was paid overtime wages during the PAGA Period or (ii) earned both sick pay or overtime and non-discretionary compensation during the Covered Period. The Settlement Administrator will calculate the number of Qualified Pay Periods for each Class Member. The Settlement Administrator will have sole and exclusive responsibility for calculating the number of Qualified Pay Periods.
- 35. "Regular Rate Subclass" means all current and former non-exempt employees of Defendant in the State of California who earned overtime wages or sick pay and non-discretionary compensation in the same workweek at any time from April 6, 2016 through September 1, 2021.

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36. “Released Claims” means all causes of action based on the factual or legal theories alleged in the Action, or that reasonably could have been raised in the Action, including all of the following legal claims: (a) any and all claims for unpaid or underpaid overtime wages; (b) any and all claims for failure to pay sick pay at proper rates; (c) any and all claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Action, and including claims for injuries suffered therefrom; (d) any and all claims for the untimely payment of final wages and associated waiting time penalties under Labor Code Section 203 based on the facts, claims, causes of action, or legal theories alleged in the Action, (e) any and all claims under the Business & Professions Code (including Section 17200 *et seq.*) premised on the facts, claims, or legal theories described herein or in the Action; (e) any other claims or penalties under the wage and hour laws pleaded in the Action; and (f) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders as to the facts and theories alleged in the Action. The period of the Release shall extend to the limits of the Covered Period. To the extent permitted by law, the *res judicata* effect of the Judgment will be the same as that of the Release; and the definition of Released Claims shall not be limited in any way by the possibility that Plaintiffs or Settlement Class Members may discover new facts, legal theories, or legal arguments not alleged in the operative complaint but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims.
37. “Released Parties” shall mean Defendant Blue Line Foodservice Distribution, Inc. and all its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, franchisees, administrators, parent companies,

1 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint  
2 venturers, and all persons acting under, by, through, or in concert with any of them,  
3 and each of them.

- 4 38. “Response Deadline” means the date sixty (60) days after the Settlement  
5 Administrator mails Notice Packets to Class Members and the last date on which  
6 Class Members may submit requests for exclusion or objections to the settlement.
- 7 39. “Settlement” means the disposition of the Action pursuant to this Agreement.
- 8 40. “Settlement Administrator” means Phoenix Settlement Administrators.
- 9 41. “Settlement Class Members” means all Class Members that do not submit a valid  
10 Exclusion Form. Settlement Class Members will release all of the Released Claims  
11 and will be bound by all terms of the Settlement and any final judgment entered in  
12 this Action.
- 13 42. “Wage Statement Subclass” means all current and former non-exempt employees of  
14 Defendant in the State of California who were paid overtime wages at any time from  
15 April 6, 2019 through September 1, 2021.

16 **II. RECITALS**

- 17 43. Class Certification. The Parties stipulate and agree to certification for purposes of  
18 this Agreement only. This Agreement is subject to the approval of the Court and is  
19 made for the sole purpose of consummating settlement of the Action. Should the  
20 Agreement not become a final and effective Settlement as herein provided, class  
21 certification shall immediately be set aside and the Settlement Class immediately  
22 decertified (subject to further proceedings on motion of any party to certify or deny  
23 certification thereafter). The Parties’ willingness to stipulate to class certification as  
24 part of the Agreement shall have no bearing on, and shall not be admissible in or  
25 considered in connection with, the issue of whether a class should be certified in a  
26 non-settlement context in this Action and shall have no bearing on, and shall not be  
27 admissible or considered in connection with, the issue of whether a class should be  
28 certified in any other lawsuit.



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44. Procedural History. On August 25, 2020 and August 31, 2020, Plaintiff Esquivel sent the PAGA Notices. On August 28, 2020, Plaintiffs filed a putative class action Complaint, invoking Emergency Rule 12, asserting claims against Defendant for alleged violations of the California Labor Code, including (a) Wage Statement Violations and (b) civil penalties under PAGA, and claims for interest, attorneys’ fees and costs. On September 24, 2020, Plaintiffs filed a First Amended Class and Representative Action Complaint adding claims for failure to pay all overtime wages due.

45. Mediation. On May 6, 2021, the Parties participated in a private mediation with Mark Peters, Esq., a well-respected mediator with considerable experience mediating wage and hour class actions. This took place only after the Parties exchanged extensive informal mediation data. The mediation and subsequent negotiations resulted in this Agreement to resolve this Action in its entirety.

46. Benefits to Settlement Class Members. Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto. Based on the foregoing, Plaintiffs and Class Counsel have determined that the terms set forth in this Agreement are a fair, adequate, and reasonable settlement, and are in the best interests of Class Members.

47. Defendant’s Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant’s time and resources have been and, unless this Agreement was made, would continue to be devoted to the defense of the claims asserted by Plaintiffs and Class Members. Defendant has also taken into account

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the risks of further litigation in reaching its decision to enter into this Agreement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiffs, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action.

48. Class Members’ Claims. The Class Representatives claim that their allegations have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. The monies being paid as part of the settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this settlement. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Class Members or Class Counsel as to the merits or lack thereof of the claims asserted.

49. Defendant’s Defenses. Defendant claims that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. The monies being paid as part of the settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this settlement. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted.

**III. TERMS OF AGREEMENT**

50. Settlement Consideration by Defendant. Defendant shall pay the monetary sums as specified in this Agreement, up to the Maximum Settlement Amount.

51. Second Amended Complaint. As a condition of settlement, Plaintiffs have filed, or will have filed, a Second Amended Complaint (“SAC”) to conform the pleadings with the scope of the Settlement and Released Claims, and to include allegations regarding Defendant’s purported failure to pay sick leave pay at proper rates. Plaintiffs have also served an amended PAGA letter upon the LWDA. Defendant

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will not be required to file an answer or other responsive pleading to the SAC. If, for any reason, the Court does not grant final approval of the Settlement, or if the Settlement does not become final and effective for any reason, then the SAC will be deemed withdrawn and the First Amended Complaint will again become the operative complaint without prejudice to Plaintiffs’ right to seek leave to file another amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses to the SAC.

52. Limited Release by All Settlement Class Members. As of the Effective Date, all Settlement Class Members will be bound by a limited Section 1542 waiver that releases all claims against Defendant, whether known or unknown, within the definition of “Released Claims” (above). However, to be clear, the scope of the Section 1542 waiver is limited to the Released Claims. Plaintiffs and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have fully, finally, and forever settled and released all of the Released Claims. The parties understand and specifically agree that the scope of the release described in this Paragraph is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this settlement and without it Defendant would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in Plaintiffs’ Complaint.

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53. PAGA Release by All PAGA Group Members. All PAGA Group Members shall be deemed to have released the Released Parties of and from the PAGA Released Claims. PAGA Group Members will not have an opportunity to opt out of, or object to, the PAGA Settlement. PAGA Group Members are bound by the PAGA Settlement and PAGA Released Claims regardless of whether they opt out of the Class Settlement and regardless of whether they cash or otherwise negotiate their Individual PAGA Payment.

54. General Release by Plaintiffs. As of the Effective Date, in consideration for the consideration set forth in this Agreement, each Plaintiff, for himself and his heirs, successors and assigns, hereby waive, release, acquit and forever discharge the Released Parties, from any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on each Plaintiff's behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200, *et seq.*, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiffs hereby expressly waive and relinquish any and all claims,

1 rights or benefits that each may have under California Civil Code § 1542, which  
2 provides as follows: “A general release does not extend to claims that the creditor  
3 or releasing party does not know or suspect to exist in his or her favor at the time of  
4 executing the release and that, if known by him or her, would have materially  
5 affected his or her settlement with the debtor or released party.” Plaintiffs may  
6 hereafter discover claims or facts in addition to, or different from, those which he  
7 now knows or believes to exist, but they expressly agree to fully, finally and forever  
8 settle and release any and all claims against the Released Parties, known or  
9 unknown, suspected or unsuspected, which exist or may exist on behalf of or against  
10 the other at the time of execution of this Agreement, including, but not limited to,  
11 any and all claims relating to or arising from Plaintiffs’ employment with  
12 Defendant. The Parties further acknowledge, understand and agree that this  
13 representation and commitment is essential to the Agreement and that this  
14 Agreement would not have been entered into were it not for this representation and  
15 commitment.

- 16 55. ADEA Waiver for Both Plaintiffs. Without limiting the scope of this Agreement,  
17 Plaintiffs agree that this Agreement constitutes a knowing and voluntary waiver of  
18 any and all rights or claims that exist or that each may claim to have under the Age  
19 Discrimination in Employment Act (“ADEA”), as amended by the Older Workers’  
20 Benefit Protection Act of 1990 (29 U.S.C. § 621 et seq.). Plaintiffs acknowledge all  
21 of the following:
- 22 a. The consideration provided pursuant to this Agreement, including any Class Representative  
23 Service Awards, is in addition to any consideration that Plaintiffs would otherwise be  
24 entitled to receive;
  - 25 b. Plaintiffs have been and are advised in writing to consult with an attorney prior to signing  
26 this Agreement;
  - 27 c. Plaintiffs have been provided a full and ample opportunity to study this Agreement,  
28 including a period of at least twenty-one (21) calendar days within which to consider it;

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- d. To the extent that Plaintiffs take fewer than twenty-one (21) calendar days to consider this Agreement prior to signing it, each Plaintiff acknowledges that he had sufficient time to consider this Agreement with legal counsel and that he expressly, voluntarily, and knowingly waives the full twenty-one (21) calendar-day period;
- e. Plaintiffs each agree that any changes made to the Agreement during the twenty-one (21) day period (whether material or immaterial) do not restart the running of the twenty-one (21) day period; and
- f. Plaintiffs are each aware of his right to revoke this waiver of claims under the ADEA any time within the seven (7) calendar-day period following the date of full execution of this Agreement and that the waiver of claims under the ADEA shall not become effective or enforceable until the seven (7) calendar-day revocation-period expires. Should either or both Plaintiffs revoke the waiver of claims under the ADEA, the revoking Plaintiff shall not request, and will not be entitled to receive, his Class Representative Service Award referred to in paragraph 64.h, although the remainder of the terms of this Agreement shall become effective and enforceable as of the date the Parties sign this Agreement.
- g. To be effective, timely notice of revocation of the waiver of ADEA claims must be made in writing and delivered to Defendant through its counsel, Gregory C. Cheng, Esq., at Ogletree Deakins Nash Smoak & Stewart, P.C., One Embarcadero Center, Suite 900, San Francisco, California 94111, no later than the eighth (8th) day after the date of Preliminary Approval (“Revocation Period”). If mailed, the revocation must be properly addressed to the above addressee and postmarked no later than the last day of the Revocation Period. If Plaintiffs do not revoke acceptance of this Agreement within the Revocation Period, each Plaintiff’s acceptance of this Agreement shall become binding and enforceable on the eighth (8th) day after the date of Preliminary Approval. The revoking Plaintiff agrees to keep written documentation proving that he revoked this Agreement as provided in this paragraph, either by keeping the documents attesting to the delivery of the revocation, or verification that the revocation was, in fact, received. In the event either Plaintiff revokes the waiver of ADEA claims, the revoking Plaintiff understands and agrees that he will not be entitled to a Class

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Representative Service Award but shall not have the right to revoke the Settlement, and it will remain binding.

56. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:
- a. The Court enters an order granting preliminary approval of the Settlement;
  - b. The Court enters an order granting final approval of the Settlement and a Final Judgment;
  - c. The Final Effective Date occurs; and
  - d. Defendant does not invoke its right to revoke the Agreement as described in Paragraph 67.c (“Defendant’s Option to Revoke Settlement”) herein.
57. Nullification of Agreement. In the event that this Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or materially modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein:
- a. This Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
  - b. The conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
  - c. None of the Parties to this Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
58. Certification of the Class for Settlement Purposes. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only and only as follows:

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- a. Plaintiffs Carlos Munguia and Jose Esquivel shall be appointed as Class Representatives.
- b. The Parties stipulate that Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group shall be appointed Class Counsel.
- c. In the event that this Agreement is not approved by the Court, fails to become effective, or is reversed, withdrawn or materially modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein, the conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

- 59. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Class Members are not relying on any statement or representation by the Parties in this regard. Settlement Class Members, PAGA Group Members, and Class Counsel understand and agree that they shall be solely and legally responsible for the payment of all applicable taxes and penalties assessed on the payments specified herein, except for any applicable employer’s share of payroll taxes.
- 60. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has



1 relied exclusively upon his, her or its own, independent legal and tax counsel for  
2 advice (including tax advice) in connection with this Agreement, (b) has not entered  
3 into this Agreement based upon the recommendation of any other Party or any  
4 attorney or advisor to any other Party, and (c) is not entitled to rely upon any  
5 communication or disclosure by any attorney or adviser to any other party to avoid  
6 any tax penalty that may be imposed on the acknowledging party, and (3) no  
7 attorney or adviser to any other Party has imposed any limitation that protects the  
8 confidentiality of any such attorney's or adviser's tax strategies (regardless of  
9 whether such limitation is legally binding) upon disclosure by the acknowledging  
10 party of the tax treatment or tax structure of any transaction, including any  
11 transaction contemplated by this Agreement.

12 61. Preliminary Approval Motion. At the earliest practicable time, Plaintiffs shall file  
13 with the Court a Motion for Order Granting Preliminary Approval and supporting  
14 papers, which shall include this Agreement. Plaintiffs shall provide a courtesy draft  
15 of these papers to Defense Counsel five (5) calendar days before filing the  
16 documents.

17 62. Settlement Administrator. By accepting the role as Settlement Administrator, the  
18 Settlement Administrator is bound to all of the terms, conditions and obligations  
19 described in this Agreement. Among these obligations, the Settlement  
20 Administrator shall have sole and exclusive responsibility for: (a) calculating  
21 Qualified Pay Periods, Individual Settlement Payments and Individual PAGA  
22 Payments; (b) printing and mailing the Notice Packets to the Class Members as  
23 directed by the Court; (c) receiving and reporting any disputes, objections, opt outs,  
24 and Requests for Exclusion and Notices of Objection; (d) deducting all legally  
25 required taxes from Individual Settlement Payments and distributing tax forms; (e)  
26 processing and mailing payments to the Class Representatives, Class Counsel,  
27 LWDA, Settlement Class Members, and PAGA Group Members; (f) processing and  
28 mailing any tax payments to the appropriate state and federal taxing authorities; (g)

1 providing declaration(s) as necessary in support of preliminary and/or final approval  
2 of this Settlement; and (h) other tasks as the Parties mutually agree or the Court  
3 orders the Settlement Administrator to perform. The Settlement Administrator shall  
4 keep the Parties timely apprised of the performance of all Settlement  
5 Administrator's responsibilities. Defendant and Defense Counsel shall have no  
6 responsibility for validating or ensuring the accuracy of the Settlement  
7 Administrator's work. Plaintiffs, Class Counsel, Defendant and Defense Counsel  
8 shall not bear any responsibility for errors or omissions in the calculation or  
9 distribution of the Individual Settlement Payments or any other distribution of  
10 monies contemplated by this Agreement.

11 63. Notice Procedure.

12 a. Class Data. The Class Data shall be confidential. The Settlement  
13 Administrator shall not provide the Class Data to Class Counsel or Plaintiffs  
14 or any third party, or use the Class Data or any information contained therein  
15 for any purpose other than to administer this Agreement. Defendant shall  
16 provide the Settlement Administrator with the Class Data for purposes of  
17 preparing and mailing Notice Packets to Class Members. This shall take  
18 place within fourteen (14) calendar days after the later of: (a) the Preliminary  
19 Approval Date; (b) the date on which Defendant receives sufficient and  
20 reasonable written assurance that the Settlement Administrator will maintain  
21 the confidentiality of the Class Data.

22 b. Notice Packets.

23 (i) The Notice of Class Action and PAGA Settlement mailed out to  
24 Class Members (the "Notice Packet") shall be in a form substantially similar  
25 to the form attached hereto as Exhibit 1. The Notice of Class Action and  
26 PAGA Settlement shall also inform Class Members to keep the Settlement  
27 Administrator apprised of their current mailing addresses, to which the  
28 Settlement Payments will be mailed following the Effective Date. The

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Notice of Class Action and PAGA Settlement shall set forth the releases to be given in connection with the Settlement.

(ii) The Notice Packet shall be individualized by inclusion of the Class Member’s number of Qualified Pay Periods, and the Settlement Administrator’s calculation of their estimated Individual Settlement Payment if they do not request to be excluded from the Settlement. The Notice Packet shall also be individualized by inclusion of the Settlement Administrator’s calculation of their estimated Individual PAGA Payment, which payments are not subject to opting out by Class Members.

c. Notice By First Class U.S. Mail. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. **No later than fourteen (14) calendar days after receiving the Class Data from Defendant as provided herein, the Settlement Administrator shall mail** copies of the Notice Packet to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

d. Undeliverable Notices. Any Notices of Class Action and PAGA Settlement returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. In

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addition, if any Notices of Class Action and PAGA Settlement addressed to Class Members who are currently employed by Defendant are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed Class Member provide a corrected address, and transmit to the Settlement Administrator any corrected address provided by the Class Member.

e. Disputes Regarding Individual Settlement Payments. Class Members will have the opportunity, should they disagree with the number of Qualified Pay Periods stated on their Notice of Class Action and PAGA Settlement, to provide documentation or an explanation. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator’s determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class Member and the Parties.

(i) Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

(ii) Requests for Exclusion.

(a) The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to exclude themselves from the class action settlement must submit a written Request for Exclusion by the Response Deadline. The written

1 Request for Exclusion must state that the Class Member wishes to  
2 exclude himself or herself from the class action settlement and (1)  
3 must contain the name, address, and the last four digits of the Social  
4 Security number or Employee ID number of the person requesting  
5 exclusion; (2) must be signed by the Class Member; (3) must be  
6 postmarked by the Response Deadline and returned to the Settlement  
7 Administrator at the specified address; and (4) contain a typewritten  
8 or handwritten notice stating in substance: "I wish to opt out of the  
9 settlement of the class action lawsuit entitled *Carlos Munguia et al.*  
10 *v. Blue Line Foodservice Distribution, Inc.*, filed on August 28, 2020,  
11 in the Orange County Superior Court, and assigned Case No. 30-  
12 2020-01157719-CU-OE-CXC. I understand that by requesting to be  
13 excluded from the class action settlement, I will receive no money  
14 from the class action settlement described in this Notice." The  
15 Request for Exclusion may, but need not be, in the form of the  
16 Exclusion Form attached hereto as Exhibit 2.

17 (b) The Request for Exclusion will not be valid if it is not timely  
18 submitted, if it is not signed by the Class Member, or if it does not  
19 contain the name and address of the Class Member. The date of the  
20 postmark on the return mailing envelope for the Request for  
21 Exclusion shall be the exclusive means used to determine whether  
22 the Request for Exclusion was timely submitted. Class Members  
23 who fail to submit a valid and timely written Request for Exclusion  
24 on or before the Response Deadline shall be Settlement Class  
25 Members who are bound by all terms of the Settlement and any final  
26 judgment entered in this Action if the Settlement is approved by the  
27 Court.  
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(c) Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement, except for an Individual PAGA Payment, and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Nothing in this Agreement will constitute or be construed as a waiver of any defense that Defendant or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion.

(d) No later than five (5) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.

(e) At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the class action settlement.

**f. Objections.**

(i) The Notice of Class Action and PAGA Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.

(ii) Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. **The Notice of Objection must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the**

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Settlement Class Member’s Social Security number and/or Employee ID

number; (4) the basis for the objection; and (5) if the Settlement Class

Member intends to appear at the Final Approval/Settlement Fairness

Hearing. The Notice of Objection may, but need not be, in the form of the

Objection Form attached hereto as Exhibit 3. Settlement Class Members

who have not filed a Notice of Objection may also appear at the Final

Approval/Settlement Fairness Hearing and ask for permission to address the

Court. Settlement Class Members who fail to make objections in the manner

specified above shall be deemed to have waived any objections and shall be

foreclosed from making any objections (whether by appeal or otherwise) to

the settlement.

(iii) At no time shall any of the Parties or their counsel seek to solicit or

otherwise encourage Settlement Class Members to file or serve written

objections to the settlement or appeal from the Order and Final Judgment.

(iv) Class Members who submit a written Request for Exclusion are not

entitled to object to the settlement. In the event that a Class Member

submits both a Request for Exclusion and a Notice of Objection, the Request

for Exclusion will be invalid, while the Notice of Objection will remain

valid.

(v) The Settlement Administrator shall send all objections to Class

Counsel and Defense Counsel. Class Counsel will be responsible for filing

the Notices of Objection with the Court in advance of the Final Approval

Hearing. Plaintiffs and/or Defendant may file responses to any properly

submitted Notices of Objection no later than five (5) court days prior to the

date of the Final Approval/Settlement Fairness Hearing.

(vi) Defendant shall not be responsible for any fees, costs, or expenses

incurred by Plaintiffs, Class Counsel or Settlement Class Members arising

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from or related to any objection to the Agreement or related to any appeals thereof, in excess to the amounts provided for in this Agreement.

64. Funding and Allocation of the Maximum Settlement Amount. This is a non-reversionary settlement in which Defendants are required to pay the entirety of the Maximum Settlement Amount. No amount of the Maximum Settlement Fund will revert to Defendant. Upon satisfaction of the preconditions described in this Agreement and pursuant to the timeline and instructions below, Defendants will deposit the Maximum Settlement Amount into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Except as stated in this Agreement, in no event shall Defendants be responsible for any payments in excess of the Maximum Settlement Amount.

- a. Funding Due Date. Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator to fund the Settlement as set forth in this Agreement within ten (10) calendar days after the Effective Date.
- b. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein.
- c. Calculation of Individual Settlement Payments. The Settlement Administrator will calculate each Individual Settlement Payment as described herein. The Settlement Administrator will divide the Net Settlement Amount by the combined total number of Qualified Pay Periods to arrive at the Pay Period Value. The Pay Period Value will then be multiplied by the number of Qualified Pay Periods worked by each Settlement Class Member to arrive at each Settlement Class Member’s allocation of the Net Settlement Amount. The Settlement Administrator shall calculate any applicable payroll taxes to the allocation to result in the Individual Settlement Payment for that Settlement Class Member. All Settlement Class Members will be entitled to payment for at least one



1 Qualified Pay Period. Each Individual Settlement Payment will be reduced  
2 by any legally mandated employee tax withholdings (e.g., employee payroll  
3 taxes, etc.). To the extent that the Court does not approve allocating funds  
4 from the Maximum Settlement Amount to the employer's share of payroll  
5 taxes, Defendant shall be responsible for funding such taxes,

6 d. Calculation of Individual PAGA Payments: The Settlement Administrator  
7 will calculate each PAGA Group Member's Individual PAGA Payment by  
8 dividing the 25% of the PAGA Payment to be distributed to PAGA Group  
9 Members (*i.e.*, \$6,250) by the total number of Qualified Pay Periods worked  
10 by PAGA Group Members in the PAGA Period, arriving at the PAGA Pay  
11 Period Value; and then multiplying the PAGA Pay Period Value by the  
12 number of Qualified Pay Periods worked by each PAGA Group Member in  
13 the PAGA Period.

14 e. Tax Allocation. For tax purposes, Individual Settlement Payments for each  
15 individual Regular Rate Settlement Class Member shall be allocated and  
16 treated as follows: 10% as wages subject to IRS Form W-2 reporting and  
17 applicable taxes/withholdings, and 90% as non-wage income. For Wage  
18 Statement Class Members who are not Regular Rate Class Members,  
19 Individual Settlement Payments for each individual shall be allocated 100%  
20 as non-wage income, penalties and interest. The Settlement Administrator  
21 will be responsible for issuing to Settlement Class Members an IRS Form  
22 W-2 for any amounts deemed to be "wages" and any applicable IRS Form  
23 1099 for the portions allocated to penalties and interest. The amount of all  
24 payments to PAGA Group Members shall be reported on any applicable IRS  
25 Form 1099 by the Settlement Administrator.

26 f. Mailing. Individual Settlement Payments and Individual PAGA Payments  
27 shall be mailed by regular First Class U.S. Mail to Class Members' last  
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known mailing address no later than twenty-five (25) calendar days after the Effective Date.

g. Uncashed Checks. Any checks issued to Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event any settlement payment has not been cashed within one hundred and eighty (180) days, pursuant to California Code of Civil Procedure section 384, the unpaid residue shall be tendered to the the State Controller, Unclaimed Property Division for handling on behalf of the recipient. In such event, those intended recipients will nevertheless remain bound by the Settlement. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to California Code Civil Procedure Section 384, including and not limited to the unused funds as set forth in this Paragraph, and the report shall be presented to the Court by Class Counsel.

h. Class Representative Service Awards.

(i) Defendant agrees not to oppose or object to any application or motion by Plaintiffs to each receive a Class Representative Service Award not to exceed ten thousand dollars (\$10,000) to each Plaintiff in exchange for their General Releases and for their time, effort and risk in bringing and prosecuting this matter. The Class Representative Service Award shall be in addition to each Plaintiff's settlement payments as Class Members.

(ii) The Settlement Administrator shall pay the Class Representative Service Awards to Plaintiffs from the Maximum Settlement Amount no later than fourteen (14) calendar days after the Effective Date. Any portion of the requested Class Representative Service Award that is not awarded to the Class Representatives shall become part of the Net Settlement Amount.

(iii) The Settlement Administrator shall issue an IRS Form 1099 — MISC to each Plaintiff for their Class Representative Service Awards.

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Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Class Representative Service Awards and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Awards.

(iv) Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Agreement, and it will remain binding, nor will Plaintiffs seek, request, or demand an increase in the Maximum Settlement Amount.

i. Class Counsel Award.

(i) In consideration for settling the Action and in exchange for the release of the Released Parties for all Released Claims and the General Release by Plaintiffs, Class Counsel intends to apply for an award of attorneys' fees not to exceed thirty-three and one-third percent (33.33%) of the Maximum Settlement Amount (\$83,333.33 of \$250,000.00), plus actual costs and expenses supported by declaration not to exceed twenty thousand dollars (\$20,000), from the Maximum Settlement Amount. Even in the event that the Court reduces or does not approve the requested Class Counsel Attorneys' Fees Award and Litigation Costs, Plaintiffs' Counsel shall not have the right to revoke this Agreement, and it will remain binding.

(ii) Class Counsel, Plaintiffs, and Class Members will not apply to the Court for any payment of attorneys' fees and costs that are in addition to the foregoing or that exceed the Maximum Settlement Amount. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties, including all Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or settlement of the Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining,

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administering, or challenging an Order Granting Preliminary Approval and/or Final Approval.

(iii) Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.

(iv) The Settlement Administrator shall pay the Class Counsel Award and Litigation Costs to Class Counsel from the Maximum Settlement Amount within fourteen (14) calendar days after the Effective Date.

(v) Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this Paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this Paragraph.

(vi) In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiffs and Class Counsel shall not have the right to modify or revoke this Agreement, which will remain binding, nor will Plaintiffs or Class Counsel seek, request, or demand an increase in the Maximum Settlement Amount.

j. PAGA Payment. Twenty-Five Thousand dollars (\$25,000) shall be allocated from the Maximum Settlement Amount for settlement and release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of that \$25,000 payment, or \$18,750, to the California Labor and Workforce Development Agency (the “PAGA Payment”) no later than fourteen (14) calendar days after the Effective Date. Twenty-five (25%) of the remaining amount of the \$25,000 payment, or \$6,250, will be distributed as described in this Agreement. Class Counsel will take all action required by California Labor Code section 2699(l).

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k. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the settlement from the Maximum Settlement Amount. The estimate of the Settlement Administration Costs is \$6,000. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fourteen (14) calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Agreement.

65. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of necessary documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Agreement. The Parties also agree to cooperate in the Settlement administration process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Class Counsel will also notify Defense Counsel if subpoenaed or upon receipt of any other request for documents or information regarding any other action filed or potential action against the Released Parties that covers or includes any Settlement Class Members and the Released Claims.

66. Preliminary Approval Hearing. Plaintiffs shall obtain a hearing before the Court to request the preliminary approval of the Settlement, and the entry of a Preliminary Approval Order for: (i) conditional certification of the Class under California Code of Civil Procedure section 382 for settlement purposes only, (ii) preliminary approval of the proposed Agreement, and (iii) setting a date for a Final Approval/Settlement Fairness Hearing and PAGA Settlement Approval. The Preliminary Approval Order shall provide for the Notice Packet to be sent to all

1 Class Members as specified herein. In conjunction with the Motion for Preliminary  
2 Approval, Plaintiffs shall submit this Agreement, which sets forth the terms of this  
3 settlement, and will include the proposed Notice Packet, which shall include the  
4 proposed Notice of Class Action and PAGA Settlement.

5 67. Final Approval Motion. At the earliest practicable time following the expiration of  
6 the Response Deadline, Plaintiffs shall file with the Court a Motion for Order  
7 Granting Final Approval and Entering Judgment, which motion shall request final  
8 approval of the Settlement and a determination of the amounts payable for the Class  
9 Representative Service Awards, the Class Counsel Award, the PAGA Payment, the  
10 Individual PAGA Payments and the Settlement Administration Costs. Plaintiffs  
11 shall provide a courtesy draft of these papers to Defense Counsel five (5) calendar  
12 days before filing the documents.

13 a. Declaration by Settlement Administrator. The Settlement Administrator  
14 shall submit a declaration in support of Plaintiffs' motion for final approval  
15 of this Settlement detailing the number of Notice Packets mailed and re-  
16 mailed to Class Members, the number of undeliverable Notice Packets, the  
17 number of timely requests for exclusion, the number of Notices of  
18 Objections received, the amount of the average Individual Settlement  
19 Payment, the Settlement Administration Costs, and any other information as  
20 the Parties mutually agree or the Court orders the Settlement Administrator  
21 to provide.

22 b. Final Approval Order and Judgment. The Parties shall present an Order  
23 Granting Final Approval of Class Action and PAGA Settlement to the Court  
24 for its approval, and Judgment thereon consistent with the terms and  
25 conditions of this Agreement.

26 c. Defendant's Option to Revoke Settlement. Defendant has the unilateral  
27 right to revoke the Settlement as follows:  
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(i) If, after the Response Deadline, the number of Class Members who submitted timely and valid written requests for exclusion from the settlement equals at least five percent (5%) of all Class Members, Defendant shall have, in its sole discretion, the option to terminate this Agreement. If Defendant exercises the option to terminate this Agreement, Defendant shall: (a) provide written notice to Class Counsel within seven (7) calendar days after the Response Deadline and (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and the Parties shall proceed in all respects as if this Agreement had not been executed.

(ii) The Parties agree the Maximum Settlement Amount was based in part on the Parties' understanding that as of May 6, 2021 there were approximately 137 putative class members. If the number of putative class members increases from the above estimate by more than ten percent (10%), the MSA will be increased proportionately, by such amount.

- 68. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court, as set forth herein. The Parties and their counsel will cooperate with each other and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.
- 69. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
- 70. Nullification of Agreement. In the event: (i) the Court does not grant preliminary approval; (ii) the Court does not grant final approval; (iii) the Court does not enter a final judgment as provided herein; or (iv) the Settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgment

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entered by the Court in furtherance of this Agreement shall be treated as void from the beginning, except that Plaintiffs shall be bound by his agreements above to dismiss any state court actions and refile such actions in federal court. In the event of nullification of this Agreement, the Parties and any funds to be awarded under this Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.

71. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiffs or Settlement Class Members.

72. Exhibits and Headings. The terms of this Agreement include the terms set forth in the attached Exhibit 1, which is incorporated by this reference as though fully set forth herein and is an integral part of the Agreement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

73. Amendment or Modification. This Agreement may be amended or modified only by a written instrument: (1) signed by counsel for all Parties or their successors-in-



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interest; (2) signed by the Parties or their successors-in-interest; and (3) as may be approved by the Court.

74. Entire Agreement. This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the Agreement and its Exhibits.
75. Authorization to Enter into Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The person signing this Agreement on behalf of Defendant represents and warrants that he or she is authorized to sign this Agreement on behalf of Defendant. Each Plaintiff represents that he is authorized to sign this Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Agreement to any third-party.
76. Binding on Successors and Assigns. The provisions of this Agreement shall run in perpetuity. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.
77. California Law Governs. All terms of this Agreement and the Exhibits hereto and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.
78. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

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79. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Agreement is a fair, adequate and reasonable settlement of this Action and have arrived at this Agreement after extensive arm’s-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Agreement.

80. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

81. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

82. Publicity. Plaintiffs and Plaintiffs’ Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, except potential class members and as shall be contractually required to effectuate the terms of the Agreement. For the avoidance of doubt, this section means Plaintiffs and Plaintiffs’ Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Agreement, including the fact of the settlement and its terms or contents and the negotiations underlying the

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settlement, except as shall be contractually required to effectuate the terms of the settlement. However, for the limited purpose of allowing Plaintiffs' Counsel to prove adequacy as class counsel in other actions, Plaintiffs' Counsel may disclose the name of the Parties in this action, the venue/case number of this action, and settlement details available in the public record, for the limited purpose of allowing Plaintiffs' Counsel to prove adequacy as class counsel in other action or for purposes of seeking approval of an unrelated settlement.

83. No Unalleged Claims. Plaintiffs and Class Counsel represent that they, as of the date of execution of this Agreement, maintain no current or putative claims against Defendant in any judicial, administrative, or arbitral forum, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendant, and that Plaintiffs' Counsel is not currently aware of any facts or legal theories upon which Plaintiffs could bring any claims or causes of action against Defendant, excepting those facts or legal theories alleged in the operative complaint in this Action. Plaintiffs and Plaintiffs' Counsel further represent and agree that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to practice.

84. Waiver of Certain Appeals. The Parties agree to stipulate to class certification for purposes of implementing this Agreement only and agree to waive all appeals from the Court's final approval of the Agreement, unless the Court modifies the Agreement.

85. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to

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liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted.

86. Notice of Settlement to LWDA. Plaintiffs hereby represent Plaintiffs will provide notice of this Agreement and proposed settlement to the Labor Workforce Development Agency (“LWDA”) as required by Labor Code Section 2699(1)(2).

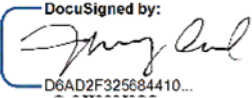
The Parties indicate by signing below their approval of the form of this Agreement (and exhibits thereto).

*[Signatures follow on next page.]*

1 IN WITNESS WHEREOF, the Parties and their duly authorized attorneys execute this Joint  
2 Stipulation of Class Action and PAGA Settlement as of the day and year herein set forth.

3 **IT IS SO AGREED:**

4 Dated: November <sup>14</sup> \_\_, 2022 CARLOS MUNGUIA

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6 DocuSigned by:  
7 D6AD2F325684410...

8 Dated: November <sup>Je</sup> \_\_, 2022 JOSE ESQUIVEL

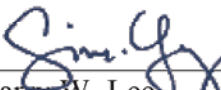
9  \_\_\_\_\_  
10 DocuSigned by:  
11 D433398D19AC415...

12 Dated: November \_\_, 2022 BLUE LINE FOODSERVICE DISTRIBUTION, INC.

13 \_\_\_\_\_  
14 Name: Erin Martin  
15 Title: Chief of Staff, General Counsel  
16 On Behalf of Defendant

17 **APPROVED AS TO FORM:**

18 Dated: December 1, 2022 DIVERSITY LAW GROUP, P.C.

19   
20 \_\_\_\_\_  
21 Larry W. Lee  
22 Simon L. Yang  
23 Counsel for Plaintiffs and Proposed Class Counsel

24 Dated: November \_\_, 2022 OGLETREE, DEAKINS, NASH, SMOAK  
25 & STEWART, P.C.

26 \_\_\_\_\_  
27 Gregory C. Cheng  
28 Carolyn B. Hall  
Counsel for Defendant

1 IN WITNESS WHEREOF, the Parties and their duly authorized attorneys execute this Joint  
2 Stipulation of Class Action and PAGA Settlement as of the day and year herein set forth.

3 **IT IS SO AGREED:**


4 Dated: November \_\_\_\_, 2022 CARLOS MUNGUIA

5  
6 \_\_\_\_\_  
7 Plaintiff

8 Dated: November \_\_\_\_, 2022 JOSE ESQUIVEL

9  
10 \_\_\_\_\_  
11 Plaintiff

12 Dated: November 11, 2022 BLUE LINE FOODSERVICE DISTRIBUTION, INC.

13 DocuSigned by:  
14   
15 \_\_\_\_\_  
16 Name: Erin Martin  
17 Title: Chief of Staff, General Counsel  
18 On Behalf of Defendant

17 **APPROVED AS TO FORM:**

18 Dated: November \_\_\_\_, 2022 DIVERSITY LAW GROUP, P.C.

19  
20 \_\_\_\_\_  
21 Larry W. Lee  
22 Simon L. Yang  
23 Counsel for Plaintiffs and Proposed Class Counsel

24 Dated: November \_\_\_\_, 2022 OGLETREE, DEAKINS, NASH, SMOAK  
& STEWART, P.C.

25  
26 \_\_\_\_\_  
27 Gregory C. Cheng  
28 Carolyn B. Hall  
Counsel for Defendant

1 IN WITNESS WHEREOF, the Parties and their duly authorized attorneys execute this Joint  
2 Stipulation of Class Action and PAGA Settlement as of the day and year herein set forth.

3 **IT IS SO AGREED:**

4 Dated: November \_\_\_\_, 2022 CARLOS MUNGUIA

5  
6 \_\_\_\_\_  
7 Plaintiff

8 Dated: November \_\_\_\_, 2022 JOSE ESQUIVEL

9  
10 \_\_\_\_\_  
11 Plaintiff

12 Dated: November \_\_\_\_, 2022 BLUE LINE FOODSERVICE DISTRIBUTION, INC.


13  
14 \_\_\_\_\_  
15 Name: Erin Martin  
16 Title: Chief of Staff, General Counsel  
17 On Behalf of Defendant

18 **APPROVED AS TO FORM:**

19 Dated: November \_\_\_\_, 2022 DIVERSITY LAW GROUP, P.C.

20  
21 \_\_\_\_\_  
22 Larry W. Lee  
23 Simon L. Yang  
24 Counsel for Plaintiffs and Proposed Class Counsel

25 Dated: December 2, 2022 OGLETREE, DEAKINS, NASH, SMOAK  
26 & STEWART, P.C.

27 \_\_\_\_\_  
28   
Gregory C. Cheng  
Carolyn B. Hall  
Counsel for Defendant