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OPERATING CO., LLC

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 ELIJAH BEY, on behalf of himself and a  
20 others similarly situated,

21 Plaintiff,

22 vs.

23 MOSAIC SALES SOLUTIONS US  
OPERATING CO., LLC, a Delaware  
24 limited liability company, and DOES 1  
through 100, inclusive.

25 Defendants.

26 Defendant.

CASE NO.: 2:16-CV-06024-FMO-RAO

**AMENDED JOINT STIPULATION  
FOR SETTLEMENT AND  
RELEASE OF CLASS AND  
REPRESENTATIVE ACTION  
CLAIMS**

1     **AMENDED JOINT STIPULATION FOR SETTLEMENT AND RELEASE**  
2                     **OF CLASS AND REPRESENTATIVE ACTION CLAIMS**

3             This Amended Joint Stipulation For Settlement And Release Of Class and  
4 Representative Action Claims (“Settlement Agreement” or “Agreement”) is made and  
5 entered into by and between MOSAIC SALES SOLUTIONS US OPERATING CO.,  
6 LLC (“Mosaic” or “Defendant”), on the one hand, and ELIJAH BEY (“Plaintiff” or  
7 “Class Representative”), on his own behalf and as a proposed representative Plaintiff  
8 on behalf of the Settlement Class and to be certified pursuant to this Settlement  
9 Agreement (as described in Paragraphs 6 and 7, below), on the other hand, in *Elijah*  
10 *Bey vs. Mosaic Sales Solutions US Operating Co., LLC* (United States District Court  
11 for the Central District of California, Case No. 2:16-CV-06024-FMO-RAO) (the  
12 “Litigation”). This Settlement Agreement pertains to all claims that have been and/or  
13 are asserted in all pleadings that have been filed in the Litigation, including without  
14 limitation the Fifth Amended Complaint (“5AC”), and all violations asserted in any  
15 notice sent to the California Labor and Workforce Development Agency (“LWDA”)  
16 referenced in all such pleadings. This Settlement Agreement is subject to the terms  
17 and conditions hereof and the approval of the Court. For purposes of this Settlement  
18 Agreement, Plaintiff and Defendant are referred to individually as a “Party” and  
19 collectively as the “Parties.”

20                                     **SETTLEMENT AMOUNT**

21             As described in detail hereafter, and pursuant to all the terms and conditions set  
22 forth hereafter, Defendant will pay the total amount of Three Million Dollars  
23 (\$3,000,000.00) (the “Settlement Fund”), to resolve all of the claims being released  
24 herein, as set forth in detail hereafter. This Settlement Agreement is not subject to  
25 any reversion of funds to the Defendant, such that the entire settlement amount will  
26 be payable if the settlement becomes final as defined herein.

27                                     **BACKGROUND AND RECITALS**

28             1. On November 20, 2015, Plaintiff filed a putative class action Complaint

1 against Mosaic, in the Superior Court of the State of California, County of Los  
2 Angeles, assigned Case No. BC601773 (the “State Court Action”). On August 11,  
3 2016, Mosaic removed the State Court Action to the United States District Court for  
4 the Central District of California (the “Court”), where it was assigned Case No. 2:16-  
5 CV-06024-FMO-RAO, and then assigned to the Hon. Fernando M. Olguin, United  
6 States District Judge.

7 2. Plaintiff subsequently filed multiple amended complaints, eventually  
8 filing his Fifth Amended Complaint (“5AC”) on December 4, 2018. Defendant’s  
9 answer to the Fourth Amended Complaint will remain operative as to the Fifth  
10 Amended Complaint.

11 3. The 5AC asserts numerous wage and hour claims against Defendant,  
12 brought on behalf of Plaintiff and on behalf of a putative class, including: (1) Failure  
13 to Pay Wages Due and Owing (under IWC Wage Order No. 4; Cal. Lab. Code §§ 201,  
14 202, 203, 204, 210, 223, 226.7, 558, 1194, 1197, 1197.1 and 1198); (2) Failure to Pay  
15 Overtime Wages (under IWC Wage Order No. 4; Cal. Lab. Code §§ 223, 510, 558,  
16 1194 and 1198); (3) Failure to Provide Meal or Rest Breaks (under IWC Wage Order  
17 No. 4; Cal. Lab. Code §§ 226.7 and 512); (4) Failure to Provide Accurate Itemized  
18 Statements (under IWC Wage Order No. 4; Cal. Lab. Code § 226); (5) Unfair  
19 Business Practices (under Cal. Business & Professions Code § 17200 et seq.);(6)  
20 Failure to pay Wages at Time of Termination (Cal. Lab. Code §§ 201-203); (7)  
21 Violation of Cal. Lab. Code § 2698, et seq. (“PAGA”); and (8) Failure to Pay  
22 Minimum Wages in violation of Cal. Lab. Code § 1194).

23 4. The Parties engaged in motion practice, extensive formal discovery,  
24 including the depositions of Plaintiff and Defendant’s Fed. R. Civ. P. 30(b)(6)  
25 witnesses, and informal exchanges of documents and information, including data  
26 regarding putative class members.

27 5. On February 27, 2018, the Parties participated in a private mediation  
28 with Phillip Cha, Esq. At the conclusion of the mediation, no agreement was reached.

1 Nevertheless, over the next few months, the Parties continued to engage in extensive  
2 arms-length negotiations. Subsequently, the Parties agreed to enter into this  
3 Settlement Agreement and resolve all disputes and claims between them, including  
4 all of the wage and hour and employment-related claims that have been or could have  
5 been raised during the course of the Litigation.

6 6. For purposes of this Settlement Agreement, the “Settlement Class”  
7 consists of all non-exempt field employees working in the State of California from  
8 November 20, 2011 through the date of preliminary approval by the Court of this  
9 Settlement Agreement (the “Settlement Class Period”). The Settlement Class shall  
10 not include any person who: (1) as of the date the Court grants preliminary approval  
11 of this settlement, has filed his or her own separate lawsuit, either individually or as  
12 a named plaintiff in a class, collective or representative action, alleging the same or  
13 similar claims being released by the Settlement Agreement, or (2) anyone who has  
14 previously released such claims.

15 7. The Parties stipulate to class certification for purposes of this Settlement  
16 Agreement only. Plaintiff and Class Counsel shall apply to the Court for approval of  
17 the Agreement, and for certification of the Settlement Class only for purposes of  
18 effectuating this Agreement. If the Court does not grant preliminary approval or final  
19 approval of the settlement reflected in the Agreement, the Parties agree that  
20 certification of the Settlement Class will automatically be deemed not to have been  
21 granted and Plaintiff will move for class certification as if this Settlement Agreement  
22 had not occurred, without prejudice to either side’s arguments in support of or against  
23 certification. Defendant agrees that it waives and will not raise any defense related to  
24 the timeliness of a class certification motion based upon time elapsed during the  
25 settlement negotiations and approval processes. Plaintiff agrees he waives and will  
26 not raise any defense related to the timeliness of a motion for summary judgment  
27 based upon time elapsed during the settlement negotiations and approval processes.

28 8. No Admission of Liability by the Defendant. Defendant denies any

1 liability or wrongdoing of any kind associated with the claims being released herein.  
2 Defendant contends, among other things, that it has complied at all times with all  
3 applicable California laws and asserts that properly compensated the Settlement Class  
4 members for all time worked, and otherwise treated them at all times in compliance  
5 with California law. Neither this Settlement Agreement nor any exhibit thereto, nor  
6 any other document pertaining to the settlement contemplated herein, may be offered  
7 in any other case or proceeding as evidence of any admission by Defendant of any  
8 liability on any claims for damages or other relief. Any stipulation or admission by  
9 Defendant contained herein is made for settlement purposes only.

10 9. Nevertheless, in the interest of avoiding the costs and disruption of  
11 ongoing litigation and resolving the claims asserted in the Litigation, Defendant  
12 believes that the settlement negotiated between the parties and set forth in this  
13 Settlement Agreement is fair, reasonable, and adequate.

14 10. It is the desire of Plaintiff, on his own behalf and on behalf of the  
15 Settlement Class, as well as on behalf of the California Labor and Workforce  
16 Development Agency (LWDA) with respect to those claims asserted under the  
17 California Labor Code Private Attorney General Act, Cal. Lab. Code 2698, et seq.  
18 (“PAGA”), to fully, finally, and forever settle, compromise, and discharge any and all  
19 claims, rights, demands, charges, complaints, causes of action, obligations or liability  
20 of any and every kind that are or have been asserted in the Complaint, First Amended  
21 Complaint, Second Amended Complaint, Third Amended Complaint, the Fourth  
22 Amended Complaint and the proposed Fifth Amended Complaint, and all violations  
23 asserted in any notices sent to the LWDA referenced in any such pleadings. The  
24 specific terms of the Releases given by the Class Representative, the Settlement Class  
25 members who do not opt out of the settlement, and the LWDA are set forth in  
26 Paragraphs 34 and 35 hereafter and are not to be construed or interpreted by any  
27 language in this Recitals section of this Settlement Agreement.

28

1 **TERMS OF THE SETTLEMENT**

2 11. Fifth Amended Class and Representative Action Complaint: For the  
3 purposes of this Settlement Agreement, and only in connection with the Court  
4 granting preliminary approval of this Settlement Agreement, Plaintiff and Defendant  
5 hereby stipulate and agree, that the 5AC shall relate back to the date of the filing of  
6 Plaintiff's original Complaint commencing the Litigation.

7 12. PAGA Notice Letter: Plaintiff has submitted the letter to the LWDA  
8 which, for the purposes of this Settlement Agreement, and only in connection with  
9 the Court granting preliminary approval of this Settlement Agreement, the Parties  
10 hereby stipulate and agree relates back to one year prior to the original Complaint  
11 filed in the Litigation, with Defendant waiving, for purposes of this Settlement  
12 Agreement only, any defenses to the PAGA notice letter, including without limitation,  
13 any argument as to the statute of limitations or standing. Should the settlement set  
14 forth in this Settlement Agreement not become final for any reason, the PAGA notice  
15 letter shall be deemed null and void *ab initio*.

16 13. Stipulation for Conditional Class Certification: The Parties stipulate and  
17 agree to the conditional certification of the Settlement Class in the Litigation for  
18 purposes of this Settlement Agreement only. Should, for whatever reason, the  
19 settlement set forth in this Settlement Agreement not become final, the Parties'  
20 stipulation to such class certification as part of this settlement shall become null and  
21 void *ab initio* and shall have no bearing on, and shall not be admissible in connection  
22 with, the issue of whether or not certification would be appropriate in a non-settlement  
23 context. Defendant expressly reserves its rights and declares that, to the extent  
24 Plaintiff may otherwise be permitted to seek class certification, it intends to oppose  
25 class certification vigorously should this settlement not become final and putative  
26 class action claims are allowed to be pursued in the Litigation or any other action or  
27 proceeding.

28 14. Establishment of the Class Settlement Fund: This Settlement is being

1 made on a non-reversionary basis, such that Defendant will pay the entirety of the  
2 agreed upon total settlement amount. The agreed total settlement amount is Three  
3 Million Dollars (\$3,000,000.00) (the “Settlement Fund”).

4 15. The payment by Defendant of the total Settlement Fund of  
5 \$3,000,000.00, pursuant to this Settlement Agreement, shall settle and forever resolve  
6 all of the Released Claims, and will include all payments to Settlement Class members  
7 and government taxing authorities, plus (a) the costs of administration of the  
8 settlement, (b) all claimed and/or awarded attorneys’ fees and costs, (c) all claimed  
9 and/or awarded enhancement awards to the Class Representative, and (d) the payment  
10 to the LWDA pursuant to the PAGA. The Settlement Fund shall not include  
11 Defendant’s employer’s-side payroll taxes. Any types of employer-side payroll taxes  
12 which may be owed as a result of the payments to be made to Settlement Class  
13 members as set forth in this Settlement Agreement will be paid by Defendant  
14 separately from the Settlement Fund. The settlement payments are not being made  
15 for any other purpose and will not be construed as “compensation” for purposes of  
16 determining eligibility for any health and welfare benefits, unemployment  
17 compensation or other compensation or benefits provided by Defendant. In addition,  
18 no individual receiving a payment based on this Settlement shall be entitled to any  
19 additional or increased health, welfare, retirement or other benefits as a result of their  
20 participation in the Settlement.

21 16. Calculation of Net Settlement Fund: The Net Settlement Fund (“NSF”)  
22 for the Settlement Class will constitute the total sum from which Settlement Class  
23 members will be paid. The first step in arriving at the NSF to be created for  
24 distribution purposes herein shall be to deduct from the total Settlement Fund the costs  
25 of administration of the entire settlement, i.e., the Settlement Administrator’s fees and  
26 costs, as well as to deduct the entire payment to the LWDA under PAGA. Thereafter,  
27 from the remaining sum shall be deducted the court-approved attorneys’ fees and  
28 litigation costs and expenses, and court-approved enhancement award for the Class

1 Representative. The remaining sum after all these deductions shall represent the NSF,  
2 which will be used to calculate the settlement share that each Settlement Class  
3 member will receive if this settlement becomes Final as defined in Paragraph 17,  
4 below.

5 17. Effective Date: This Settlement Agreement shall become effective when  
6 the settlement is considered as “Final.” For purposes of this Settlement Agreement,  
7 “Effective Date” and “Final” mean (i) in the event that the settlement has received  
8 Final Approval by the Court and there were no timely objections filed, or that any  
9 timely objections have been withdrawn, then upon the passage of the applicable date  
10 for any interested party to seek appellate review of the Court’s order of final approval  
11 of the settlement without a timely appeal being filed; or, (ii) in the event that one or  
12 more timely objections has/have been filed and not withdrawn, then upon the passage  
13 of the applicable date for an objector to seek appellate review of the Court’s order of  
14 final approval of the settlement, without a timely appeal having been filed; or, (iii) in  
15 the event that a timely appeal of the Court’s order of final approval has been filed,  
16 then the Settlement Agreement shall be final when the applicable appellate court has  
17 rendered a final decision or opinion affirming the Court’s final approval without  
18 material modification, and the applicable date for seeking further appellate review has  
19 passed. In the event that the Court fails to approve the settlement, or if the appropriate  
20 appellate court fails to affirm approval of the settlement: (1) this Settlement  
21 Agreement shall have no force and effect and the parties shall be restored to their  
22 respective positions prior to entering into it, and no Party shall be bound by any of the  
23 terms of the Settlement Agreement; (2) Defendant shall have no obligation to make  
24 any payments to the Settlement Class members, Plaintiff or Plaintiff’s counsel; (3)  
25 any preliminary approval order, final approval order or judgment, shall be vacated;  
26 and (4) the Settlement Agreement and all negotiations, statements, proceedings and  
27 data relating thereto shall be deemed confidential mediation settlement  
28 communications and not subject to disclosure for any purpose in any proceeding.

1           18. PAGA: The PAGA allocation of the Settlement Fund shall be  
2 \$20,000.00, subject to the Court’s final approval, of which 75% of that amount will  
3 be paid to the LWDA out of the Settlement Fund, and the remaining 25% will become  
4 part of the NSF for distribution to Settlement Class members.

5           19. Attorneys’ Fees and Costs: Subject to the Court’s approval, “Class  
6 Counsel” refers to Plaintiff’s Counsel in this Litigation: Marcus J. Bradley, Esq. and  
7 Kiley L. Grombacher, Esq. of BRADLEY/GROMBACHER and Solomon E. Gresen,  
8 Esq. and Jack Risemberg, Esq. of RGLAWYERS, LLP. Class Counsel may apply to  
9 the Court for an award of attorneys’ fees and costs and expenses incurred in  
10 connection with the prosecution of this matter, and all of the work remaining to be  
11 performed by Class Counsel in documenting the Settlement, securing Court approval  
12 of the Settlement, carrying out their duties to see that the Settlement is fairly  
13 administered and implemented, and obtaining dismissal of the action. Subject to  
14 Court approval, Class Counsel will be paid up to 30% of the value of the settlement,  
15 or \$900,000.00 and reimbursement of reasonable costs and expenses in an amount not  
16 to exceed \$15,000.00. Defendant agrees not to oppose Class Counsel’s proposed fees  
17 and costs application, so long as it is consistent with the provisions of this Agreement.  
18 The Parties expressly agree that the Court’s approval or denial of any request for  
19 attorneys’ fees and costs are not material conditions to the Settlement Agreement, and  
20 are to be considered by the Court separately from the fairness, reasonableness,  
21 adequacy, and good faith of the Settlement Agreement. Any order or proceeding  
22 relating to the application by Class Counsel for an award for attorneys’ fees and costs  
23 shall not operate to terminate or cancel this Settlement Agreement. Amounts awarded  
24 by the Court for attorneys’ fees and costs shall be paid from the Settlement Fund.

25           20. Enhancement Award: Class Counsel may apply to the Court for an  
26 enhancement award for Plaintiff, in exchange for his service as a class representative,  
27 the risks associated with filing a lawsuit against an employer, and in exchange for a  
28 general release. Subject to approval by the Court, Plaintiff will be paid an

1 enhancement award not to exceed \$10,000.00 in consideration for serving as Class  
2 Representative. The enhancement award is in addition to the claim share to which  
3 Plaintiff is entitled along with all other Settlement Class members. Plaintiff hereby  
4 understands and agrees that, except for employment resulting from Defendant's or the  
5 Released Parties' acquisition of an existing employer of Plaintiff, he is not eligible for  
6 future employment with Defendant or any of the Released Parties, that he will not  
7 seek or apply for any such employment, that Defendant and the Released Parties are  
8 under no obligation and can decline to hire Plaintiff if he applies for or seeks such  
9 employment, and Defendant and the Released Parties can terminate Plaintiff's  
10 employment sought and obtained in violation of the foregoing without obtaining  
11 Defendant's written consent. The Parties expressly agree that the Court's approval,  
12 denial, or reduction of any enhancement payment is not a material condition to the  
13 Settlement Agreement, and is to be considered by the Court separately from the  
14 fairness, reasonableness, adequacy, and good faith of the Settlement Agreement. Any  
15 order or proceeding relating to the application by Class Counsel for an award for an  
16 enhancement award shall not operate to terminate or cancel this Settlement  
17 Agreement.

18         21. In the event that a lesser sum is awarded for the attorneys' fees and costs  
19 referenced above in Paragraph 19, or for the Enhancement Award referenced above  
20 in Paragraph 20, the approval by the Court of any such lesser sum(s) shall not be  
21 grounds for Plaintiff and/or Class Counsel to terminate the settlement, but such an  
22 order shall be appealable by them. In the event that such an appeal is filed,  
23 administration of the settlement shall be stayed pending resolution of the appeal.  
24 Thereafter, if, after the exhaustion of such appellate review, any additional amounts  
25 remain which are distributable to the Settlement Class members, the cost of  
26 administration of such additional payments will be paid out of such additional  
27 amounts, and will not be chargeable to or payable by Defendant. Any amount not  
28 awarded in fees and/or costs, or enhancement awards, but which is not challenged via

1 appeal by Plaintiff and/or Class Counsel, shall be added to the Net Settlement Fund  
2 and distributed to the Settlement Class members in accordance with the terms of the  
3 Settlement Agreement.

4       22. Costs of Administration: Subject to Court approval, the Parties designate  
5 CPT Group, Inc. to administer the settlement in this action (“Settlement  
6 Administrator”), which has agreed to administer the settlement for fees and costs not  
7 to exceed \$32,500. The Settlement Administrator’s duties of administration shall  
8 include, without limitation, receiving and updating through normal and customary  
9 procedures the Class List to be produced by Defendant, so that it is updated prior to  
10 the Notice being mailed, printing and mailing the Court approved Notice of Class  
11 Action Settlement, performing necessary additional skip traces on Notices and/or  
12 checks returned as undeliverable, calculating Settlement Class members’ shares of the  
13 Net Settlement Fund, preparing and mailing of settlement checks, establishing a  
14 settlement website as described hereafter, responding to Settlement Class member  
15 inquiries as appropriate, preparing any appropriate tax forms in connection with the  
16 settlement payments and remitting those forms to the appropriate governmental  
17 agencies, and generally performing all normal and customary duties associated with  
18 the administration of such settlements. All class administration fees for the Settlement  
19 Administrator’s services will be paid out of the Settlement Fund. The Settlement  
20 Administrator will coordinate the calculations of the payroll taxes and deductions with  
21 Defendant to ensure that, to the extent such taxes and deductions are or could be  
22 deemed to have been made by the Settlement Administrator on behalf of Defendant  
23 by government taxing authorities, they are made in compliance with Defendant’s tax  
24 withholding and remittance obligations for such payments. The Parties shall have  
25 equal access to the Settlement Administrator.

26       23. No Claim Form Required: Settlement Class members shall share in the  
27 Net Settlement Fund referred to in Paragraph 16, as set forth in more detail in  
28 Paragraph 24 hereafter. Settlement Class members shall not be required to complete

1 a claim form. Settlement Class members shall receive a Notice of Class Action  
2 Settlement informing them of the terms of the Settlement and providing them with an  
3 estimate of their share of the Net Settlement Fund. Unless a class member elects to  
4 opt out of the settlement, a check representing each class member's settlement  
5 payment will be mailed to them pursuant to the terms of this Settlement Agreement.  
6 However, members of the Settlement Class may not opt out of the Settlement as it  
7 pertains to PAGA claims, and they will be sent a check representing their portion of  
8 the Settlement of the PAGA claims, notwithstanding if they otherwise opt out of the  
9 Settlement of the putative class claims.

10 24. Calculation of Settlement Class Members' Shares of the Net Settlement  
11 Fund: Each Settlement Class member shall, subject to the terms and conditions of  
12 this Settlement Agreement, be entitled to a share of the NSF on a pro-rata basis, based  
13 on the number of active workweeks during the Settlement Class Period. For purposes  
14 of this Settlement Agreement, the number of active workweeks shall include any  
15 partial workweek, and shall include any workweek in which the Settlement Class  
16 member worked any hours.

17 25. Opt-Out and/or Objection Rights to Settlement: The Notice of Class  
18 Action Settlement mailed to all Settlement Class members will advise each class  
19 member of their right to opt-out of the Settlement Agreement (except as to the PAGA  
20 claims), or object to all or any part of the Settlement Agreement (except as to the  
21 PAGA claims) and include a Request for Exclusion Form. Any Settlement Class  
22 member who wishes to opt-out from the Settlement Agreement, or lodge an objection,  
23 shall be advised that they must submit the Request for Exclusion or other written  
24 request to opt out to the Settlement Administrator postmarked no later than forty-five  
25 (45) calendar days from the date of mailing of the Notice of Class Action Settlement  
26 and Request for Exclusion Form to the Settlement Class members. Any opt-out  
27 submission that is not on the Request for Exclusion Form must contain the following  
28 language (or substantially similar language), in order to effectuate the class member's

1 election to opt-out: “I elect to opt out of the Bey v. Mosaic Sales Solutions class  
2 action settlement. I understand that by doing so, I will not be able to participate in  
3 the settlement, and will not receive a share of the settlement proceeds, although I will  
4 recover a share of the proceeds of the settlement of the PAGA claim.” The Notice  
5 of Class Action Settlement shall include the specific address for a class member to  
6 use when mailing the Request for Exclusion Form or an opt-out letter. In the event of  
7 the election to submit an Objection, each Objection must contain the full name,  
8 current home (or mailing) address, and last four digits of the Social Security number  
9 of the objector, and must state the grounds for the objection. If an objector wishes to  
10 be heard at the time of the hearing on final approval, he/she must notify the Court and  
11 all counsel in writing not less than 30 days before the scheduled date of the Final  
12 Approval hearing of the intention to appear. In the event that more than 5% of the  
13 class members submit elections to opt-out of the settlement, Defendant will have the  
14 right to rescind and terminate the settlement without prejudice to their pre-settlement  
15 positions and defenses in the Litigation. Should the 5% threshold for opt-outs be  
16 exceeded, the Settlement Administrator shall notify counsel for all parties via email  
17 immediately, and Defendant shall notify Class Counsel within 10 calendar days of  
18 receipt of such email if it intends to void the Settlement.

19       26. Challenges to Calculations: A Settlement Class member may dispute  
20 the number of workweeks used to calculate the settlement payment by timely sending  
21 a written notice to the Settlement Administrator informing the Settlement  
22 Administrator of the nature of the dispute and providing any records or documentation  
23 supporting the Settlement Class member’s position. To be considered timely, any  
24 dispute regarding the settlement payment or the underlying data used to calculate the  
25 settlement payment must be submitted by the Settlement Class member within forty-  
26 five (45) days of the mailing of the Notice of Class Action Settlement. In response to  
27 any timely dispute, Defendant will first verify the information contained in the  
28 Settlement Class member’s personnel file and Defendant’s payroll records. Unless the

1 Settlement Class member can establish a different period of employment based on  
2 documentary evidence, the total number of workweeks established by Defendant's  
3 records will control. Class Counsel and Defendant's Counsel will then make a good  
4 faith effort to resolve the dispute informally. If counsel for the parties cannot agree,  
5 the dispute shall be resolved by the Settlement Administrator, who shall examine the  
6 records provided by the Defendant and the Settlement Class member, and shall be the  
7 final arbiter of disputes relating to a Settlement Class member's workweeks. The  
8 Settlement Administrator's determination regarding any such dispute shall be final  
9 for purposes of administering notice of the Settlement, subject to final review,  
10 determination, and approval by the Court.

11       27. Funding of Settlement: Within ten (10) business days following the  
12 occurrence of the Effective Date of the Settlement as defined above, Defendant shall  
13 transfer the total settlement amount of Three Million Dollars (\$3,000,000.00), in  
14 addition to the amount estimated by the Settlement Administrator for Defendant's  
15 share of employer-side payroll taxes, to the Settlement Administrator. Thereafter, the  
16 Settlement Administrator shall distribute the funds as soon as is practical in  
17 accordance with the terms of this Settlement Agreement as approved by the Court.  
18 No funds will be payable by Defendant prior to that time.

19       28. Payment Procedures: As soon as practical after Defendant's deposit of  
20 the Settlement Funds into the account created by the Settlement Administrator, the  
21 Settlement Administrator shall resolve all disputes as to the settlement payment owed  
22 to each Settlement Class member (as provided in Paragraph 26, above) and shall pay  
23 settlement awards from the NSF to all Settlement Class members who have not opted-  
24 out of the settlement, settlement awards for their portion of the settlement of PAGA  
25 claims from the NSF to all members of the Settlement Class (regardless of whether  
26 they opt out of the Settlement as it pertains to the putative class claims), Court-  
27 approved attorneys' fees, costs, enhancement awards and LWDA payment. Payment  
28 of Court-approved attorneys' fees, costs, and enhancement awards need not await the

1 making of settlement award distributions to Settlement Class members, and shall be  
2 paid as soon as practical after receipt of the funds by the Settlement Administrator.

3 29. Tax Treatment of Settlement Payments:

4 a. Settlement awards will be allocated for tax purposes as one-third  
5 (33 1/3%) for unpaid wages, one-third (33 1/3%) for other non-wage damages, and  
6 one-third (33 1/3%) for civil or statutory penalties and interest.

7 b. Each recipient of any monies paid in accordance with this  
8 Settlement Agreement is responsible for any taxes associated with the monies  
9 received by each recipient.

10 c. If required by state or federal tax requirements, the Settlement  
11 Administrator will prepare appropriate W-4 payroll tax deductions for that portion of  
12 each settlement payment on which payroll tax withholdings are required. Where  
13 otherwise required, the Settlement Administrator will prepare a Form 1099 for  
14 Settlement Class members. The 1099 form will reflect each Settlement Class  
15 member's non-wage income. The Settlement Administrator will be responsible for  
16 preparing these forms correctly. Settlement Class members will be responsible for  
17 correctly characterizing the compensation that they receive pursuant to the Form 1099  
18 and for payment of any taxes owing on said amount.

19 d. The Parties acknowledge and agree that neither Defendant nor its  
20 attorneys have made any representations regarding the tax consequences of the  
21 settlement payments made under this Settlement Agreement. Settlement Class  
22 members will be required to pay all federal, state or local taxes, if any, which are  
23 required by law to be paid with respect to the settlement payments. The parties further  
24 agree that Defendant shall have no legal obligation to pay, on behalf of Settlement  
25 Class members, any taxes, deficiencies, levies, assessments, fines, penalties, interest  
26 or costs, which may be required to be paid with respect to the settlement payments.

27 30. Tax Treatment of Class Representative Enhancement Award: The Class  
28 Representative will receive an IRS Form 1099 for his individual enhancement award

1 prepared by the Settlement Administrator, and will be responsible for correctly  
2 characterizing this additional compensation for tax purposes and for payment of any  
3 taxes owing on said amount.

4 31. Undistributed Funds: In the event that any checks mailed to Settlement  
5 Class members remain uncashed after the expiration of 180 days, or an envelope  
6 mailed to a Settlement Class member is returned and no forwarding address can be  
7 located for the Settlement Class member after reasonable efforts have been made, then  
8 any such funds shall be transmitted by the Settlement Administrator to California  
9 Labor Commissioner’s office, which will try to locate the employee and deliver the  
10 funds. If these attempts are unsuccessful, the funds shall be deposited into the State  
11 of California Unclaimed Property Fund, to be held there in the name of and for the  
12 benefit of such Settlement Class members under California’s escheatment laws.

13 **NOTICE TO THE CLASS**

14 32. Compilation of Class List: The Parties agree that within thirty (30) days  
15 after preliminary approval of this Settlement Agreement by the Court, Defendant will  
16 provide a final “Class List” to the Settlement Administrator, which list shall include  
17 the following most up to date information about each Settlement Class member in an  
18 electronic format:

- 19 (1) name; (2) last known home address and telephone number; (3)  
20 Social Security Number; and (4) number of weeks in which they  
21 worked any hours for Defendant during the Settlement Class  
22 Period.

23 The final Class List will be designated as Highly Confidential – Attorney Eyes  
24 Only under the protective order that the Parties shall stipulate to, and submit to the  
25 Court, as a condition of the final Class List being provided to the Settlement  
26 Administrator, and the Settlement Administrator will be required to sign and provide  
27 to Defendant the Acknowledgement of being bound by the protective order as entered  
28 by the Court. The Class List shall be used only by the Claims Administrator, and only

1 for purposes of administering the settlement.

2 The Settlement Administrator will perform normal and customary address  
3 updates and verifications as necessary prior to the mailing of the Notice to the  
4 Settlement Class. Once the final Class List has been received from Defendant, and  
5 updated as stated herein, the list shall then be referred to as the "Class Data List." In  
6 response to any dispute raised by a putative Settlement Class member about their  
7 omission from the Class List, Defendant will first verify the information contained in  
8 the putative Settlement Class member's personnel file and Defendant's payroll  
9 records. Unless the putative Settlement Class member can establish that they should  
10 have been included on the Class List based on documentary evidence, Defendant's  
11 records will control. Class Counsel and Defendant's Counsel will then make a good  
12 faith effort to resolve the dispute informally. If counsel for the parties cannot agree,  
13 the dispute shall be resolved by the Settlement Administrator, who shall examine the  
14 records provided by the Defendant and the putative Settlement Class member, and  
15 shall be the final arbiter of disputes relating to a putative Settlement Class member's  
16 omission from the Class List. The Settlement Administrator's determination  
17 regarding any such dispute shall be final for purposes of administering notice of the  
18 Settlement, subject to final review, determination, and approval by the Court.

19 33. Dissemination of Notice of Class Action Settlement: Within ten (10)  
20 business days of its receipt of the Class Data List, the Settlement Administrator will  
21 send the Settlement Class members, by first-class mail, at their last known address or  
22 such other address as located by the Settlement Administrator, the court-approved  
23 Notice of Class Action Settlement in the form attached hereto as **Exhibit A** and  
24 Request for Exclusion Form attached hereto as **Exhibit B**.

25 **RELEASE BY THE CLASS AND THE LWDA**

26 34. Upon final approval by the Court, each Settlement Class member who  
27 has not opted-out of the settlement and the LWDA will release Mosaic Sales Solutions  
28 US Operating Co., LLC, and all of its present and former parent companies,

1 subsidiaries, shareholders, officers, directors, employees, agents, servants, registered  
2 representatives, attorneys, insurers, affiliates, and successors and assigns of  
3 Defendant and its affiliates and its parent companies (including without limitation,  
4 Acosta, Inc. and Mosaic Parent Holdings, Inc.), and all persons acting under, by,  
5 through, or in concert with any of them, from all claims, demands, rights, liabilities,  
6 and causes of action that were asserted in the 5AC, and all violations asserted in any  
7 notice sent to the LWDA referenced in any such pleadings on behalf of Plaintiff and  
8 the Settlement Class members, and any additional claims that could have been brought  
9 based on the facts alleged in the 5AC, and notice sent to the LWDA referenced in any  
10 such pleadings through the date of the Final Approval of this Settlement Agreement.

11 The released claims include but are not limited to, claims for: alleged failure to  
12 pay minimum wage for all hours worked; alleged failure to properly calculate and/or  
13 pay overtime wages; alleged failure to provide legally-compliant meal and rest breaks  
14 or pay premium wages for same; alleged failure to timely, properly or otherwise  
15 provide accurate itemized wage statements to the Plaintiffs and/or Plaintiff Class  
16 members; alleged failure to keep records properly concerning time worked and/or  
17 breaks taken by the Plaintiff and/or Settlement Class members; alleged failure to pay  
18 all wages owed at the time of termination; alleged unfair competition predicated on  
19 the facts alleged in the 5AC, and alleged civil or other penalties predicated on the facts  
20 alleged in the 5AC, and any notice to the LWDA referenced in such pleadings.

21 Notwithstanding the foregoing, upon occurrence of the Effective Date, the  
22 LWDA and all Settlement Class members, regardless of whether they opted out of the  
23 Settlement as it pertains to the putative class claims, shall be deemed to have released  
24 all claims for civil penalties under PAGA.

25 **ADDITIONAL RELEASE BY CLASS REPRESENTATIVE**

26 35. In addition to the Release set forth in Paragraph 34, Plaintiff and Class  
27 Representative, for himself alone, releases Mosaic Sales Solutions US Operating Co.,  
28 LLC, and all of its present and former parent companies, subsidiaries, shareholders,

1 officers, directors, employees, agents, servants, registered representatives, attorneys,  
2 insurers, affiliates, and successors and assigns of Defendant and its affiliates and its  
3 parent companies (including without limitation, Acosta, Inc. and Mosaic Parent  
4 Holdings, Inc.), and all persons acting under, by, through, or in concert with any of  
5 them, from any and all claims, debts, liabilities, demands, obligations, guarantees,  
6 costs, expenses, attorneys' fees, damages, action or causes of action, contingent or  
7 accrued, which do or may exist as of the date of the execution of this Settlement  
8 Agreement and through and including the date of Final Approval of this Settlement  
9 Agreement, including a waiver of, to the extent otherwise applicable, rights under  
10 California Civil Code section 1542 with respect to all such released claims. Section  
11 1542 states as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
13 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
14 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
15 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
16 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

17 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

18 36. The Parties shall promptly seek the Court's approval of this settlement.  
19 As soon as practicable after execution of this Settlement Agreement, Class  
20 Representative and Class Counsel shall apply to the Court for the entry of a  
21 preliminary approval order which would accomplish the following:

- 22 a. Schedule a final fairness hearing on the question of whether the  
23 settlement, including the payment of attorneys' fees and costs, the  
24 Class Representative's enhancement award, and the payment to  
25 the LWDA pursuant to the PAGA claims should be finally  
26 approved as fair, reasonable, and adequate, and finally resolving  
27 any outstanding issues or disputes remaining from the  
28 administration of the notice of the settlement;

- b. Approve, as to form and content, the proposed Notice of Proposed Class Action Settlement;
- c. Direct the mailing of the Notice of Proposed Class Action Settlement by first class mail to the Settlement Class members;
- d. Preliminarily approve the settlement subject to the final review and approval by the Court;
- e. Preliminarily approve the Settlement Administrator selected by Class Counsel as the Settlement Administrator and approving payment of the reasonable charges of the Settlement Administrator;
- f. Preliminarily approve Class Counsel's request for attorneys' fees and litigation expenses and costs subject to final review and approval by the Court; and
- g. Preliminarily approve Class Counsel's request that Class Representative receive an enhancement award in the amount of up to \$10,000.00 subject to final review and approval by the Court.

Not later than five court days prior to the submission of the motion for preliminary approval of this Settlement Agreement to the Court, Plaintiff's counsel will submit a near-final draft thereof (including all supporting papers and proposed order) to counsel for Defendant for their review and comment.

**DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

37. In conjunction with the request for final approval of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a proposed final order and Judgment:

- a. Granting Final Approval of the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Approving Class Counsel's application for an award of attorneys'

- 1 fees and reimbursement of costs;
- 2 c. Approving the enhancement award to the Class Representative;
- 3 d. Approving the Payment to the LWDA, pursuant to the PAGA, of
- 4 its statutory proportionate share of the amount of \$20,000.00 (i.e.,
- 5 \$15,000.00); and
- 6 e. Dismissing this Action on the merits and with prejudice.

7 Not later than five calendar days prior to the submission of the motion(s)  
8 seeking the foregoing, Plaintiff's counsel will submit a near-final draft thereof  
9 (including all supporting papers and proposed order) to counsel for Defendant for  
10 their review and comment.

11 **PARTIES' AUTHORITY**

12 38. The signatories hereto hereby represent that they are fully authorized to  
13 enter into this Settlement Agreement and bind the Parties hereto to the terms and  
14 conditions hereof.

15 **MUTUAL FULL COOPERATION**

16 39. The Parties agree to fully cooperate with each other to accomplish the  
17 terms of this Settlement Agreement, including but not limited to execution of such  
18 documents and to take such other actions as may reasonably be necessary to  
19 implement the terms of this Settlement Agreement. The Parties shall use their best  
20 efforts, including all efforts contemplated by this Settlement Agreement and any other  
21 efforts that may become necessary by order of the Court, or otherwise, to effectuate  
22 this Settlement Agreement and the terms set forth herein. As soon as practicable after  
23 execution of this Settlement Agreement, Class Counsel shall, with the assistance and  
24 cooperation of Defendant and their counsel, take all necessary steps to secure the  
25 Court's preliminary approval of this Settlement Agreement.

26 **NO PRIOR ASSIGNMENTS**

27 40. The Parties hereto represent, covenant, and warrant that they have not,  
28 directly or indirectly, assigned, transferred, encumbered, or purported to assign,

1 transfer, or encumber to any person or entity any portion of any liability, claim,  
2 demand, action, cause of action, or rights herein released and discharged except as set  
3 forth herein.

4 **CONSTRUCTION**

5 41. The Parties hereto agree that the terms and conditions of this Settlement  
6 Agreement are the result of lengthy, intensive, arms-length mediated negotiations  
7 between the Parties, conducted through mediator Phillip Cha, Esq., a respected and  
8 experienced employment and class action mediator. The Parties further agree that  
9 this Settlement Agreement shall not be construed in favor of, or against, any party by  
10 reason of the extent to which any party, or his or its counsel, participated in the  
11 drafting of this Settlement Agreement.

12 **CAPTIONS AND INTERPRETATIONS**

13 42. Paragraph titles or captions contained herein are inserted as a matter of  
14 convenience and for reference, and in no way define, limit, extend, or describe the  
15 scope of this Settlement Agreement or any provision hereof. Each term of this  
16 Settlement Agreement is contractual and not merely a recital.

17 **MODIFICATION**

18 43. This Settlement Agreement may not be changed, altered, or modified,  
19 except in writing and signed by the Parties hereto, and approved by the Court. This  
20 Settlement Agreement may not be discharged except by performance in accordance  
21 with its terms or by a writing signed by the Parties hereto.

22  
23 **INTEGRATION CLAUSE**

24 44. This Settlement Agreement contains the entire agreement between the  
25 Parties relating to the settlement and the transaction contemplated hereby, and all prior  
26 or contemporaneous agreements, understandings, representations, and statements,  
27 whether oral or written and whether by a party or such party's legal counsel, are  
28 merged herein. No rights hereunder may be waived except in writing.

1 **BINDING ON ASSIGNS**

2 45. This Settlement Agreement shall be binding upon and inure to the benefit  
3 of the Parties hereto and their respective heirs, trustees, executors, administrators,  
4 successors and assigns.

5 **CLASS COUNSEL SIGNATORIES**

6 46. It is agreed that because of the large number of Settlement Class  
7 members, it is impossible or impractical to have each Settlement Class member  
8 execute this Settlement Agreement. As such, Class Counsel is signing on behalf of  
9 the Settlement Class. In addition, the Notice of Class Action Settlement, Exhibit "A",  
10 will advise all Settlement Class members of the binding nature of the Release and  
11 such shall have the same force and effect as if this Settlement Agreement were  
12 executed by each Settlement Class member.

13 **CONFIDENTIALITY**

14 47. Plaintiff and Class Counsel will maintain the proposed settlement and  
15 this Settlement Agreement as confidential and not publicly disclose the same except  
16 as set forth herein and in Paragraph 48 below. Except as set forth in Paragraph 48  
17 below, or as otherwise agreed in writing between the Parties, both before and  
18 following the execution of this Settlement Agreement by the Parties and their counsel,  
19 there will be no direct or indirect comment or publication by Plaintiff and Class  
20 Counsel of the settlement in terms of affirmative or responsive media  
21 statements/comments, press releases or conferences, website postings or content,  
22 social media postings or content, other Internet postings or content, subscribed email  
23 messages, newsletters, disseminated updates, mass mailings, or any other comment  
24 or publication to the press, media or public at large. This shall not apply to or limit  
25 the public filing of motions or other case materials by Class Counsel in the Litigation  
26 or in other class action litigation in which Class Counsel is seeking appointment as  
27 counsel for a certified class ("Other Actions"), related to seeking and obtaining Court  
28 approval of the proposed settlement and the related awards of attorneys' fees and

1 costs, enhancements and the other relief set forth in this Settlement Agreement or in  
2 proposed settlements in Other Actions, or to communications between Class Counsel  
3 and Plaintiff or Settlement Class members in the Litigation, except that prior to the  
4 filing of the motion for preliminary approval of the Settlement in the Litigation, Class  
5 Counsel shall not discuss the settlement with Settlement Class members other than  
6 the named Plaintiff. The parties understand and agree that there may be media  
7 coverage of the settlement of the Litigation not initiated by Plaintiff or Class Counsel,  
8 directly or indirectly. It is also agreed and understood that the Parties and each and  
9 every Settlement Class member, may disclose the settlement to their families, plus  
10 their legal, tax, or accounting advisors, insurance companies, or as required by law,  
11 regulatory rules or regulatory requirements.

#### 12 WEBSITES

13 48. The Parties agree that the Settlement Administrator may use U.S. Mail  
14 and an information-only website to provide notice and information about the  
15 settlement to Settlement Class members. The domain name used for the Settlement  
16 Administrator's website for the settlement will be subject to Defendant's reasonable  
17 approval. Not later than the date that the Claims Administrator must remit any  
18 returned checks to the California Labor Commissioner, the Settlement  
19 Administrator's website for the settlement will be taken down. No information about  
20 the Litigation or the settlement may be posted on any of Plaintiff's counsel's websites  
21 without Defendant's prior written consent.

#### 22 COUNTERPARTS

23 49. This Settlement Agreement may be executed in counterparts, and when  
24 each party has signed and delivered at least one such counterpart, each counterpart  
25 shall be deemed an original, and, when taken together with other signed counterparts,  
26 shall constitute one Settlement Agreement, which shall be binding upon and effective  
27 as to all Parties.  
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**GOVERNING LAW**

50. The Parties agree that California law governs the interpretation and application of this Settlement Agreement, except to the extent governed by federal law in which case federal law will apply.

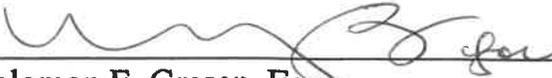
*[Signatures on following page]*

1 IT IS SO AGREED AND STIPULATED.

2

3 Dated: 12/5, 2018

RGLAWYERS, LLP



Solomon E. Gresen, Esq.  
Jack Risemberg, Esq.  
Attorneys for Plaintiff, Elijah Bey

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5 Dated: 12/5, 2018

BRADLEY/GROMBACHER LLP

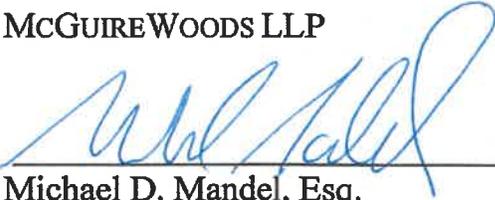


Marcus J. Bradley, Esq.  
Attorneys for Plaintiff, Elijah Bey

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7 Dated: 12/5, 2018

MCGUIREWOODS LLP



Michael D. Mandel, Esq.  
Attorneys for Defendant  
Mosaic Sales Solutions US Operating Co.  
LLC

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