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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF TULARE**

16 DON VASQUEZ, individually and on behalf
17 of all others similarly situated,
18 Plaintiff,
19 vs.
20 SAPUTO CHEESE USA, INC.; and Does 1
21 through 20, inclusive,
22 Defendants.

Case No. VCU282978
CLASS ACTION
**STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Action Filed: May 27, 2020
Trial Date: None Set

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1 Subject to final approval by the Court, which counsel and the parties agree to pursue and
2 recommend in good faith, Plaintiff Don Vasquez (“Named Plaintiff”), individually and on behalf
3 of all others similarly situated and alleged aggrieved employees, on the one hand, and Defendant
4 Saputo Cheese USA, Inc. on the other (“Defendant”), hereby agree to the following binding
5 Settlement of the class action designated *Vasquez v. Saputo Cheese USA, Inc.*, Superior Court of
6 the State of California, County of Tulare, Case No. VCU282978. As detailed below, in the event
7 the Court does not enter orders consistent with the Settlement terms or the conditions precedent are
8 not met for any reason, this Stipulation shall be void and shall be of no force or effect whatsoever.

9 **I. DEFINED TERMS**

10 As used herein, the following terms shall have the meanings specified below. To the extent
11 terms or phrases used in this Stipulation are not specifically defined below, but are defined
12 elsewhere in the Stipulation, they are incorporated by reference into this definition section:

13 1. “Action” or “Lawsuit” means the lawsuit captioned as *Vasquez v. Saputo Cheese*
14 *USA, Inc.*, Superior Court of the State of California, County of Tulare, Case No. VCU282978 and
15 any and all other lawsuits consolidated thereto, including but not limited to Case No. VCU283853.

16 2. “Agreement,” or “Stipulation” means this Stipulation and Settlement of class action
17 claims and claims brought under the California Labor Code Private Attorneys General Act (Cal.
18 Labor Code §§ 2698 *et seq.*).

19 3. “Attorneys’ Fees and Cost Award” means the amount authorized by the Court to be
20 paid to Class Counsel for the services they have rendered and costs and expenses they have incurred
21 in prosecuting the Action.

22 4. “Saputo” means and refers to Defendant Saputo Cheese USA, Inc.

23 5. “Claims” means all claims which have been, will be (pursuant to Section I,
24 Paragraphs 31 and 32, *infra*), or could have been asserted in the Action based on the facts alleged.

25 6. “Class” or “Settlement Class” means and refers to: All current and former non-
26 exempt California employees of Saputo employed at any time from May 27, 2016 through and
27 including March 30, 2023. “Class Member” or “Settlement Class Member” refers to individual
28 members of the Class.

1 7. “Class Counsel” and “Named Plaintiff’s Counsel” means and refers to Jonathan
2 Lebe and Zachary Gershman of Lebe Law, APLC and Michael Singer and Jeff Geraci of Cohelan
3 Khoury & Singer. Class Counsel represent and warrant that, other than the individuals and firms
4 referenced in this definition, no individuals or law firms represent Plaintiff or the Settlement Class
5 in connection with this Action or have any right to seek reimbursement of fees or expenses in
6 connection with this Action.

7 8. “Class List and Data Report” means the following: a list of the Class Members that
8 provides their names; last known mailing addresses and telephone numbers; social security
9 numbers; and the start and end dates of active employment during the Class Period, as reflected in
10 Defendant’s existing business records and to the extent such records and information exists.
11 Defendant will diligently and in good faith compile the Class List and Data Report from their
12 records. Defendant will provide the Class List and Data Report to the Settlement Administrator
13 within twenty-one (21) calendar days following Preliminary Approval of the Settlement. The Class
14 List and Data Report shall be provided in a ready to use computer-readable format approved by the
15 Settlement Administrator.

16 9. “Class Period” means the period May 27, 2016 to and including March 30, 2023.

17 10. “Court” means the Superior Court of California, County of Tulare.

18 11. “Defendant” means and refers to Saputo Cheese USA, Inc.

19 12. “Effective Date” means the date when both of the following have occurred: (a)the
20 Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
21 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
22 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one
23 or more Participating Class Members objects to the Settlement, the day after the deadline for filing
24 a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after
25 the appellate court affirms the Judgment and issues a remittitur.

26 13. “Final Approval Hearing/Settlement Fairness Hearing” means the hearing at which
27 the Court considers whether to approve the Settlement and to enter the Final Judgment.

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1 14. “Final Judgment” refers to the order of the Court granting final approval of this
2 Stipulation of Settlement and entering a judgment approving this Agreement on substantially the
3 terms provided in the Agreement.

4 15. “Gross Individual Settlement Payment” means the total Settlement amount for each
5 individual Class Member resulting from the calculations set forth herein for the complete settlement
6 and release of any and all non-PAGA claim.

7 16. “Gross Settlement Amount” (“GSA”) means the total maximum amount that Saputo
8 will pay under this Agreement. The Gross Settlement Amount equals two million four hundred
9 thousand U.S. dollars (\$2,400,000). All payments associated with the parties’ settlement shall be
10 paid from the Gross Settlement Amount, including all monies allocated to Participating Class
11 Members, the PAGA Group, Named Plaintiff, Class Counsel, the Labor and Workforce
12 Development Agency, and the Settlement Administrator and the employees’ employment taxes,
13 including the employee FICA, FUTA and SDI contributions, on the wage portion of the Gross
14 Individual Settlement Payment. Defendant’s share of taxes will be paid separately from and in
15 addition to the Gross Settlement Amount and will not be deducted from the Gross Settlement
16 Amount.

17 17. “Individual PAGA Payment” means the amount payable from the Net Class
18 Settlement Fund to each PAGA Group Member. The Individual PAGA Payment shall be calculated
19 pursuant Paragraph III.15. herein.

20 18. “Individual Settlement Payment” means the amount of each Participating Settlement
21 Class Member’s Gross Individual Settlement Payment, less employee portions of state and federal
22 withholding taxes, including the employee FICA, FUTA and SDI contributions and any other
23 applicable payroll deductions required by law as a result of the payment of the amount allocated to
24 such Participating Settlement Class Member under the terms of the Settlement.

25 19. “Named Plaintiff” means proposed settlement class representative Don Vasquez.

26 20. “Net Class Settlement Fund” or “NCSF” refers to the funds available to be
27 distributed to Participating Class Members as Gross Individual Settlement Payments after payment
28 of any Attorneys’ Fees and Cost Award, Settlement Administration Costs, Enhancement Award

1 and the PAGA Payment, and less applicable taxes. Class Members shall not be required to submit
2 a claim in order to receive a share of the NCSF, and no portion of the Gross Settlement Amount
3 shall revert to Defendant.

4 21. "Notice" means the Notice of Class Action Settlement which describes the terms of
5 the Settlement, procedure and time period to Opt-Out of or object to the Settlement, and the date
6 set for the Final Approval Hearing (substantially in the form attached hereto as Exhibit A). The
7 Parties agree that the Notice does not need to be translated into Spanish or any other language
8 because, to the best of their knowledge, the majority of the Class Members are sufficiently fluent
9 in English.

10 22. "Notice Response Deadline" means the date forty-five (45) calendar days after the
11 Notice is initially mailed to Class Members by the Settlement Administrator and is synonymous
12 with Opt-Out/Objection Deadline Date, as defined immediately below.

13 23. "Opt-Out/Objection Deadline Date" means the deadline date forty-five (45)
14 calendar days after the date the Notice is initially mailed to the Class Members by which Class
15 Members must postmark an opt-out or objection to be considered timely.

16 24. "Opt-Out" means a timely letter submitted by a Class Member indicating a request
17 to be excluded from the Settlement. The Request for Exclusion must: (a) set forth the name, address,
18 and telephone number of the Class Member requesting exclusion; (b) clearly state that the Class
19 Member does not wish to be included in the Settlement; (c) be signed by the Class Member; (d) be
20 returned by mail to the Settlement Administrator at the specified address indicated in the Notice;
21 and (e) be postmarked on or before the Opt-Out/Objection Deadline Date. The date of the postmark
22 shall be the exclusive means to determine whether a Request for Exclusion has been timely
23 submitted. A Class Member who does not request exclusion from the Settlement shall be deemed
24 a Participating Class Member and will be bound by all terms of the Settlement if the Settlement is
25 granted final approval by the Court.

26 25. "PAGA Group" means and refers to all current and former non-exempt California
27 employees of Saputo employed at any time from May 12, 2019 through and including March 30,
28 2023. Each member of the PAGA Group is a "PAGA Group Member."

1 26. “PAGA Payment” means the total maximum amount to be paid to the Labor
2 Workforce Development Agency and the PAGA Group pursuant to the California Private Attorney
3 General Act of 2004 (“PAGA”) as set forth in Section III, Paragraph 15, *infra*.

4 27. “Participating Class Member” means a Class Member who has not Opted Out of the
5 Settlement.

6 28. “Parties” means Defendant, the Named Plaintiff, PAGA Group, and the Class
7 Members.

8 29. “Preliminary Approval Order” means the Order issued by the Court preliminarily
9 approving the terms of the Settlement set forth in this Stipulation.

10 30. “Qualified Settlement Fund” or “QSF” shall be the fund established by the
11 Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 and funded by
12 Defendant within fourteen (14) business days after the Effective Date. This amount shall be the
13 Gross Settlement Amount. All payments pursuant to this Agreement shall be made from the QSF
14 in a manner consistent with the terms of this Agreement.

15 31. “Released Class Claims” means, for All Participating Class Members, on behalf of
16 themselves and their respective former and present representatives, agents, attorneys, heirs,
17 administrators, successors, and assigns, release Released Parties from (i) all claims that were
18 alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
19 Operative Complaint, including any and all claims arising under federal, state, and/or local
20 statutory, constitutional, contractual, or common law for wages, damages, costs, penalties,
21 liquidated damages, punitive damages, interest, attorney fees, litigation costs, expenses, other fees
22 of any kind, restitution, equitable relief, other relief under California Business & Professions Code
23 Section 17200 et seq. (“Section 17200”) by or on behalf of any of the Participating Class Members,
24 whether individual, direct, class, representative, legal, equitable, or other type or in any other
25 capacity against Defendant and the Released Parties, which the Class Members ever had, now have,
26 or may have had based on the Class Period facts stated in the Operative Complaint, from the
27 beginning of time to the Effective Date, including, but not limited to, failure to timely pay minimum
28 wage, failure to pay overtime wages, failure to pay reporting time pay, failure to provide timely,

1 off-duty meal and/or rest breaks, failure to timely pay all wages due and owing during employment,
2 failure to promptly pay all wages due and owing at the time of the employee’s separation from
3 employment, failure to provide accurate itemized wage statements, failure to reimburse employees
4 for business expenses, engaging in any unlawful/unfair/fraudulent business practices in violation
5 of Section 17200 and the requirements of the Industrial Welfare Commission Wage Order
6 applicable thereto.

7 32. “Released PAGA Claims” means and shall include, without limitation, any and all
8 claims for PAGA civil penalties that could have been assessed or collected by Plaintiff or the
9 LWDA, a State of California Executive Branch Agency under the PAGA, from the Released Parties
10 based on the facts alleged in the Complaint, including any and all claims for failure to pay minimum
11 wage, failure to pay overtime, failure to provide compliant meal periods, failure to provide
12 compliant rest periods, failure to issue accurate itemized wage statements, failure to pay all wages
13 owed during employment, failure to reimburse employees for business expenses, failure to pay
14 reporting time pay, failure to maintain accurate payroll records for its non-exempt employees, and
15 failure to pay all wages due and owing upon termination.

16 33. “Released Parties” shall mean Defendant and its present and former parent,
17 subsidiaries, affiliates, insurers, successors, assignees, and any other entity with an interest in or
18 obligation regarding Defendant’s assets or liabilities, including but not limited to any controlling
19 persons, associates, affiliates, or subsidiaries and each and all of their respective past or present
20 officers, members, managers, directors, executives, stockholders, principals, representatives,
21 employees, attorneys, financial or investment advisors, insurers, consultants, suppliers, distributors,
22 customers, contractors, experts, accountants, bankers, testing laboratories, advisors or agents, heirs,
23 executors, trustees, general or limited partners or partnerships, limited liability companies,
24 members, joint ventures, personal or legal representatives, estates, administrators, predecessors,
25 successors, and assigns, whether or not specifically named or participating in the settlement by
26 payment or otherwise.

27 34. “Released Class Period” shall mean the period of time for which the Participating
28 Class Members have released the Released Class Claims and shall be defined as the time from May

1 27, 2016 through the date of preliminary approval of the Settlement, or June 30, 2023, whichever
2 is first.

3 35. “Released PAGA Period” shall mean the period of time for which the PAGA Group
4 has released the Released PAGA Claims and shall be defined as the time from May 12, 2019
5 through the date of preliminary approval of the Settlement, or June 30, 2023, whichever is first.

6 36. “Settlement Administrator” means and refers to CPT Group, a third-party class
7 action settlement administrator agreed to by the Parties, who will, among other things, provide the
8 Notice Packet to the Class Members and distribute the settlement amounts as described in this
9 Stipulation.

10 37. “Settlement Administration Costs” means the costs payable from the Gross
11 Settlement Amount to the Settlement Administrator for administering this Settlement including,
12 but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting,
13 distributing the Settlement Amount, and providing necessary reports and declarations, and any
14 other expenses incurred by the Settlement Administrator to complete the settlement process
15 according to the terms of this Agreement, as requested by the Parties. The Settlement
16 Administration Costs shall be paid from the Gross Settlement Amount, including, if necessary, any
17 such costs in excess of the amount represented by the Settlement Administrator as being the
18 estimated costs necessary to administer the Settlement.

19 38. “Pay Period” and/or “Pay Periods” means the number of pay periods PAGA Group
20 Members worked for Defendant in California in a non-exempt position during the PAGA Period.
21 If it is determined that any PAGA Group Member worked a partial Pay Period, it shall be considered
22 a full Pay Period. All PAGA Group Members will be entitled to payment for at least one (1) Pay
23 Period.

24 39. “Pay Period Value” means the settlement value of each Pay Period, as determined
25 by the formula set forth below in Section III, Paragraph 15(a).

26 40. “Workweek” or means the number of pay periods Settlement Class Members
27 worked for Defendant in California in a non-exempt position during the Class Period. If it is
28 determined that any Settlement Class Member worked a partial Workweek, it shall be considered

1 a full Workweek. All Settlement Class Members will be entitled to payment for at least one (1)
2 Workweek.

3 41. "Workweek Value" means the settlement value of each Pay Period, as determined
4 by the formula set forth below in Section III, Paragraph 16(a).

5 **II. RECITALS**

6 This Stipulation is made by Named Plaintiff on behalf of himself and each Class Member
7 and each member of the PAGA Group, on the one hand, and Defendant, on the other hand, and is
8 subject to the approval of the Court.

9 **INVESTIGATION IN THE CLASS ACTION**

10 The Parties have conducted significant investigation of the facts and law during the
11 prosecution of the Action. This investigation included the exchange of information preliminary to
12 two separate mediations, multiple sets of written discovery regarding Defendant's policies and
13 practices, the depositions of the Person Most Knowledgeable of Defendant and Named Plaintiff,
14 and voluminous samples of employee time records and payroll records for the Settlement Class that
15 are relevant to the Named Plaintiff's claims and the analysis by the Parties of the class-wide
16 information to investigate the merits of Named Plaintiff's claims and Defendant's potential
17 liability. Furthermore, counsel have investigated the facts and law relating to the claims alleged
18 and that could have been alleged based on the facts and claims alleged in the action, including the
19 initial Complaint and all subsequent amended complaints and potential defenses thereto, and the
20 potential damages claimed by Named Plaintiff.

21 Counsel for the Parties engaged in extensive discussions about the strengths and weaknesses
22 of the claims and defenses over the course of the preceding three years. The Parties attended two
23 separate mediation sessions, the first of which was supervised and conducted by John S. Adler,
24 Esq., a mediator with more than 40 years of experience in employment law on behalf of individuals
25 and businesses of all sizes, and the second of which was supervised and conducted by the Honorable
26 Amy D. Hogue (Ret.), a distinguished attorney and former judge with experience including time
27 with the Los Angeles County Superior Court's Complex Case Division and on assignment in
28 Division Three of the Second Appellate District. These mediations ultimately resulted in a

1 mediator's proposal by Judge Hogue on or about March 31, 2023, the terms and conditions of which
2 were accepted by the Parties and are now set forth in this Settlement.

3 **BENEFITS OF SETTLEMENT TO CLASS MEMBERS**

4 Named Plaintiff and Class Counsel recognize the expense and length of continued
5 proceedings necessary to litigate the disputes through trial and through any possible appeals.
6 Named Plaintiff has also considered the uncertainty and risk of the outcome of further litigation,
7 the uncertain merits of the claims, and the difficulties and delays inherent in such litigation. Named
8 Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability
9 for the claims asserted in the Action, both generally and in response to Defendant's defenses
10 thereto. Named Plaintiff and Class Counsel have also considered the extensive settlement
11 negotiations conducted and Defendant's agreement to enter into a settlement that confers
12 substantial benefits and relief upon the Class Members. Based on the foregoing, Named Plaintiff
13 and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate
14 and a reasonable Settlement, and is in the best interests of the Class.

15 **DEFENDANT'S REASONS FOR SETTLEMENT**

16 Without conceding any infirmity in its defenses, Defendant has concluded that any further
17 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
18 time, energy and resources of Defendant have been spent and, unless this settlement is made, will
19 continue to be devoted to the defense of the Claims asserted by the Named Plaintiff. Defendant
20 has also considered the risks and uncertainties associated with further litigation in reaching its
21 decision to enter into this Settlement. Defendant has, therefore, agreed to settle in the manner and
22 upon the terms set forth in this Agreement to put to rest the Claims in the Action.

23 Defendant denies any fault, wrongdoing, or liability, whether individually, as a class, or in
24 any kind of representative capacity, in connection with this lawsuit. Relying on the provisions of
25 this Agreement that the settlement embodied here shall in no event be construed as or deemed to
26 be evidence of an admission or a concession on the part of Defendant (or any of its predecessors,
27 successors, parent or subsidiary companies, affiliates, officers, directors, agents, attorneys,
28 representatives, insurers, suppliers, distributors, or vendors) of any fault, wrongdoing, or liability

1 whatsoever, or that any of the allegations in the Complaint are true or Class Members' claims
2 meritorious.

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

7 **III. STIPULATION AND AGREEMENT**

8 ***NOW, THEREFORE, IT IS HEREBY STIPULATED***, by and among the Named Plaintiff
9 on behalf of the Class Members and the members of the PAGA Group on the one hand, and
10 Defendant on the other hand, and subject to the approval of the Court, that the Action is hereby
11 being compromised and settled pursuant to the terms and conditions set forth in this Agreement,
12 and subject to the following terms and conditions:

13 1. Full Investigation. Named Plaintiff and Class Counsel have fully investigated the
14 factual and legal bases for the causes of action asserted in the Action.

15 2. Stipulation for Class Certification. For settlement purposes only, the Parties
16 stipulate and agree that (i) the Class Members described herein who do not Opt Out from the
17 Settlement Class may be conditionally certified as a Settlement Class, (ii) Named Plaintiff Don
18 Vasquez shall be appointed as representative for the Class, and (iii) Class Counsel shall be
19 appointed as Class Counsel for the Class. This stipulation to certification and appointments of class
20 representative and class counsel is in no way an admission that class action certification or
21 appointments is proper and shall not be admissible in this or in any other action except for the sole
22 purpose of enforcing this Agreement. Should, for whatever reason, the Court deny Final Approval,
23 or this Settlement not become effective, the Parties' stipulation to class certification as part of the
24 Settlement shall become null and void ab initio and shall have no bearing on and shall not be
25 admissible in connection with the issue of whether certification would be appropriate in a non-
26 settlement context. Defendant expressly reserves its rights and declares that it would continue to
27 oppose class certification and the substantive merits of Plaintiff's claims should the Court deny
28 Final Approval or should this Settlement not become effective. Plaintiff expressly reserves his

1 rights and declares that he will continue to pursue class certification and a trial should the Court
2 fail to grant Final Approval or should this Settlement not become effective.

3 3. For settlement purposes only, the Parties stipulate and agree that the Named Plaintiff
4 was deputized by the State of California, pursuant to PAGA, to negotiate and compromise the
5 Released PAGA Claims on behalf of any and all “Aggrieved Employees” as defined by Labor Code
6 section 2699(c), subject to the approval procedure set forth in Labor Code section 2699(l). Should,
7 for whatever reason, the Court deny Final Approval, or this Settlement not become effective, the
8 Parties’ stipulation to Named Plaintiff’s representation of any and all “Aggrieved Employees” as
9 defined by Labor Code section 2699(c) as part of the Settlement shall become null and void ab
10 initio and shall have no bearing on and shall not be admissible in connection with the issue of
11 whether or not this Action could proceed in a representative context in a non-settlement context.
12 Defendant expressly reserves its rights and declares that it would continue to oppose this action
13 proceeding on a representative basis and the substantive merits of Plaintiff’s claims should the
14 Court deny Final Approval or should this Settlement not become effective. Plaintiff expressly
15 reserves his rights and declares that he will continue to pursue representation of “Aggrieved
16 Employees” as defined by Labor Code section 2699(c) and a trial should the Court fail to grant
17 Final Approval or should this Settlement not become effective.

18 4. Release as to Participating Class Members and all PAGA Group Members. As of the
19 Effective Date, the Participating Class Members, including any Participating Class Members who
20 object to this Agreement pursuant to the procedures set forth below, fully, finally, and forever
21 completely release and discharge the Released Parties from the Released Claims for the Class
22 Period. Similarly, as of the Effective Date, Plaintiff, individually and on behalf of the Labor and
23 Workforce Development Agency and members of the PAGA Group, forever completely release,
24 relinquish, and discharge the Released PAGA Claims. Participating Class Members and members
25 of the PAGA Group shall be forever barred from asserting, instituting, or maintaining against any
26 or all of the Released Parties, any and all claims, demands, actions, causes of action, lawsuits,
27 arbitrations, damages, or liabilities whether legal, equitable, or otherwise, relating in any way to
28 the claims asserted or the factual or legal allegations made in the Action. Members of the PAGA

1 Group will not have the opportunity to opt out of the PAGA Group or object to the PAGA Payment
2 and release of the PAGA Claims.

3 a. The release shall be included as part of any final judgment in this action, and all
4 released claims and rights are intended to be barred by principles of res judicata.
5 “Released Claims” does not release any person, party or entity from claims, if
6 any, by Settlement Class Members for workers compensation, unemployment,
7 wrongful termination, discrimination, harassment, retaliation, or disability
8 benefits of any nature. The Released Claims are those that accrued during the
9 Class Period.

10 5. Section 1542 Waiver.

11 In agreeing to the foregoing waiver, Plaintiff expressly waives and relinquishes the
12 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

20 6. Inapplicability of Labor Code § 206.5. Plaintiff, on behalf of himself and the
21 Settlement Class, acknowledges and agrees that the claims for failure to pay all overtime wages,
22 minimum wage violations, meal period violations, wage statement violations, and waiting time
23 penalties in the Action are disputed, and that the payments set forth herein constitute payment of
24 all sums allegedly due to them regarding the allegations in this Action. Plaintiff, on behalf of
25 himself and the Settlement Class, acknowledge and agree that California Labor Code § 206.5 is not
26 applicable to the Parties hereto. That section provides in pertinent part as follows:

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

7. Tax Liability. Defendant makes no representations as to the tax treatment or legal

1 effect of the payments called for herein, and Named Plaintiff, Participating Class Members,
2 members of the PAGA Group, and Class Counsel are not relying on any statement or representation
3 by Defendant in this regard and shall hold Defendant harmless from any claim or liability for taxes,
4 penalties or interest arising as a result of the payment. Named Plaintiff, Participating Class
5 Members, Class Counsel, and members of the PAGA Group understand and agree that Named
6 Plaintiff will be solely responsible for the payment of any taxes and penalties assessed on the
7 payments described herein. Income and other tax withholding will also be made pursuant to
8 applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will
9 be distributed at the times and in the manner required by the Internal Revenue Code of 1986 (the
10 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder,
11 or other applicable tax law, is changed after the date of this Agreement, the processes set forth in
12 this Section may be modified in a manner to comply with any such changes.

13 8. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
16 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
18 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
19 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
20 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
21 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
22 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
23 EXCLUSIVELY UPON HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
24 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
25 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
4 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 9. No Effect on Employee Benefits. Amounts paid to Plaintiff, Participating Class
10 Members, or members of the PAGA Group pursuant to this Settlement will not count as earnings
11 or compensation for purposes of any benefits (e.g., pensions or retirement plans) sponsored by
12 Defendant. It is expressly understood and agreed that the receipt of an Gross Individual Settlement
13 Payment or Individual PAGA Payment shall not entitle any Participating Class Member or member
14 of the PAGA Group to additional compensation or benefits under any collective bargaining
15 agreement or under any bonus, contest, or other compensation or benefit plan or agreement in place
16 during the period covered by the Settlement, nor shall it entitle any Participating Class Member or
17 member of the PAGA Group to any increased pension and/or retirement, or other deferred
18 compensation benefits. It is the intent of the Parties that Gross Individual Settlement Payments and
19 Individual PAGA Payments, as provided for in this Stipulation, are the sole payments to be made
20 by Defendant to Plaintiff, Participating Class Members, and members of the PAGA Group, in
21 connection with this Settlement, and that Plaintiff, the Participating Class Members and members
22 of the PAGA Group are not entitled to any new or additional compensation or benefits as a result
23 of having received the Gross Individual Settlement Payments or Individual PAGA Payments.
24 Furthermore, the receipt of monies from the Settlement shall not, and does not, by itself establish
25 any general, special, or joint employment relationship between and among the Plaintiff,
26 Participating Class Members, and members of the PAGA Group and Defendant.

27 10. Creation of the Qualified Settlement Fund and Administration of the Settlement.
28 Within fourteen (14) business days after the Effective Date, Defendant shall deliver the Gross

1 Settlement Amount into the Qualified Settlement Fund created by the Settlement Administrator,
2 plus shall separately pay its share of employer payroll taxes. All payments that Defendant is
3 required to make pursuant to the Settlement Agreement, including, but not limited to, all monies
4 allocated to Participating Class Members, the PAGA Group, Class Counsel, the Labor and
5 Workforce Development Agency, the Settlement Administrator, and FICA, FUTA and SDI
6 contributions and the employee's portion of all payroll taxes, shall be made from the Gross
7 Settlement Amount.

8 11. Attorneys' Fees and Cost Award. Class Counsel shall request, and Defendant agrees
9 to not oppose or impede, an award of attorneys' fees not in excess of one-third (1/3) of the Gross
10 Settlement Amount, or \$800,000, as well as an additional amount for reasonable actual litigation
11 costs. The Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount.
12 Named Plaintiff expressly consents to this distribution of the Attorneys' Fees and Cost Award. Any
13 amount awarded for attorneys' fees to Class Counsel less than \$800,000 will result in the non-
14 awarded amounts to be part of the Net Class Settlement Fund, available for distribution to
15 Participating Class Members. So long as there are no objections, Class Counsel shall be paid any
16 Court-approved fees and costs no later than ten (10) calendar days after the Defendant delivers the
17 Gross Settlement Amount to the Settlement Administrator for deposit into the Qualified Settlement
18 Fund. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the
19 payment made pursuant to this Paragraph. A Form 1099 – MISC, Box 14 shall be provided to
20 Class Counsel by the Settlement Administrator for the payment made pursuant to this Paragraph.
21 The Attorneys' Fees and Costs awarded from the Gross Settlement Amount shall constitute full
22 satisfaction of any claim by any person, attorney, or law firm for attorneys' fees, expenses, or costs
23 in any way related to the Action. Neither Class Counsel nor any other current or past counsel for
24 Plaintiff shall be permitted to petition the Court for, or to accept, any additional payments for
25 attorneys' fees, costs, interest, or any other amount from Defendant in connection with this
26 Agreement except as specified above.

27 12. Settlement Administrator. The Settlement Administrator shall be paid for the costs
28 of administration of the settlement from the Gross Settlement Amount. The estimate of such costs

1 of administration for the disbursement of the Gross Settlement Amount is \$17,500. In the event
2 that the costs of administration by the Settlement Administrator are less than \$17,500, then such
3 amount will be made part of the Net Class Settlement Fund, available for distribution to
4 Participating Class Members. In the event that the costs of administration by the Settlement
5 Administrator are more than \$17,500, then such amount will be deducted from the Gross Settlement
6 Fund, and therefore no longer available for distribution to Participating Class Members. The
7 Settlement Administrator will be responsible for the mailing of Notice to the class, receipt of any
8 requests to Opt-Out, receipt of any objections to the Settlement, resolution of any disputes (subject
9 to court approval), payment of individual settlement amounts to the Class Members, and the
10 issuance of all related tax documents (i.e., W-2s and 1099s).

11 13. Preliminary Approval Hearing. As part of this Settlement, the Parties agree to the
12 following procedures for obtaining preliminary Court approval of the Settlement, notifying Class
13 Members, obtaining final Court approval of the Settlement and processing the Individual
14 Settlement Payments:

15 a. Named Plaintiff shall endeavor to file a Motion for Preliminary Approval as
16 soon as reasonably possible. Defendant will not object to Plaintiff's motion for preliminary
17 approval, subject to its review of the motion and as long as it is consistent with this Agreement.

18 b. Named Plaintiff shall request a hearing before the Court to request preliminary
19 approval of the settlement and to request the entry of the Preliminary Approval Order.

20 c. Named Plaintiff will request the Court to enter the Preliminary Approval Order,
21 preliminarily approving and conditionally certifying the class for settlement purposes only, and
22 setting a date for a Final Approval Hearing.

23 d. In conjunction with this hearing, Named Plaintiff will submit this Stipulation,
24 and will include the proposed form of the Notice as reviewed and approved by Defendant, and as
25 attached hereto as **Exhibit A**. The Order shall provide for Notice of the settlement to be sent to
26 Class Members as specified herein.

27 14. Settlement Administration/Management. The Individual Settlement Payments shall
28 be managed and administered as follows:

1 a. Defendant shall not have any obligation to segregate the funds to be used for the
2 Gross Settlement Amount from other assets. Defendant will retain exclusive authority over, and
3 responsibility for, the funds comprising the Gross Settlement Amount and the employer's share of
4 payroll taxes until such time as payment is due.

5 b. CPT Group shall be retained to serve as Settlement Administrator. The Parties
6 represent that they do not have any financial interest in the Settlement Administrator or otherwise
7 have a relationship with the Settlement Administrator that could create a conflict of interest.

8 c. No payments are due to the Settlement Administrator until the Qualified
9 Settlement Fund is funded.

10 d. Defendant shall provide the Settlement Administrator with the Class List and
11 Data Report within twenty-one calendar days of Preliminary Approval of the Settlement.

12 e. Within ten (10) business days of receipt of the Class List and Data Report, the
13 Settlement Administrator shall mail the Notice to each Class Member in accordance with the terms
14 of this Agreement and as approved by the Court. The Class List and Data Report provided to the
15 Settlement Administrator will remain confidential and will not be used or disclosed to anyone by
16 the Settlement Administrator, except as required by applicable tax authorities, pursuant to
17 Defendant's express written consent, or by order of the Court.

18 f. All Class Members who do not Opt Out of the Settlement shall be Participating
19 Settlement Class Members.

20 g. With the motion for final approval of this settlement, the Settlement
21 Administrator shall provide Defendant's Counsel and Class Counsel a report showing: (i) the names
22 and number of Class Members who have objected to the settlement; (ii) the names and number of
23 Class Members who submitted valid requests to Opt Out of the settlement; and (iii) the amount
24 owed to each Participating Settlement Class Member.

25 h. The Parties agree to cooperate in the settlement administration process and to
26 make all reasonable efforts to control and minimize the costs and expenses incurred in
27 administration of the settlement.

28 i. The Settlement Administrator shall be responsible for: calculating the number

1 of Pay Periods attributable to each Settlement Class Member and PAGA Group Member that will
2 be used to calculate their individual share of the NCSF and Individual PAGA Payment; calculating
3 the Class Member's share of the NCSF and Individual PAGA Payment; printing and mailing the
4 Notices to Class Members as directed by the Court; receiving and reporting the Opt-Outs and
5 objections submitted by Class Members; mailing Individual Gross Settlement Payments to
6 Participating Settlement Class Members and Individual PAGA Payments to PAGA Group
7 members; creating and issuing W-2s and Form 1099 – MISCs to Settlement Class Members; setting
8 up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate
9 government authorities; and other tasks as the Parties mutually agree or the Court orders the
10 Settlement Administrator to perform. The Settlement Administrator shall keep the Parties' legal
11 counsel timely apprised of the performance of all Settlement Administrator responsibilities.

12 j. The Settlement Administrator, on the Defendant's behalf, shall have the
13 authority and obligation to make payments, credits and disbursements, including payments and
14 credits in the manner set forth herein, to Participating Settlement Class Members calculated in
15 accordance with the methodology set out in this Agreement and orders of the Court. Specifically,
16 no later than ten (10) business days after the deposit of Defendant's payment of the Gross
17 Settlement Amount into the QSF, the Settlement Administrator will mail the Individual Gross
18 Settlement Payments, the Individual PAGA Payments, the payment for the attorneys' fees and costs
19 to Class Counsel, any Service Payments to the Class Representatives if requested, the portion of
20 PAGA Award allocated to the LWDA, and will pay itself the Settlement Administration Costs. If
21 a Class Member Opts Out, and is a PAGA Group Member, the payment to that PAGA Group
22 Member shall be accompanied by a cover letter that specifies that the payment resolves the PAGA
23 Group's PAGA claims. This letter shall be drafted by Class Counsel and subject to the review and
24 approval of Defendant.

25 k. Any tax return filing required by payments made pursuant to this Agreement
26 shall be made by the Settlement Administrator. Any expenses incurred in connection with such
27 filing shall be a cost of administration of the settlement.

28 l. No person shall have any claim against Defendant or Defendant's Counsel, the

1 Named Plaintiff, Class Members, the Class, Class Counsel based on distributions and payments
2 made in accordance with this Agreement.

3 15. PAGA Allocation and Individual PAGA Payments. Subject to Court approval, the
4 Parties allocate a total of \$120,000 Dollars and Zero Cents (\$120,000.00) from the Gross Settlement
5 Amount to the PAGA Allocation. Pursuant to California Labor Code section 2699(i), the PAGA
6 Payment shall be divided as follows: seventy five percent (75%), or \$90,000, shall be paid to the
7 LWDA, and twenty-five percent (25%), or \$30,000, shall be distributed to the PAGA Group as
8 Individual PAGA Payments.

9 a. The Individual PAGA Payments shall be calculated as follows: “PAGA Pay
10 Periods” shall be the total of all pay periods worked by PAGA Group Members
11 for Defendant in California during the period of May 12, 2019 through the date
12 of preliminary approval of the Settlement (“PAGA Time Frame”). The dollars
13 per PAGA Pay Period (“PAGA Pay Period Value”) will be calculated by
14 dividing twenty-five percent (25%) of the PAGA Allocation by the PAGA Pay
15 Periods. The PAGA Pay Period Value will be multiplied by the number of pay
16 periods each PAGA Group Member worked for Defendant as a non-exempt
17 employee during the PAGA Time Frame to determine the distribution for each
18 Individual PAGA Payment.

19 16. Calculation of Individual Gross Settlement Payments. To determine the Gross
20 Individual Settlement Payment for each Participating Class Member:

21 a. The Net Class Settlement Fund (“NCSF”) shall be divided among all Class
22 Members based on the number of Workweeks each Class Member worked during the Class Period.
23 The Settlement Administrator shall divide the NCSF by the total number of Workweeks for all
24 Participating Class Members resulting in a value for each week worked by the Participating Class
25 Members during the Class Period (“Workweek Value”). The Settlement Administrator shall then
26 multiply the number of Workweeks for each Participating Class Member by the Workweek Value.
27 All Class Members will be entitled to payment for at least one (1) Workweek.

28 b. The Gross Individual Settlement Payment to each Participating Settlement Class

1 Member shall be allocated as follows: four-fifths (i.e., 80%) shall be attributed to penalties and
2 interest, to be reported on a 1099 Form; and one-fifth (i.e., 20%) shall be attributed to wages (“Wage
3 Component”), to be reported on a W-2 Form.

4 c. The Settlement Administrator shall determine the eligibility for, and the amounts
5 of, any Individual Settlement Payments under the terms of this Settlement Agreement. Any
6 disputes not resolved by the Settlement Administrator concerning the administration of the
7 Settlement will be resolved by the Tulare County Superior Court under the laws of the State of
8 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good
9 faith to resolve the dispute without the necessity of involving the Court.

10 d. The Gross Individual Settlement Payments will be reduced by any required legal
11 deductions for each Class Member. All standard employer and employee payroll deductions will
12 be made by the Settlement Administrator for state and federal withholding taxes, as well as any
13 other applicable payroll deductions owed by the Participating Class Members. The Settlement
14 Administrator will issue a check and W-2 Form to each Class Member for the Wage Component.

15 e. No withholding shall be made on the interest and penalty portion of the Gross
16 Individual Settlement Payment (eighty percent of the payment amount). The Settlement
17 Administrator will issue a second check and IRS Form 1099 for the remaining interest and penalty
18 component, to the extent required by law.

19 f. The Settlement Administrator shall issue a single check containing a
20 Participating Settlement Class Member’s Individual Settlement Payment and Individual PAGA
21 Payment, except that any Settlement Class Member who submits a timely and valid Opt-Out will
22 receive a check only for his/her Individual PAGA Payment because he/she will not receive an
23 Individual Settlement Payment under this Settlement.

24 g. For any Class Member who opts out of the settlement, that amount will inure to
25 the Net Settlement Fund, increasing the per-workweek amount available to be distributed to the
26 Class.

27 h. The Settlement Administrator shall be responsible for issuing the payments and
28 calculating and withholding all required state and federal taxes.

1 17. Notice to Class Members. Notice of the Settlement shall be provided to all Class
2 Members using the following procedures:

3 a. Notice by First-Class Mail. Within ten (10) business days after receipt of the
4 Class List and Data, the Settlement Administrator shall mail the Notice to the Class Members via
5 first-class regular U.S. mail. The Settlement Administrator will, among other items, identify in the
6 Notice each individual Class Member's estimated Individual Gross Settlement Payment and the
7 employee's dates of employment and Pay Period Value derived from the Class Member's
8 applicable employment dates.

9 b. Opt-Out/Objection Deadline Date: Class Members will have forty-five (45)
10 calendar days from the mailing of the Notice to opt out of or object to the Settlement.

11 c. Procedure for Undeliverable Notices. Any Notices returned to the Settlement
12 Administrator as non-delivered on or before the Opt-Out/Objection Deadline Date shall be sent to
13 the forwarding address affixed thereto within five (5) business days. If no forwarding address is
14 provided, then the Settlement Administrator shall promptly attempt to determine a correct address
15 using a single skip-trace, computer or other search using the name, address and/or Social Security
16 number of the individual involved and shall then perform a single re-mailing within five (5)
17 business days. In the event the procedures in this paragraph are followed and the intended recipient
18 of a Notice still does not receive the Notice, the intended recipient shall be considered a
19 Participating Class Member and shall be bound by all terms of the Settlement and any Final
20 Judgment entered by the Court if the Settlement is approved by the Court, and his or her Individual
21 Settlement Payment shall be distributed to the *cy pres* beneficiary, namely, Legal Aid at Work.

22 d. Presumption Regarding Receipt of Notice Packet. It will be conclusively
23 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
24 Settlement Class Member received the Notice Packet.

25 e. Participating Class Members shall be bound by all terms of the Settlement and
26 any Final Judgment entered by the Court if the Settlement is approved by the Court.

27 18. Procedure for Objecting to or Opting Out of the Class Action Settlement. Each
28 Class Member will be fully advised of the Settlement, the ability to object to the Settlement, and

1 the ability to opt-out or request exclusion from the Settlement. The Notice Packet will inform the
2 Settlement Class Members of the Court-established deadlines for filing objections or requesting
3 exclusion from the Settlement in accordance with the following guidelines:

4 a. Procedure for Objecting. The Notice shall provide that those Class Members
5 who wish to object to the Settlement must mail a written statement of objection (“Notice of
6 Objection”) to the Settlement Administrator no later than the Opt-Out/Objection Deadline Date.
7 The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice
8 of Objection is timely. The Notice of Objection must identify the Class Member’s full name,
9 address, email address (if known), telephone number, the case name and number; a statement of
10 the Class Member’s basis for any objections to the Parties’ settlement; a statement advising whether
11 the objecting Class Member plans to address the Court at the Settlement Fairness Hearing and any
12 legal briefs, papers or memoranda the objecting Class Member proposes to submit to the Court;
13 and, if the objecting Class Member is represented by counsel, the name and address of his or her
14 counsel. The Settlement Administrator shall promptly forward to Class Counsel and Defendants’
15 Counsel complete copies of all objections received, including the postmark dates for each objection.
16 Any objector may also appear at the Final Approval Hearing, in person or through an attorney
17 retained at his or her own expense, without filing a written objection, but such appearance shall not
18 be a prerequisite to the Court’s consideration of any timely-filed objection. Class Members may
19 withdraw their objections at any time. Class Members who submit an objection shall remain part of the Class
20 and be bound by the release provisions in this Agreement or the applicable release provisions in any order
21 granting Final Approval. At no time will any of the Parties or their counsel seek to solicit or otherwise
22 encourage Class Members to submit written objections to the Settlement or appeal from the Order and
23 Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this
24 Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred
25 by any Class Member and/or his or her counsel related to any objections to the Settlement.

26 b. Procedure for Opting Out. The Notice shall provide that those Class Members
27 who wish to opt out of the Settlement must mail a written signed statement expressing his or her
28 desire to opt-out from the parties’ settlement, and any such statement shall include the name (and

1 former names, if any), current address, telephone number of the Class Member and state that “I
2 wish to opt out from the *Vasquez v. Saputo Cheese USA, Inc.* settlement.” Any Class Member who
3 wishes to opt out of the settlement must submit a request to be excluded from the settlement to the
4 Settlement Administrator postmarked no later than the Opt-Out/Objection Deadline Date. The date
5 of the postmark on the mailing envelope shall be the exclusive means used to determine whether
6 an Opt-Out has been timely submitted. Any Class Member who submits a valid and timely Opt-
7 Out request shall no longer be a member of the Class; shall be barred from participating in this
8 Settlement, as to the class claims; shall be barred from objecting to this Settlement; shall receive
9 no benefit from this Settlement, except as to their Individual PAGA Payment; and will not be bound
10 by this Agreement, or the Judgment, except as to the PAGA Claims. Any Class Member who does
11 not Opt-Out by submitting a request for exclusion as described herein, (i) will be bound by the
12 terms of this settlement and conditions of this Agreement, the Judgment, and the releases set forth
13 herein; (ii) be deemed to be Participating Class Members for all purposes under this Agreement;
14 and (iii) except as otherwise provided herein, will be deemed to have waived all objections and
15 oppositions to the fairness, reasonableness, and adequacy of the Settlement.

16 c. Failure to Object. Absent good cause found by the Court, any Settlement Class
17 Member who desires to object but fails to timely submit a written objection or appear in person to
18 object at the Final Approval Hearing waives any right to object and will be foreclosed from making
19 any objection to this Settlement. Any Settlement Class Member who does not timely and properly
20 become a party of record by intervening or filing a motion to vacate the judgment waives any and
21 all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
22 appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
23 California Code of Civil Procedure section 473, and/or extraordinary writs.

24 d. Responses to Objections. Counsel for the Parties may file a response to any
25 objections submitted by Objecting Settlement Class Members at least five (5) court days before the
26 date of the Final Approval Hearing.

27 e. Disputed Information on Notice. Each Class Member shall have an opportunity
28 to dispute the employment dates and/or number of Workweeks or Pay Periods attributed to him or

1 her in the Notice, and must submit such a dispute to the Settlement Administrator on or before the
2 Opt-Out/Objection Deadline Date. To the extent a Class Member disputes the employment dates
3 or number of Workweeks or Pay Periods listed in the Notice, the Class Member may produce
4 evidence to the Settlement Administrator showing that such information is inaccurate. Absent
5 evidence rebutting Defendant's records, Defendant's records will be presumed determinative.
6 However, if a Class Member produces evidence to the contrary, the Settlement Administrator will
7 evaluate the evidence submitted by the Class Member and will make the final decision as to the
8 number of eligible Workweeks or Pay Periods that should be applied.

9 f. No Solicitation of Settlement Objections or Opt-Outs. The Parties agree to use
10 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or
11 their counsel seek to solicit or otherwise encourage or influence Class Members to submit written
12 objections to the settlement, to Opt-Out of the Settlement or to appeal from the Order and Final
13 Judgment.

14 g. No Opt-Outs or Subsequent Lawsuits By Any Parties Represented by Class
15 Counsel. Class Counsel agrees that Named Plaintiff waives his right to opt-out of or object to this
16 Settlement.

17 19. Procedure for Payment of Individual Settlement Payments. The procedure for
18 payment to Class Members of Individual Settlement Payments is as follows:

19 a. All Class Members who do not Opt-Out of the Settlement will receive an
20 Individual Settlement Payment, distributed through the Settlement Administrator.

21 b. Individual Settlement Payments for Class Members shall be paid pursuant to the
22 Workweek formula set forth herein and shall be mailed within ten (10) business days after
23 Defendant delivers the Gross Settlement Amount to the Settlement Administrator for deposit into
24 the Qualified Settlement Fund.

25 c. Individual Settlement Payments shall be made by check and shall be made
26 payable to each Participating Class Member as set forth in this Stipulation.

27 d. Should any question arise regarding the determination of eligibility for, or the
28 amounts of, any Individual Settlement Payment under the terms of this Agreement, Class Counsel

1 and Defendant’s Counsel shall meet and confer in an attempt to reach agreement. If they cannot
2 agree, the Settlement Administrator shall make the final determination, and that determination shall
3 be conclusive, final and binding on all Parties, including all Class Members, subject to court
4 approval.

5 20. Non-Negotiated Settlement Checks/ Cy Pres Beneficiary. Any checks issued by the
6 Settlement Administrator to Participating Class Members shall be negotiable for one hundred and
7 eighty (180) calendar days. Those funds represented by settlement checks returned as undeliverable
8 and the funds which correspond with the settlement checks that are not negotiated within one
9 hundred and eighty (180) calendar days after issuance shall be cancelled, and the funds associated
10 with such cancelled checks, plus any accrued interest that has not been distributed, shall be tendered
11 by the Settlement Administrator to the *cy pres* beneficiary.

12 21. Certification By Settlement Administrator. Upon completion of administration of
13 the distributions, the Settlement Administrator shall provide written certification of such
14 completion to the Court and counsel for all Parties. The Settlement Administrator shall attach any
15 objections to its certification and Class Counsel shall file the certification with the Court at least 14
16 days prior to the Final Approval Hearing.

17 22. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration
18 of the Opt-Out/Objection Deadline Date, Class Counsel shall submit, subject to Defendant’s
19 review, the proposed Final Judgment and a motion for final approval of the settlement requesting
20 the Court (i) approve the Settlement, adjudging the terms thereof to be fair, reasonable and
21 adequate, and directing consummation of its terms and provisions; (ii) approve Class Counsel’s
22 application for an award of attorneys’ fees and reimbursement of litigation costs and expenses, any
23 Service Payment to Plaintiff, and the payment to the Settlement Administrator for costs of
24 administering the settlement; (iii) enter judgment approving settlement, thereby permanently
25 barring all Class Members from prosecuting any Released Claims against any of the Released
26 Parties; and (iv) dismiss this Action with prejudice. With the Court’s permission, a hearing (“Final
27 Fairness Hearing”) shall then be conducted to determine final approval of the Settlement along with
28 the amount properly payable for: (i) Attorneys’ Fees and Costs Award, (ii) any Service Payment,

1 if requested, and (iii) Settlement Administration Costs. After entry of the Final Judgment, the Court
2 shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
3 enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such
4 post-Final Judgment matters as may be appropriate under court rules or as set forth in this
5 Agreement.

6 23. Named Plaintiff and Defendant's Option to Nullify the Agreement. The Parties
7 agree that the Class Agreement is premised on information based on data provided by Defendant
8 to Plaintiff reflecting that the estimated number of Workweeks attributable to Class Members is
9 approximately 400,000. If, at any time between now and the date upon which the calculations
10 concerning the estimated Individual Settlement Payments are made, the number of Workweeks
11 attributable to Class Members is more than seven-and-a-half percent (7.5%) higher than 400,000
12 for the Class Period, the Gross Settlement Amount shall increase by that amount, i.e., if the number
13 of Workweeks increases by 7.50%, the GSA will not increase, but if the number of Workweeks
14 increases by 7.51% the GSA will increase by 7.51%.

15 The Parties further agree that if more than seven-and-a-half percent (7.5%) of Class
16 Members opt-out of this Agreement, Defendant shall have, in its sole discretion, the option to
17 terminate this Agreement. If Defendant decides to void this Agreement pursuant to this term, then
18 this Agreement and conditional class certification shall be considered void, and neither this
19 Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall
20 be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if
21 this Agreement had been neither entered into nor filed with the Court.

22 24. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
23 the Preliminary Approval Order; (ii) the Court does not finally approve the Settlement as provided
24 herein; (iii) the Court does not enter a Final Judgment; (iv) the LWDA does not approve the
25 settlement; (v) Defendants exercise their option to nullify the Agreement based on an excessive
26 number of opt-outs, as describe in the above paragraph; or, (vi) the Settlement does not become
27 final for any other reason, this Settlement Agreement shall be null and void. Any order or judgment
28 entered by the Court in furtherance of this settlement shall be treated as void, and the Stipulations

1 and Recitals contained herein, except for Section III, Paragraph 27, *infra*, shall be of no force or
2 effect and shall not be treated as an admission by the Parties or their Counsel. In such a case, the
3 Parties and any funds to be awarded under this settlement shall be returned to their respective
4 statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties
5 shall proceed in all respects as if this Settlement Agreement had not been executed, except that any
6 fees already incurred by the Settlement Administrator shall be paid in equal parts by Named
7 Plaintiff and Defendant, but if Defendant elects to nullify the Agreement pursuant to Paragraph 23
8 *supra*, then the fees incurred by the Settlement Administrator shall be paid entirely by Defendant.
9 If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further
10 obligations under the Settlement, including any obligation by Defendant to pay the Settlement
11 Amount, or any amounts that otherwise would have been owed under this Settlement, and the
12 Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

13 25. Notice to LWDA. Pursuant to California Labor Code section 2699(1), Class Counsel
14 shall have the obligation to provide notice to the California Labor and Workforce Development
15 Agency in compliance with Labor Code section 2699(1), including but not limited to this Agreement
16 and any judgment or order pertaining to the Court's approval of this Agreement.

17 26. Publicity/Non-Disclosure.

18 Plaintiff, Class Counsel, and Defense Counsel separately agree that, until the Motion
19 for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate
20 and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
21 terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
22 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
23 or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a
24 related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in
25 response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state
26 or federal government agency. Each Party agrees to immediately notify each other Party of any
27 judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
28 and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or

1 other communication, before the filing of the Motion for Preliminary Approval, any with third party
2 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
3 “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
4 communications with Class Members in accordance with Class Counsel’s ethical obligations owed
5 to Class Members.

6 27. Dispute Resolution as Between the Parties. Except as otherwise set forth herein, all
7 disputes concerning the interpretation, calculation or payment of settlement claims, or other
8 disputes regarding compliance with this Agreement shall be resolved as follows:

9 a. If the Named Plaintiff, or Class Counsel, on behalf of the Named Plaintiff or any
10 Settlement Class Member, or Defendant’s Counsel, on behalf of Defendant, at any time believes
11 that the other Party has breached or acted contrary to the Agreement, that Party shall notify the
12 other Party in writing of the alleged violation.

13 b. Upon receiving notice of the alleged violation or dispute, the responding Party
14 shall have five (5) business days to correct the alleged violation and/or respond to the initiating
15 Party with the reasons why the party disputes all or part of the allegation.

16 c. If the response does not address the alleged violation to the initiating Party’s
17 satisfaction, the Parties shall negotiate in good faith for up to five (5) business days to resolve their
18 differences.

19 d. If the Parties are unable to resolve their differences informally, the Parties agree
20 to seek the help of mediator Hon. Amy Hogue (Ret.) to resolve any dispute. The Parties shall bear
21 their own attorneys’ fees and costs during his period and in connection with any dispute resolution
22 process. If the mediation is unsuccessful, either Party may file an appropriate motion for
23 enforcement with the Court. The briefing of such motion shall not exceed ten (10) pages (excluding
24 exhibits).

25 e. Reasonable attorneys’ fees and costs for work done in resolving a dispute under
26 this Section, including costs of mediation, may be recovered by any party that prevails under the
27 standards set forth within the meaning of applicable law.

28 28. No Retaliation. Defendant shall not take any adverse action against any Class

1 Member because of the Action or because of the existence of, and/or participation in, the
2 Settlement, or because they choose to benefit from the Settlement or to object to the Settlement.
3 Defendant shall not take action to discourage Class Members from participating in the Settlement.

4 29. Notices. Unless otherwise specifically provided herein, all notices, demands or other
5 communications regarding this Agreement or given hereunder shall be in writing and shall be
6 deemed to have been duly given as of the third business day after mailing by United States
7 registered or certified mail, return receipt requested, addressed:

8 To the Settlement Class:

9 COHELAN KHOURY & SINGER
10 Michael D. Singer
msinger@ckslaw.com
11 Jeff Geraci
jgeraci@ckslaw.com
12 605 C Street, Suite 200
13 San Diego, CA 92101
14 Telephone: (619) 595-3001

15 To Defendant:

16 SUTTON HAGUE LAW CORPORATION
17 S. Brett Sutton
brett@suttonhague.com
18 Jared Hague
jared@suttonhague.com
19 5200 N. Palm Avenue, Suite 203
20 Fresno, California 93704
Telephone: (559) 325-0500

21 30. Exhibits and Headings. The terms of this Agreement include the terms set forth in
22 any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any
23 exhibits to this Agreement are an integral part of the settlement. The descriptive headings of any
24 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
25 constitute a part of this Agreement.

26 31. Interim Stay of Proceedings. The Parties agree to the Court staying and holding all
27 proceedings in the Action, except such proceedings necessary to implement and complete the
28 settlement, in abeyance pending the Final Approval Hearing to be conducted by the Court.

1 32. Tolling of 5-Year Deadline. The Parties agree and hereby stipulate to toll and extend
2 the five-year deadline to bring this case to trial, as set forth in Code of Civil Procedure section
3 583.330, for the period of time from March 30, 2023 through and including the later of the
4 following dates: (a) 45 calendar days following the Court’s entry of an order denying, in its entirety
5 and with prejudice, Plaintiff’s Motion for Preliminary Approval; or (b) if the Court grants Plaintiff’s
6 Motion for Preliminary Approval, 45 calendar days following the Court’s entry of an order denying,
7 in its entirety and with prejudice, Plaintiff’s Motion for Final Approval; or (c) if there are objections
8 to this Settlement and subsequent appeals, then 45 calendar days after those appeals have been
9 resolved and this Action is remanded to the Court. The Parties agree and stipulate that this clause
10 regarding the tolling of the 5-year deadline shall remain in full force and effect even if this
11 Agreement is nullified and/or found void for any reason whatsoever and/or is revoked by any Party.

12 33. Amendment or Modification. This Agreement may be amended or modified
13 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

14 34. Entire Agreement. This Agreement and any attached exhibits constitute the
15 entire agreement among these Parties, and no oral or written representations, warranties or
16 inducements have been made to any Party concerning this Agreement or its exhibits other than the
17 representations, warranties and covenants contained and memorialized in such documents.

18 35. Authorization to Enter into Settlement Agreement. Counsel for all Parties
19 warrant and represent that they are expressly authorized by the Parties whom they represent to
20 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
21 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents
22 required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate
23 with each other and use their best efforts to affect the implementation of the settlement. In the
24 event the Parties are unable to reach agreement on the form or content of any document needed to
25 implement the settlement, or on any supplemental provisions that may become necessary to
26 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
27 such disagreement. The person(s) signing this Agreement on behalf of Defendant represent and
28 warrant that he or she is authorized to sign this Agreement on the Defendant’s behalf.

1 36. Binding on Successors and Assigns. This Agreement shall be binding upon, and
2 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

3 37. California Law Governs. All terms of this Agreement and the exhibits hereto
4 shall be governed by and interpreted according to the laws of the State of California.

5 38. Counterparts. This Agreement may be executed in one or more counterparts.
6 All executed counterparts and each of them shall be deemed to be one and the same instrument,
7 provided that counsel for the Parties to this Agreement shall exchange among themselves original
8 signed counterparts.

9 39. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
10 Settlement is a fair, adequate and reasonable Settlement of this Action and have arrived at this
11 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
12 and potential.

13 40. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
14 interpretation, implementation and enforcement of the terms of this Agreement and all orders and
15 judgments entered in connection therewith, and the Parties and their counsel hereto submit to the
16 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement
17 embodied in this Agreement and all orders and judgments entered in connection therewith.

18 41. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
19 preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall
20 not be construed against any of the Parties.

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

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