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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF RIVERSIDE**

24 **Gerardo Duenas**, individually and on behalf of all
25 similarly situated individuals,

26 Plaintiff,

27 vs.

28 **Stremicks Heritage Food**, a Delaware limited
liability company; **Jack Noenickx**, an individual;
and **Does 1-10**, inclusive;

Defendants.

CASE NO. CVRI2202014

[Assigned to Hon. Raquel A. Marquez, Dept.
S303]

CLASS ACTION

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF CLASS ACTION**

Complaint Filed: May 19, 2022

Trial Date: None Set

1 This Joint Stipulation of Settlement and Release of Class Action (“Agreement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff Gerardo Duenas (“Plaintiff” or “Class
3 Representative”), as an individual and on behalf of all others similarly situated, and Defendants
4 Stremicks Heritage Foods, LLC and Jack Noenickx (“Defendants”). Plaintiff and Defendants may be
5 referred to herein as the “Parties,” singularly as a “Party,” or by their designated names.

6 This Agreement is subject to the approval of the Court, pursuant to California Rules of Court,
7 Rule 3.769(c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of
8 the Action on a class-wide basis subject to the following terms and conditions.

9 This Settlement Agreement shall be binding on Plaintiff, the Settlement Class, and the Aggrieved
10 Employees, on the one hand, and Defendants, on the other hand, subject to the terms and conditions
11 herein and the approval of the Court.

12 RECITALS

13 1. Plaintiff filed his complaint on May 19, 2022 against Defendants in the Riverside County
14 Superior Court. Plaintiff’s lawsuit, entitled *Gerardo Duenas v. Stremicks Heritage Food, LLC, et. al.*, Case
15 Number No. CVRI2202014 (“Action”), sets forth the following class-wide causes of action: (1) failure
16 to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or premium
17 pay in lieu thereof; (4) failure to provide rest periods or premium pay in lieu thereof; (5) failure to
18 provide and maintain complete and accurate records; (6) failure to timely pay wages when due; (7)
19 failure to reimburse necessary business expenses; (8) civil penalties under the Labor Code Private
20 Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”); and (9) Unlawful Business
21 Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 2. Defendants deny all material allegations set forth in the Action, and have asserted
23 numerous affirmative and other defenses in response to all claims, including the Class, PAGA, and
24 individual claims alleged in the Action.

25 3. Notwithstanding the foregoing and in the interest of avoiding further litigation, the
26 Parties desire to fully and finally settle all actual or potential class, individual, and PAGA claims as
27 pleaded in the operative Complaint or that could have been pleaded in the operative Complaint and this
28 Action.

1 4. This Settlement Agreement is made and entered into by and between Plaintiff
2 individually, as a proxy for the State of California, and on behalf of all other allegedly similarly situated
3 and Aggrieved Employees and Settlement Class Members on the one hand, and Defendants on the other
4 hand. This Settlement Agreement is subject to the terms and conditions herein, as well as the Court’s
5 approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose
6 of compromising disputed claims, and that nothing herein is an admission of any liability or wrongdoing
7 by Defendants. The monies being paid as part of this settlement are genuinely disputed, and the Parties
8 agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement Agreement.

9 5. The Parties agree to abide by the terms of the Settlement Agreement in good faith, to
10 support the Settlement Agreement fully, and to use their best efforts to defend this Settlement
11 Agreement from any legal challenge, whether by appeal or collateral attack.

12 6. On April 24, 2023, the Parties participated in a full-day mediation before Louis Marlin of
13 Louis Marlin Mediation (the “Mediator”), a well-respected mediator in the field of employment law
14 and wage-and-hour class and PAGA actions. At the mediation, the Parties agreed to the principal terms
15 of a class action and PAGA settlement and entered into a Memorandum of Agreement (“MOA”) setting
16 forth those terms.

17 7. The settlement discussions before, during, and after mediation were conducted at arm’s
18 length, and the settlement of the Action is the result of an informed and detailed analysis of Plaintiff’s
19 claims and Defendants’ potential liability in relation to the costs and risks associated with continued
20 litigation.

21 **DEFINITIONS**

22 The following definitions are applicable to this Settlement Agreement. Definitions contained
23 elsewhere in this Settlement Agreement will also be effective:

24 1. “**Action**” means *Gerardo Duenas v. Stremicks Heritage Food, et al.*, Riverside County
25 Superior Court Case Number No. CVRI2202014.

26 2. “**Aggrieved Employee(s)**” means those Class Members who worked during the PAGA
27 Release Period and are entitled to an Individual PAGA Payment under the terms of this Settlement.

28 3. “**Class Counsel’s Fees and Costs**” means attorneys’ fees agreed upon by the Parties

1 and approved by the Court for Class Counsel’s litigation and resolution of this Action. Class Counsel’s
2 Fees and Costs shall include all costs incurred and to be incurred by Class Counsel in the Action,
3 including, but not limited to, costs associated with documenting the Settlement, securing the Court’s
4 approval of the Settlement, responding to any objections to the settlement and appeals arising
5 therefrom, administering the Settlement, and obtaining entry of a Judgment terminating this Action,
6 and expenses for any experts. Class Counsel will request attorneys’ fees not in excess of one-third of the
7 Maximum Settlement Amount, or up to Three Hundred Thirty-Three Thousand Three Hundred
8 Thirty-Three Dollars and Thirty-Three Cents (\$333,333.33). The Class Counsel’s Fees and Costs will
9 also mean and include the additional reimbursement of Class Counsel’s actual reasonable costs incurred
10 in connection with Class Counsel’s litigation and settlement of the Action, up to Thirty-Five Thousand
11 Dollars and Zero Cents (\$35,000.00), subject to the Court’s approval. Defendants agree not to oppose
12 Class Counsel’s request for fees and reimbursement of costs as set forth above.

13 4. “**Settlement Administrator**” means a third-party class action settlement claims
14 administrator selected by Plaintiff and approved by the Court for purposes of administering this
15 Settlement. Plaintiff represents that he will not select a Settlement Administrator in which either Party
16 has any financial interest or other relationship that could create a conflict of interest. Defendants and
17 Defendants’ Counsel shall not be parties to any agreement or contract entered into with the Settlement
18 Administrator. None of the Parties or their legal counsel will be responsible for any errors or omissions
19 in the Settlement Administrator’s work product or calculations.

20 5. “**Settlement Administration Costs**” means the costs payable from the Maximum
21 Settlement Amount to the Settlement Administrator for administering this Settlement, including, but
22 not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated
23 amounts per Class Member, tax reporting, distributing the appropriate settlement amounts, and
24 providing necessary reports and declarations, and other duties and responsibilities set forth herein to
25 process this Settlement, and as requested by the Parties. The Settlement Administration Costs will be
26 paid from the Maximum Settlement Amount and shall not exceed \$25,000.

27 6. “**Class Counsel**” means Elliot J. Siegel, Julian Burns King, and Erum Siddiqui of King
28 & Siegel LLP.

1 7. **“Class List”** means a complete list of all Class Members that Defendants will diligently
2 and in good faith compile from their records and provide to the Settlement Administrator within fifteen
3 (15) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a
4 readable Microsoft Office Excel spreadsheet and will include, to the extent in the possession of
5 Defendants or their agents, each Class Member’s name; last-known home or mailing address; last-
6 known telephone numbers; last-known email address; Social Security number or, as applicable, other
7 Taxpayer Identification Number; and number of weeks in which the Class Member recorded performing
8 work as a non-exempt employee of Stremicks Heritage Foods, LLC in the state of California during the
9 Class Period.

10 8. **“Class Member(s)”** or **“Settlement Class”** or the **“Class”** means “all persons who
11 worked at least one shift as a non-exempt employee in the State of California for Stremicks Heritage
12 Foods, LLC (‘Stremicks’) from September 26, 2020 through July 23, 2023.” Defendants have
13 estimated that, during the period from September 27, 2020 to November 19, 2022 (the “Data Period”),
14 there were approximately 431 Class Members and 33,285 weeks in which Class Members were recorded
15 performing work as non-exempt employees of Stremicks Heritage Foods, LLC in the State of California.
16 These representations are material terms for Plaintiff entering into this Stipulation.

17 9. **“Class Period”** means the period from September 26, 2020 to July 23, 2023.

18 10. **“Class Representative”** means Plaintiff Gerardo Duenas, who will seek to be appointed
19 as the representative for the Settlement Class.

20 11. **“Class Representative Enhancement Payment”** means the amounts to be paid to
21 Plaintiff in recognition of his efforts and work in prosecuting the Action on behalf of Class Members and
22 negotiating the Settlement. Defendants agree not to dispute that the Class Representative will be paid,
23 subject to Court approval, up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) from the
24 Maximum Settlement Amount for his services on behalf of the class, subject to the Court granting Final
25 Approval of this Settlement Agreement and subject to the exhaustion of any and all appeals. Should the
26 Court reduce the Class Representative Enhancement Payment, any such reduction shall revert to the
27 Net Settlement distributed to Participating Class Members.

28 12. **“Court”** means the Superior Court of California, County of Riverside.

1 13. **“Defendants”** means shall include the Defendants named by Plaintiff in his Complaint
2 in this Action, including Stremicks Heritage Foods, LLC and Jack Noenickx.

3 14. **“Effective Date”** means the date on which the settlement embodied in this Settlement
4 Agreement shall become effective, and is the date after all of the following events have occurred: (i) this
5 Settlement Agreement has been executed by Plaintiff and Defendants; (ii) the Court has given
6 Preliminary Approval to the Settlement, including approving a provisional Settlement Class; (iii) notice
7 has been given to the putative members of the Settlement Class, providing them with an opportunity to
8 object to the terms of the Settlement or to opt-out of the Settlement; and (iv) *either* (1) the Court has
9 held a formal fairness hearing and, having heard no objections to the Settlement, has given Final
10 Approval to the Settlement, including entering a final order and judgment certifying the Class and
11 approving this Settlement Agreement; or (2) in the event there are oral or written objections filed prior
12 to or at the formal fairness hearing which are not later withdrawn or denied, the later of the following
13 events: (a) five (5) business days after the period for filing any appeal, writ, or other appellate proceeding
14 opposing the Court’s Final Approval of the Settlement have elapsed without any appeal, writ, or other
15 appellate proceeding having been filed; or (b) five (5) business days have elapsed following the final and
16 conclusive dismissal or resolution of any appeal, writ, or other appellate proceeding opposing the
17 Settlement, with no right to pursue further appellate remedies or relief.

18 15. **“Individual Settlement Payment”** means each Participating Class Member’s share of
19 the Net Settlement Amount, to be distributed to the Class Members who do not submit a valid Request
20 for Exclusion, to be paid without the need to submit a claim.

21 16. **“Individual PAGA Payment”** means any Aggrieved Employee’s pro rata share of 25%
22 of the Labor and Workforce Development Agency Payment allocated to the Aggrieved Employees
23 calculated according to the number of Workweeks worked during the PAGA Release Period.

24 17. **“Labor and Workforce Development Agency Payment”** means the amount that the
25 Parties have agreed that Defendants will pay in connection with Plaintiff’s Labor Code Private Attorneys
26 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”)) cause of action. The Parties have
27 agreed that One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Maximum Settlement
28 Amount will be allocated to the resolution of the Aggrieved Employees’ claims arising under PAGA

1 (“PAGA Settlement Amount”). Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy-Five
2 Thousand Dollars and Zero Cents (\$75,000.00), of the PAGA Settlement Amount will be paid to the
3 California Labor and Workforce Development Agency (“LWDA”), and Twenty-Five Percent (25%), or
4 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), of the PAGA Settlement Amount will be
5 paid to the Class Members, as allegedly Aggrieved Employees, as part of the Net Settlement Amount.

6 18. “**Maximum Settlement Amount**” means the maximum settlement amount of One
7 Million Dollars and Zero Cents (\$1,000,000.00) to be paid by Defendants in full satisfaction of all claims
8 arising from the Action. The Maximum Settlement Amount shall include all Individual Settlement
9 Payments to Participating Class Members, the Class Representative Enhancement Payment, Settlement
10 Administration Costs to the Settlement Administrator, the Labor and Workforce Development Agency
11 Payment, and the Class Counsel’s Fees and Costs. Defendants agree that they are responsible for
12 employer-side payroll taxes, which are not included in the Maximum Settlement Amount and are to be
13 paid in addition to the Maximum Settlement Amount. The Maximum Settlement Amount is non-
14 reversionary.

15 19. “**Net Settlement Amount**” means the portion of the Maximum Settlement Amount
16 remaining after deduction of the approved Class Representative Enhancement Payments, Settlement
17 Administration Costs, Labor and Workforce Development Agency Payment, and Class Counsel’s Fees
18 and Costs. The Net Settlement Amount will be distributed to Participating Class Members.

19 20. “**Notice of Objection**” means a Class Member’s valid and timely written objection to
20 the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector’s
21 full name, signature, address, telephone number, and the last four digits of the objector’s Social Security
22 number (or other Taxpayer Identification Number, if applicable), (b) the dates the objector was
23 employed by Stremicks in California, (c) a written statement of all grounds for the objection
24 accompanied by any legal support for such objection, and (d) copies of any papers, briefs, or other
25 documents upon which the objection is based.

26 21. “**Notice Packet**” or “**Notice**” means the Notice of Class Action Settlement and Share
27 Form, substantially in the form attached as **Exhibit A**.

28 22. “**PAGA Release Period**” shall run from May 19, 2021 to July 23, 2023.

1 23. “**Parties**” means Plaintiff and Defendants, collectively.

2 24. “**Participating Class Members**” means all Class Members who do not submit valid and
3 timely Requests for Exclusion.

4 25. “**Plaintiff**” means Gerardo Duenas.

5 26. “**Preliminary Approval**” means the Court order granting preliminary approval of the
6 settlement set forth in this Settlement Agreement; the order shall be substantially in the form attached
7 as **Exhibit B**. Plaintiff agrees to provide Defendants with a copy of Plaintiff’s motion for Preliminary
8 Approval and accompanying filings at least 5 court days in advance of filing.

9 27. “**Final Approval**” means the Court order granting final approval of this Settlement
10 Agreement; the order shall be substantially in the form attached as **Exhibit C**. Plaintiff agrees to provide
11 Defendants with a copy of Plaintiff’s motion for Final Approval and accompanying filings at least 5 court
12 days in advance of filing.

13 28. “**Released Claims**” means all claims and causes of action alleged in the First Amended
14 Complaint or which reasonably could have been alleged based on the factual allegations and legal
15 theories contained in the operative complaint and/or LWDA letter(s). It is the intent of the Parties that
16 the judgment entered by the Court upon Final Approval of the Settlement shall have *res judicata* and/or
17 collateral estoppel effect and be final and binding upon Plaintiff and all Participating Class Members
18 regarding all of the Released Claims.

19 29. “**First Amended Complaint**” means the amended complaint that Plaintiff agrees to file
20 in this matter, substantially in the form attached as **Exhibit D**. It is the intent of the Parties that the
21 Court will accept the First Amended Complaint as filed automatically upon preliminary approval of the
22 settlement.

23 30. “**Amended LWDA Letter**” means the amended notice of PAGA claims that Plaintiff
24 agrees to file with the LWDA and with the Court as an attachment to Plaintiff’s First Amended
25 Complaint. Plaintiff’s Amended LWDA Letter will be substantially in the form attached as **Exhibit D**.

26 31. “**Released PAGA Claims**” means the claims being released for PAGA penalties that
27 were alleged, or reasonably could have been alleged, based on the Operative Complaint and the PAGA
28 Notice(s) during the PAGA Release Period. This Release binds the State of California, including the

1 LWDA, and Plaintiff.

2 32. “**Release Period**” means the period from September 26, 2020 to July 23, 2023.

3 33. “**Released Parties**” shall include the Defendants named by Plaintiff in his Complaint in
4 this Action, including Stremicks Heritage Foods, LLC and Jack Noenickx, and their officers, directors,
5 employees, and agents; and Dairy Farmers of America, Inc., a milk cooperative which is the owner and
6 sole member of Defendant Stremicks Heritage Foods, LLC; and the farmer-owners of Dairy Farmers of
7 America, Inc. It is the intent of the Parties that if the Court orders a narrowing of the definition of the
8 Released Parties that the Settlement still be effectuated as long as all named Defendants are still covered
9 by the Release. However, any such change must occur through written stipulation by the Parties.

10 34. “**Request for Exclusion**” means a timely letter submitted by a Class Member indicating
11 a request to be excluded from the Settlement. The Request for Exclusion must: (a) be signed by the
12 Class Member; (b) contain the name, address, telephone number, and the last four digits of the Social
13 Security number (or other Taxpayer Identification Number, if applicable) of the Class Member
14 requesting exclusion; (c) clearly state that the Class Member received the Notice, does not wish to
15 participate in the Settlement, and wants to be excluded from the Settlement; (d) be returned by first
16 class mail or equivalent to the Settlement Administrator at the specified address; and (e) be postmarked
17 on or before the Response Deadline. The date of the postmark on the return mailing envelope will be
18 the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class
19 Member who does not request exclusion from the Settlement will be deemed a Participating Class
20 Member and will be bound by all terms of the Settlement, if the Settlement is granted Final Approval by
21 the Court.

22 35. “**Response Deadline**” means the deadline by which Class Members must postmark to
23 the Settlement Administrator valid Share Forms, Requests for Exclusion, or file and serve objections to
24 the Settlement. The Response Deadline will be thirty (30) calendar days from the initial mailing of the
25 Notice Packet by the Settlement Administrator, unless the 30th day falls on a Sunday or federal holiday,
26 in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service
27 is open. The Response Deadline for Objections or Requests for Exclusion will be extended fifteen (15)
28 calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator,

1 unless the 15th day falls on a Sunday or federal holiday, in which case the Response Deadline will be
2 extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be
3 extended by express agreement between Class Counsel and Defendants. Under no circumstances,
4 however, will the Settlement Administrator have the authority to extend the deadline for Class Members
5 to submit a Request for Exclusion, or objection to the Settlement, other than as provided herein.

6 36. “**Settlement**” means the agreement to resolve the Action on terms and conditions as set
7 forth in this Settlement Agreement.

8 37. “**Workweeks**” means the number of weeks in which a Class Member recorded
9 performing work as a non-exempt employee of Stremicks Heritage Foods, LLC in the State of California
10 during the Class Period. Workweeks will be determined based on such data as is electronically available
11 in Stremicks’s existing timekeeping and payroll data.

12 **CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

13 38. The Parties agree that the requisites for establishing a settlement class are satisfied and
14 that, solely for purposes of settling the Action, class certification is appropriate. If the Settlement is not
15 approved by the Court, Defendants retain all rights and opportunities to contest class certification on all
16 issues in the Action.

17 **TERMS OF AGREEMENT**

18 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
19 forth herein, the Parties agree, subject to the Court’s approval, as follows:

20 39. Funding of the Maximum Settlement Amount. Within ten (10) calendar days after the
21 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts
22 to be paid by Stremicks pursuant to the terms of the Settlement. Within ten (10) business days of the
23 Effective Date, Stremicks will pay the entire Maximum Settlement Amount *plus* all required employer-
24 side payroll taxes to the Settlement Administrator. Payment will be deposited into a Qualified
25 Settlement Account to be established by the Settlement Administrator.

26 Within five (5) calendar days of the funding of the Maximum Settlement Amount, the Settlement
27 Administrator will issue payments to: (a) the Settlement Administrator; (b) the Labor and Workforce
28 Development Agency; (c) Class Representative; (d) Class Counsel; (e) Participating Class Members;

1 and (f) Aggrieved Employees.

2 40. Class Counsel's Fees and Costs. Defendants agree not to oppose or impede any
3 application or motion by Class Counsel for Class Counsel's Fees and Costs of up to one-third of the
4 Maximum Settlement Amount, or \$333,333.33, plus the reimbursement of actual reasonable costs and
5 expenses incurred in connection with Class Counsel's litigation and settlement of the Action, up to
6 Thirty Five Thousand Dollars and Zero Cents (\$35,000), both of which will be paid from the Maximum
7 Settlement Amount. Even in the event the Court reduces or does not approve the requested amount for
8 Class Counsel's Fees and Costs, Plaintiff and Plaintiff's Counsel shall not have the right to revoke this
9 Agreement or the Settlement.

10 41. Class Representative Enhancement Payment. In exchange for a general release of the
11 Released Parties, and in recognition of his efforts and work in prosecuting the Action on behalf of Class
12 Members and negotiating the Settlement, Defendants agree not to oppose or impede any application or
13 motion for a Class Representative Enhancement Payment of up to a total of Fifteen Thousand Dollars
14 and Zero Cents (\$15,000.00) to the Class Representative, subject to the Court's approval. The Class
15 Representative Enhancement Payment, which will be paid from the Maximum Settlement Amount, is
16 in addition to the payments to which he is entitled as a Settlement Class Member and Aggrieved
17 Employee. The Class Representative agrees to execute a general release of all claims, including a waiver
18 of California Civil Code § 1542, against the Released Parties in exchange for his Enhancement Payment,
19 which this Stipulation includes. The Settlement Administrator will issue an IRS Form 1099 for the
20 Enhancement Payment to the Class Representative, and the Class Representative shall be solely and
21 legally responsible for correctly characterizing this compensation for tax purposes and for paying any
22 taxes on the amount received. Should the Court reduce the Class Representative Enhancement
23 Payment, any such reduction shall revert to the Net Settlement distributed to Participating Class
24 Members. Even in the event the Court reduces or does not approve the requested amount for the Class
25 Representative Enhancement Payment, Plaintiff and Plaintiff's Counsel shall not have the right to
26 revoke this Agreement or the Settlement.

27 42. Settlement Administration Costs. The Settlement Administrator will be paid for the
28 reasonable costs of administration of the Settlement and distribution of payments from the Maximum

1 Settlement Amount, which is capped at no more than \$25,000.00. These costs, which will be paid from
2 the Maximum Settlement Amount, will include, for instance, costs incurred for the required tax
3 reporting on the Individual Settlement Payments, the issuing of W-2 and 1099 IRS Forms, distributing
4 the Notice Packet, calculating Class Members' workweeks, calculating and distributing the Maximum
5 Settlement Amount and Class Counsel's Fees and Costs, and providing necessary reports and
6 declarations.

7 43. Labor and Workforce Development Agency Payment. Subject to Court approval, the
8 Parties agree that the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the
9 Maximum Settlement Amount will be designated for satisfaction of Plaintiff's and Class Members'
10 PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy-Five Thousand Dollars and
11 Zero Cents (\$75,000.00), will be paid to the LWDA, and Twenty-Five Percent (25%), or Twenty-Five
12 Thousand Dollars and Zero Cents (\$25,000.00), will be distributed to the Aggrieved Employees as part
13 of the Net Settlement Amount. Class Counsel agrees to provide notice of this Settlement to the LWDA
14 as required by Labor Code section 2699(l)(2).

15 44. Net Settlement Amount. "Net Settlement Amount" shall mean the Maximum
16 Settlement Amount *minus* Settlement Administration Costs, Class Counsel's Fees and Costs, the Class
17 Representative Enhancement Payment, and the portion of the Labor and Workforce Development
18 Agency Payment that will be paid to the LWDA.

19 45. Settlement Administration Cost Decreases. Any portion of the estimated or designated
20 Settlement Administration Costs which are not required to fulfill the total Settlement Administration
21 Costs will become part of the Net Settlement Amount.

22 46. Individual Settlement Payment Calculations. Individual Settlement Payments will be
23 calculated and apportioned from the Net Settlement Amount based on each Participating Class
24 Member's "Workweeks" (as defined above).. Specific calculations of Individual Settlement Payments
25 will be made as follows:

26 a. The Settlement Administrator will calculate the number of Workweeks per
27 Participating Class Member during the Class Period based on records in Defendants' possession,
28

1 custody, or control.¹ Class Members' Individual Workweeks shall be calculated to the nearest
2 hundredth of a full workweek.

3 b. The Settlement Administrator will calculate the total Workweeks for all
4 Settlement Class Members by adding the number of Workweeks worked by each Settlement
5 Class Member during the Class Period.

6 c. The respective Workweeks for each Settlement Class Member will be divided by
7 the total Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each
8 Settlement Class Member.

9 d. Each Settlement Class Member's Payment Ratio will then be multiplied by the
10 Net Settlement Amount to calculate each Settlement Class Member's estimated Individual
11 Settlement Payments.

12 e. Using the Class Data, the Settlement Administrator will divide the total number
13 of Workweeks during the PAGA Release Period, and divide that number by two, to arrive at the
14 total number of "PAGA Pay Periods." Using the Class Data, the Settlement Administrator will
15 also calculate the total number of Workweeks for each Settlement Class Member during the
16 PAGA Release Period, and divide each of those numbers by two, to arrive at each individual's
17 PAGA Pay Periods. The Settlement Administrator will divide each Aggrieved Employee's
18 PAGA Pay Periods by the aggregate number of PAGA Pay Periods of all Aggrieved Employees
19 during the PAGA Release Period to determine each Aggrieved Employee's pro rata portion of
20 the portion of the PAGA payment allocated to Aggrieved Employees. A Class Member's pay
21 periods shall be calculated to the nearest hundredth of a full pay period.

22 47. Limited Confidentiality. The Parties agree not to issue press releases, communicate with,
23 or respond to, any media or publication entities, or otherwise publish any information, concerning the
24 Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying
25

26 ¹ Defendants' Workweek data will be presumed to be correct unless a particular Class Member
27 proves otherwise to the Settlement Administrator by credible written evidence. All Workweek disputes
28 will be resolved and decided by the Settlement Administrator in consultation with Class Counsel and
counsel for Defendants. The Settlement Administrator's decision on all Workweek disputes will be final
and non-appealable.

1 the Settlement prior to final approval and Entry of Judgment, except as required by law or as shall be
2 contractually required to effectuate the terms of the Settlement as set forth herein. Nothing stated herein
3 shall prohibit Class Counsel from discussing the Settlement, the fact of Settlement, and its terms and
4 conditions: (i) with Class Members and/or (ii) in court filings, including in their respective firm resumes,
5 and/or (iii) in all necessary motions and supporting memoranda related to preliminary and final approval
6 of the Settlement, or for other class action settlements. This provision also does not limit Class Counsel
7 (i) from complying with ethical obligations; or (ii) from posting a neutral description of publicly available
8 facts regarding the Settlement, provided that such posting does not expressly identify Defendants by
9 name.

10 48. Class Member Communications. Defendants will instruct Stremicks' officers, directors,
11 and exempt managers that, should they be contacted by Class Members or persons who believe they may
12 be Class Members in relation to this Agreement, such officers, directors, and exempt managers should
13 make no comment except by directing the employees to Defendants' administrators, who will be
14 instructed to direct such Class Members to (a) the Settlement Administrator and the Class Notice, *or*
15 (b) Class Counsel, and to provide such Class Members with contact information for the Settlement
16 Administrator and Class Counsel. Defendants agree not to discourage or prevent Class Members from
17 exercising any of their rights or obligations pursuant to this Agreement. At no time will any of the Parties
18 or their counsel take any action to encourage, support, require, or induce Class Members to object to
19 the Settlement Agreement, opt-out from the Settlement, appeal from the Order and Judgment, or
20 otherwise engage in a particular course of action with respect to their rights under the Settlement.

21 49. Settlement Awards Do Not Trigger Additional Benefits. All Individual Settlement
22 Payments to Participating Class Members shall be deemed to be paid to such Participating Class
23 Members solely in the year in which such payments are received by the Participating Class Members. It
24 is expressly understood and agreed that the receipt of such Individual Settlement Payments will not
25 entitle any Participating Class Member to additional compensation or benefits under any company
26 bonus, commission, or other compensation or benefit plan or agreement in place during the period
27 covered by the Settlement, nor will it entitle any Participating Class Member to any increased
28 retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of the

1 Parties to this Settlement that the Individual Settlement Payments provided for in this Settlement are
2 the sole payments to be made by Stremicks to the Participating Class Members, and that the
3 Participating Class Members are not entitled to any new or additional compensation or benefits as a
4 result of having received the Individual Settlement Payments (notwithstanding any contrary language
5 or agreement in any benefit or compensation plan document that might have been in effect during the
6 period covered by this Settlement).

7 50. Settlement Administration Process. The Parties agree to cooperate in the administration
8 of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses
9 incurred in administration of the Settlement.

10 51. Delivery of the Class List. Within 15 calendar days of Preliminary Approval, Defendants
11 will provide the Class List to the Settlement Administrator.

12 52. Notice by First-Class U.S. Mail. Within five (5) calendar days following receipt of the
13 Class List, the Settlement Administrator will mail a Notice Packet, substantially in the form attached
14 hereto as **Exhibit A**, to all Class Members via regular First-Class U.S. Mail, using the most current or
15 last known mailing addresses identified in the Class List. Each Notice Packet will provide: (a)
16 information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c)
17 the Settlement Class definition; (d) each Class Member's estimated Individual Settlement Payment and
18 the formula for calculating Individual Settlement Payments; (e) the dates which comprise the Class
19 Period; (f) instructions on how to submit valid Requests for Exclusion or objections; (g) the deadlines
20 by which the Class Member must fax or postmark Requests for Exclusions or file and serve objections
21 to the Settlement; (h) the claims to be released, as set forth herein; and (i) the date for the Final Approval
22 Hearing.

23 53. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
24 Administrator will perform a search based on the National Change of Address Database for information
25 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
26 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
27 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
28 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is

1 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
2 skip-trace, or other search using the name, address, and/or Social Security number (or other Taxpayer
3 Identification Number, if applicable) of the Class Member involved and will then perform a single re-
4 mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by
5 request, will have between the later of: (a) an additional fifteen (15) calendar days; or (b) the Response
6 Deadline to fax or postmark a Request for Exclusion, or file and serve an objection to the Settlement.

7 54. Disputed Information on Notice Packets. Class Members will have an opportunity to
8 dispute the information provided in their Notice Packets. To the extent Class Members dispute the
9 number of weeks he/she worked during the Class Period, or the amount of their Individual Settlement
10 Payment, Class Members may produce evidence to the Settlement Administrator showing that such
11 information is inaccurate. Any disputes, along with supporting documentation, must be postmarked on
12 or before the Response Deadline. Absent evidence rebutting Defendants' records, Defendants' records
13 will be presumed determinative. However, if a Class Member produces evidence to the contrary, the
14 Settlement Administrator will evaluate the evidence submitted by the Class Member in consultation
15 with Class Counsel and counsel for Defendants and will make the final decision as to the Individual
16 Settlement Payment to which the Class Member may be entitled with input from Class Counsel and
17 Defense Counsel. This determination shall be binding on the Class Member.

18 55. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
19 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
20 Administrator within the Response Deadline. The date of the postmark on the return mailing envelope
21 will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.
22 All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to
23 Class Counsel and Defendants' Counsel the Requests for Exclusion that were timely submitted. Any
24 Class Member who submits a Request for Exclusion shall be prohibited from objecting to the Settlement
25 Agreement.

26 56. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
27 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
28 Request for Exclusion will be bound by all of the terms of the Settlement Agreement, including those

1 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if it grants
2 Final Approval to the Settlement. The release of the Released PAGA Claims shall be binding
3 irrespective of whether any Class Members opt-out of the Settlement Agreement.

4 57. Objection Procedures. To object to the Settlement Agreement, a Class Member must file
5 a valid Notice of Objection with the Settlement Administrator on or before the Response Deadline. The
6 Settlement Administrator shall serve all objections as received on Class Counsel and Defendants'
7 Counsel. The Notice of Objection shall be signed by the Class Member and contain all information
8 required by this Settlement Agreement. The postmark date of the filing and service will be deemed the
9 exclusive means for determining that the Notice of Objection is timely. Class Members may also raise
10 objections orally at the Final Fairness and Approval hearing, whether or not they previously submitted
11 a valid Notice of Objection. It shall not be a breach of this Agreement for Class Counsel to file the
12 Objections with the Court per the Court's instruction, local rules, or as otherwise required for approval
13 of this Settlement Agreement.

14 58. Certification Reports Regarding Individual Settlement Payment Calculations. The
15 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report which
16 certifies: (a) the number of Class Members who have submitted valid Requests for Exclusion; and (b)
17 whether any Class Member has submitted a challenge to any information contained in their Claim Form
18 or Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
19 any updated reports regarding the administration of the Settlement Agreement as needed or requested.
20 No later than 30 days prior to the deadline for Class Counsel to file its motion in support of the Final
21 Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel
22 and Defense Counsel a declaration with summary information of the Notice process, including but not
23 limited to: (a) the total amount of final Individual Settlement Payments of each Settlement Class
24 Member; (b) the number of Settlement Class Members to receive such payments; (c) the final number
25 of requests for exclusion/Opt-Outs and objections; (d) the Settlement Administrator's qualifications for
26 administration; and (e) an explanation of the steps taken to implement the Notice process as set forth in
27 this Agreement.

28 59. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to

1 Participating Class Members will be negotiable for 180 calendar days from the date the check was issued
2 (the "Void Date"). For any Class Member whose Individual Class Payment check and/or Individual
3 PAGA Payment check is uncashed and cancelled after the Void Date, the Administrator shall transmit
4 the funds represented by such checks to a Court-approved non-profit organization or foundation
5 consistent with Code of Civil Procedure Section 384(b) ("Cy Pres Recipient"). The Cy Pres Recipient
6 shall be the California Bar's Justice Gap Fund. The Parties represent that they have no interest or
7 relationship, financial or otherwise, with the intended Cy Pres Recipient. If any Aggrieved Employees
8 cannot be found, or if the checks sent to Aggrieved Employees as their share of the PAGA penalties are
9 not cashed, and the collective amount of those checks do not justify the expense of a second distribution
10 to Aggrieved Employees who did cash their checks, the unclaimed funds shall be distributed to the Labor
11 and Workforce Development Agency rather than to the intended Cy Pres Recipient.

12 60. Certification of Completion. Upon completion of administration of the Settlement, the
13 Settlement Administrator will provide a written declaration under oath to certify such completion to the
14 Court and counsel for all Parties.

15 61. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
16 be allocated as follows: of each Individual Settlement Payment, 33% will be allocated as alleged unpaid
17 wages, 33% will be allocated as alleged unpaid civil penalties, and 34% will be allocated as alleged unpaid
18 interest, and expense reimbursement. The percentage of each Individual Settlement Payment allocated
19 as wages will be reported on an IRS Form W-2 by the Settlement Administrator. The remaining
20 percentage of each Individual Settlement Payment shall be allocated as interest, penalties, and
21 reimbursement, and will be reported on an IRS Form-1099 by the Settlement Administrator.

22 62. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
23 will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2,
24 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Agreement.
25 Within ten (10) business days after the Effective Date, the Settlement Administrator will provide the
26 Parties with an accounting of the amounts to be paid by Stremicks pursuant to the terms of the
27 Settlement, including the amount of the employer contribution for payroll taxes to be paid by Stremicks.

28 63. Tax Liability. The Parties acknowledge that no tax advice has been offered or given by

1 any other Party, their attorneys, agents, or any other representatives, in the course of these negotiations,
2 and that each Party is relying upon the advice of his/its own tax consultant with regard to any tax
3 consequences that may arise as a result of the execution of this Agreement. The Class Representatives
4 and Class Counsel acknowledge that they may be required to submit a Form W-9, and the Class
5 Representatives, Class Members, and Class Counsel acknowledge that the Settlement Administrator
6 may be required to issue a Form 1099 or other tax form reporting the consideration flowing to the Class
7 Representatives, Class Members, and Class Counsel under this agreement to the Internal Revenue
8 Services and/or other taxing authority. Nothing herein shall obligate the Class Representatives, Class
9 Members, and Class Counsel to pay, indemnify, or otherwise assume responsibility for any taxes that
10 would be owed by Defendants in the first instance or as a result of any re-classification of the treatment
11 of the payments, such as, for example, employer-side payroll contributions.

12 64. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
13 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
14 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
15 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
16 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
17 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL
18 ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR
19 BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
20 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
21 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN,
22 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
23 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
24 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
25 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
26 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
27 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
28 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY

1 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
2 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
3 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
4 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
5 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
6 AGREEMENT.

7 65. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
8 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
10 of action, or right herein released and discharged.

11 66. Release of Claims by Class Members. Upon the Effective Date, the Settlement Class, and
12 each Participating Class Member, fully releases and discharges the Released Parties for the Released
13 Claims for the Class Period. Participating Class Members will be deemed to have acknowledged and
14 agreed that their claims for wages and penalties in the Action are disputed. Participating Class Members
15 will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not
16 applicable to the Individual Settlement Payment.

17 67. Plaintiff's Released Claims. In addition to the Participating Class Members' Released
18 Claims described above, in exchange for the consideration recited in this Stipulation, including but not
19 limited to the Class Representative Enhancement Award, Plaintiff releases, acquits, and discharges and
20 covenants not to sue any of the Released Parties for any claim, whether known or unknown, which he
21 has ever had, or hereafter may claim to have, arising on or before the date they sign this Stipulation,
22 including without limitation to, any claims relating to or arising out of any aspect of his relationship with
23 Defendants, or the termination of that relationship, including any claims for unlawful discrimination,
24 harassment, or retaliation; any claims for unpaid compensation, wages, reimbursement for business
25 expenses, penalties, or waiting time penalties; any other claims under the California Labor Code, the
26 California Business and Professions Code, the federal Fair Labor Standards Act, 29 U.S.C. section 201,
27 *et seq.*, or any other federal, state, county, or city law or ordinance regarding wages or other
28 compensation; any claims for employee benefits including without limitation, any claims under the

1 Employment Retirement Income Security Act of 1974; any claims of employment discrimination on any
2 other basis, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the
3 Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with
4 Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code,
5 or any other federal, state, county, or city law or ordinance regarding employment discrimination.
6 Plaintiff acknowledges and agrees that the foregoing general release is given in exchange for the
7 consideration provided to him under this Stipulation by Defendants. However, this release shall not
8 apply to any claim for workers' compensation benefits, unemployment insurance benefits, pension or
9 retirement benefits, or any other claim or right that as a matter of law cannot be waived or released.

10 Plaintiff expressly waives any rights or benefits available to him under the provisions of Section
11 1542 of the California Civil Code, which provides as follows:

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

15 Plaintiff understands fully the statutory language of Civil Code Section 1542 and, with this
16 understanding, nevertheless elects to, and does, assume all risks for claims against the Released Parties
17 that have arisen, whether known or unknown, which he had, or hereafter may claim to have, arising on
18 or before the date of his signature to this Stipulation, and specifically waives all rights he may have
19 under the California Civil Code section 1542.

20 68. Applicability of the Age Discrimination in Employment Act. Plaintiff represents that, as
21 of the date of the execution of this Agreement, Plaintiff is under the age of 40 years old.

22 69. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit this
23 Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval and
24 determination by the Court as to the fairness, adequacy, and reasonableness of the Settlement
25 Agreement. Promptly upon execution of this Settlement Agreement, the Parties shall apply to the Court
26 for the entry of an order for:

27 a. Scheduling a fairness hearing on the question of whether the proposed Settlement,
28 including but not limited to, payment of Class Counsel's fees and costs, and the Class Representative

1 Enhancement Payments, should be finally approved as fair, reasonable, and adequate as to the members
2 of the Settlement Class;

3 b. Preliminarily Certifying a Settlement Class;

4 c. Approving, as to form and content, the proposed Notice;

5 d. Approving the manner and method for Class Members to request exclusion from the
6 Settlement as contained herein and within the Notice;

7 e. Directing the mailing of the Notice, by first class mail to the Class Members; and

8 f. Giving Preliminary Approval to Settlement subject to final review by the Court.

9 g. To effectuate the release intended by the Parties, Plaintiff agrees to file the First
10 Amended Complaint, and the Amended LWDA Letter, to include the following claims for relief and/or
11 factual allegations: (a) failure to properly pay or calculate all wages owed, including but not limited to
12 overtime, minimum, and sick pay wages; (b) failure to pay all wages owed at the applicable/correct
13 regular rate of pay; (c) failure to pay all wages owed due to “off-the-clock” work; (d) improper
14 “rounding” of employees’ time entries and meal/rest breaks; (e) failing to properly pay for time spent
15 donning and doffing of employees’ uniforms, (f) failing to properly pay for time spent waiting in line to
16 clock in and out of work and/or walking to/from timeclocks; (g) failing to properly pay for time spent
17 submitting to or engaging in security checks, security screenings, bag checks, security/health
18 procedures, and/or waiting in cars to go through security booth checks; (h) failure to provide proper
19 meal periods or proper premium pay in lieu thereof, (i) failure to provide proper rest periods or proper
20 premium pay in lieu thereof, (j) failure to reimburse business expenses, including but not limited to
21 expenses related to personal cell phone use, masks, tools, uniforms, and footwear; (k) failure to provide
22 compliant and/or timely wage statements; (l) failure to properly pay vested vacation time or timely pay
23 vacation time pursuant to Labor Code section 227.3; (m) failure to properly maintain accurate
24 employment or payroll records; (n) failure to timely pay all wages owed during employment; (o) failure
25 to timely pay all wages owed upon termination of employment; (p) violations of the Unfair Competition
26 Law based on the Labor Code claims released by this Agreement; (q) civil penalties under the Private
27 Attorneys General Act (“PAGA”) based on the claims and legal theories released by this Agreement;
28 and (r) any other claims, penalties or requests for interest alleged in or arising out of the claims alleged

1 in the First Amended Complaint. The Preliminary Approval Order will state that upon issuance of an
2 order granting preliminary approval, the Court will accept the First Amended Complaint as
3 automatically filed as the operative complaint in this action.

4 70. Duties of the Parties Following Preliminary Court Approval. Following Preliminary
5 Approval by the Court of the Settlement provided for in this Settlement Agreement and Notice to the
6 Class, Class Counsel will submit a proposed final order of approval and judgment for:

- 7 a. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable, and
8 adequate, and directing consummation of its terms and provisions;
- 9 b. Approval of Class Counsel's application for an award of attorneys' fees and costs;
- 10 c. Approval of the Class Representative Enhancement Payments to the Class
11 Representatives;
- 12 d. Approval of the Settlement Administration Costs of the Settlement Administrator; and
- 13 e. That judgment be entered in this Action.

14 71. Termination or Rescission of Settlement Agreement.

15 a. *Termination by Either Party.* Except with respect to Rescission of the Settlement by
16 Defendants pursuant to Paragraph 72.b, in the event the Court does not grant preliminary or final
17 approval of the Settlement in substantially the form agreed to by the Parties, or settlement approval is
18 not judicially approved for any other reason in substantially the form agreed to by the Parties, any Party
19 may (subject to the obligations of cooperation set forth herein) terminate the Settlement upon ten (10)
20 business days' advance written notice to legal counsel for the non-terminating Party. In the event of
21 termination of the settlement:

- 22 i. The Settlement and the Settlement Agreement shall be terminated and shall have
23 no force or effect, and no Party shall be bound by any of their terms;
- 24 ii. Defendants shall have no obligation to make any payments to any Party, Class
25 Member or Class Counsel;
- 26 iii. The Preliminary Approval Order, Final Approval Order, and Judgment, including
27 any order of class certification, shall be vacated and shall not be used for any
28 purpose during litigation;

- 1 iv. The Settlement Agreement and all negotiations, statements, and proceedings
2 relating thereto shall be without prejudice to the rights of any of the Parties, all of
3 whom shall be restored to their respective positions in the Action prior to the
4 Settlement;
- 5 v. Neither this Stipulated Settlement, nor any ancillary documents, actions,
6 statements, or filings in furtherance of settlement (including all matters associated
7 with the mediation) shall be admissible or offered into evidence in the Action or
8 any other action for any purpose whatsoever.
- 9 vi. The Terminating Party shall pay the Settlement Administrator for services
10 rendered up to the date the Settlement Administrator is notified that the
11 Settlement has been terminated;
- 12 vii. The Parties' agreement that this matter is appropriate for class certification for
13 purposes of settlement shall not be considered as binding or evidence that the case
14 should be certified for purposes of litigation and neither Party's arguments with
15 respect to class certification will be prejudiced.

16 b. *Rescission by Defendants.* Notwithstanding the above, if more than seven percent (7%) of
17 the Class Members opt-out of the Settlement by submitting Requests for Exclusion, Defendants may, at
18 their option, rescind and void the Settlement and all actions taken in furtherance of it will thereby be
19 null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel within
20 fourteen (14) calendar days after the Settlement Administrator notifies the Parties of the total number
21 of Requests for Exclusion received by the Response Deadline. If the option to rescind is exercised,
22 Defendants shall be solely responsible for all costs of the Settlement Administrator accrued to that point.

23 72. Escalator Clause. Defendants have estimated that, during the period from September 27,
24 2020 to November 19, 2022 (the "Data Period"), there were approximately 33,285 weeks in which class
25 members performed work for Stremicks. If the actual number of such weeks during the Data Period is
26 more than 7% greater than 33,285 weeks (i.e., if the actual number is greater than 35,615), the Maximum
27 Settlement Amount will increase in proportion to the increase in the number of workweeks above 35,615.
28 By way of example, if the actual number of weeks in which class members performed work for Stremicks

1 during the Data Period is 35,972 (i.e., 1% greater than 35,615), the Maximum Settlement Amount would
2 be increased by 1% (i.e., increased \$10,000 to \$1,010,000).

3 73. Adjustments to Components of Maximum Settlement Amount. Paragraph 73 (the
4 Escalator Clause) contemplates only adjustments to the Maximum Settlement Amount that may be
5 permitted absent written stipulation by all Parties.

6 74. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
7 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
8 for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary
9 Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement
10 Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all
11 Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will
12 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
13 proposed Notice Packet; *i.e.*, the proposed Notice of Class Action Settlement document, attached as
14 **Exhibit A**. Class Counsel will be responsible for drafting all documents necessary to obtain Preliminary
15 Approval. Defendants agree not to oppose the Motion for Preliminary Approval.

16 75. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
17 deadlines for Class Members to submit Requests for Exclusion, or objections to the Settlement
18 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
19 conducted to determine the Final Approval of the Settlement Agreement along with the amounts
20 properly payable for: (a) Individual Settlement Payments; (b) the Labor and Workforce Development
21 Agency Payment; (c) the Class Counsel's Fees and Costs; (d) the Class Representative Enhancement
22 Payment; (e) all Settlement Administration Costs; and (f) Stremicks' share of payroll taxes for wages
23 paid in connection with the Individual Settlement Payments. Class Counsel will be responsible for
24 drafting all documents necessary to obtain Final Approval, including responding to any objections and
25 appeals arising therefrom. Class Counsel will also draft the attorneys' fees and costs application to be
26 heard at the Final Approval hearing. Defendants agree not to oppose the Motion for Final Approval.

27 76. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
28 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment

1 pursuant to California Code of Civil Procedure section 664.6 to the Court for its approval. After entry
2 of the Judgment, the Court will have continuing jurisdiction for purposes of addressing: (a) the
3 interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters,
4 and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this
5 Agreement.

6 77. Exhibit(s) Incorporated by Reference. The terms of this Agreement include the terms set
7 forth in any attached Exhibit(s), which are incorporated by this reference as though fully set forth herein.
8 Any Exhibits to this Agreement are an integral part of the Settlement.

9 78. Entire Agreement. This Settlement Agreement, the general release of all claims by the
10 Class Representative, and any attached Exhibit(s) constitute the entirety of the Parties' settlement
11 terms. The Parties expressly recognize California Civil Code section 1625 and California Code of Civil
12 Procedure section 1856(a), which provide that a written agreement is to be construed according to its
13 terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
14 extrinsic oral or written representations or terms will modify, vary, or contradict the terms of this
15 Agreement.

16 79. Amendment or Modification. This Settlement Agreement may be amended or modified
17 only by a written instrument signed by the named Parties or their successors-in-interest.

18 80. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
19 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
20 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
21 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
22 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
23 each other and use their best efforts to effectuate the implementation of the Settlement. If the Parties
24 are unable to reach agreement on the form or content of any document needed to implement the
25 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
26 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

27 81. Signatories. It is agreed for the purposes of this Settlement Agreement only that because
28 the members of the Class are so numerous, it is impossible or impractical to have each member of the

1 Class execute this Settlement Agreement. The Notice, attached hereto as **Exhibit A**, will advise all Class
2 Members of the binding nature of the release, and the release shall have the same force and effect as if
3 this Settlement Agreement were executed by each member of the Class.

4 82. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
5 and will inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

6 83. California Law Governs. All terms of this Settlement Agreement and Exhibit(s) hereto
7 will be governed by and interpreted according to the laws of the State of California.

8 84. Execution and Counterparts. This Settlement Agreement is subject only to the execution
9 of all Parties. The Agreement may be executed in one or more counterparts either by ink or electronic
10 signature. All executed counterparts and each of them, including electronic, facsimile, and scanned
11 copies of the signature page, will be deemed to be one and the same instrument.

12 85. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
13 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action. The Parties further
14 agree that they have arrived at this Settlement after arm's-length negotiations and in the context of
15 adversarial litigation, taking into account all relevant factors, present and potential. The Parties further
16 acknowledge that they are each represented by competent counsel and that they have had an opportunity
17 to consult with their counsel regarding the fairness and reasonableness of this Agreement.

18 86. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
19 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
20 consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid
21 and enforceable.

22 87. Plaintiff's Waiver of Right to Be Excluded and Object. Plaintiff agrees to sign this
23 Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein.
24 For good and valuable consideration, Plaintiff further agrees that he will not request to be excluded from
25 the Settlement Agreement, nor object to any terms herein. Any such request for exclusion or objection
26 by Plaintiff will be void and of no force or effect. Any efforts by Plaintiff to circumvent the terms of this
27 paragraph will be void and of no force or effect.

28 88. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class

1 certification for settlement purposes only; except, however, that Plaintiff or Class Counsel may appeal
2 any reduction in the Class Counsel's Fees and Costs below the amount requested from the Court but
3 must inform Defense Counsel and the Class Administrator of any intent to appeal prior to the
4 distribution of any funds from the Class Administrator to any Settlement Class Members or any other
5 Parties. Any Party may appeal a Court order that modifies the Settlement in a manner that was not
6 approved in writing by all Parties.

7 89. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute
8 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In
9 entering into this Agreement, Released Parties do not admit, and specifically deny, they have violated
10 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
11 statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated
12 or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
13 conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor
14 any of the negotiations connected with it, shall be construed as an admission or concession by Released
15 Parties of any such violations or failures to comply with any applicable law. Except as necessary in a
16 proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall
17 not be offered or received as evidence in any action or proceeding to establish any liability or admission
18 on the part of Released Parties, or to establish the existence of any condition constituting a violation of,
19 or non-compliance with, federal, state, local, or other applicable law.

20 90. Captions. The captions and section numbers in this Agreement are inserted for the
21 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
22 provisions of this Agreement.

23 91. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
24 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a
25 further waiver by such Party of the same or any other condition, covenant, right, or remedy.

26 92. Enforcement Actions. In the event that one or more of the Parties institute any legal
27 action, motion, petition, or other proceeding against any other Party or Parties to enforce the provisions
28 of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or

1 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and
2 costs, including expert witness fees incurred, in connection with such enforcement actions.

3 93. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
4 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against
5 one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of
6 the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all
7 Parties have contributed to the preparation of this Agreement.

8 94. Representation By Counsel. The Parties acknowledge that they have been represented by
9 counsel throughout all negotiations that preceded the execution of this Agreement, and that this
10 Agreement has been executed with the consent and advice of counsel, and reviewed in full.

11 95. All Terms Subject to Final Court Approval. All amounts and procedures described in this
12 Settlement Agreement herein will be subject to the Court's Final Approval.

13 96. Notices. Unless otherwise specifically provided herein, all notices, demands, or other
14 communications given hereunder shall be in writing and shall be transmitted to a Party via email:

15 To Plaintiff and the Settlement Class:

16 Elliot J. Siegel
17 elliot@kingsiegel.com
18 Erum Siddiqui
19 erum@kingsiegel.com
20 **KING & SIEGEL LLP**
724 S. Spring Street, Suite 201
Los Angeles, California 90014

21 To Defendants:

22 Evan R. Moses (Bar No. 198099)
23 Evan.moses@ogletree.com
24 Catherine L. Brackett (Bar No. 332918)
25 Catherine.brackett@ogletree.com
26 **OGLETREE, DEAKINS, NASH,**
27 **SMOAK & STEWART, P.C.**
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

28 97. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good

1 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
2 Settlement Agreement. The Parties agree to support the Settlement so it is effectuated until the Court
3 issues an order granting final approval of the settlement. The Parties agree that they will work
4 collaboratively and exercise reasonable best efforts to defeat any objections or challenges to the approval
5 of the Settlement. Before filing any documents with the Court related to or in furtherance of this
6 Settlement, Plaintiff shall provide Defendants' counsel with copies of such documents at least five court
7 days in advance of filing.

8 98. Plaintiff and Plaintiff's Counsel represent that they: (a) are not currently (i.e., as of the
9 date of execution of this Agreement) aware of any unalleged facts or claims that would support a legal
10 action against any of the Released Parties; (b) do not currently represent, except with respect to the
11 matters released by this Settlement, any current or former employees of Defendants or any of them with
12 respect to any legal claims against any of the Released Parties. The Parties acknowledge, understand,
13 and agree that the representations described in this paragraph are essential to the Agreement and that
14 this Agreement would not have been entered into were it not for this representation. However, the
15 Parties also agree that nothing in this Paragraph limits or restrains Plaintiffs' Counsel from representing
16 any individuals of their choosing or ability to bring claims of their choosing, except to the extent such
17 individuals or claims are covered by the release negotiated in this Agreement.

18 99. Binding Agreement. The Parties warrant that: 1) they understand and have full authority
19 to enter into this Agreement; 2) they intend that this Agreement will be fully enforceable and binding
20 on all Parties; and 3) agree that it will be admissible and subject to disclosure in any proceeding to enforce
21 its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under
22 federal or state law.

23 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
24 Stipulation of Settlement and Release Between Plaintiff and Defendants as of the date(s) set forth below:

25
26 **SIGNATURES**

27 **READ CAREFULLY BEFORE SIGNING**

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PLAINTIFF: Gerardo Duenas

Dated: _____

Gerardo Duenas

DEFENDANT: Stremicks Heritage Foods, LLC

Dated: 6/26/2023

By: 

Its: CFO

DEFENDANT: Jack Noenickx

Dated: 6/26/2023

By: 

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT
APPROVAL

Gerardo Duenas v. Stremicks Heritage Foods, LLC and Jack Noenickx
Superior Court of the State of California, Riverside County
Case No. CVRI2202014

*You are **not** being sued. This is **not** an advertisement. This notice affects your rights.*

YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice of Class Action Settlement because Stremicks Heritage Foods, LLC's records show you are what is called a "Class Member," and are therefore entitled to a payment from this class action settlement ("Settlement"). **Class Members are all persons who worked at least one shift as a non-exempt employee in the State of California for Stremicks Heritage Foods, LLC from September 26, 2020 to July 23, 2023 ("Class Period").**

On [REDACTED], the Honorable Raquel A. Marquez of the Superior Court of California for the County of Riverside granted preliminary approval of this Class Action Settlement and ordered that all Class Members be notified of the Settlement.

Unless you choose not to participate in the Settlement (in other words, should you choose to "opt out") by following the procedures described below, you will be considered a "Participating Class Member." If the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement fund, which is estimated to be <estAmount>.

IF YOU STILL WORK FOR STREMICKS HERITAGE FOODS, LLC, PARTICIPATION IN THIS SETTLEMENT WILL NOT AFFECT OR DISRUPT YOUR WORK IN ANY MANNER.

YOU WILL NOT BE RETALIATED AGAINST BY DEFENDANTS FOR YOUR PARTICIPATION. California law strictly prohibits retaliation. Defendants are prohibited by law from taking any adverse action against any Class Member or otherwise targeting, retaliating, or discriminating against any Class Member because of the Class Member's participation in or decision not to participate in this Settlement.

You can view the proposed Final Approval Order, Final Judgment, and payment schedule at [www.\[REDACTED\]](#).

What Is This Case About?

Gerardo Duenas is an employee of Defendant Stremicks Heritage Foods, LLC. He is the "Plaintiff" in this case and is suing Stremicks Heritage Foods, LLC ("Stremicks") and Jack Noenickx (collectively with Stremicks, the "Defendants") on behalf of himself and all other Class

Questions? Contact the Settlement Administrator toll free at [REDACTED]

Members. Plaintiff sued Defendants, alleging: (a) failure to properly pay or calculate all wages owed, including but not limited to overtime, minimum, and sick pay wages; (b) failure to pay all wages owed at the applicable/correct regular rate of pay; (c) failure to pay all wages owed due “off-the-clock” work; (d) improper “rounding” of employees’ time entries and meal/rest breaks; (e) failing to properly pay for time spent donning and doffing of employees’ uniforms; (f) failing to properly pay for time spent waiting in line to clock in and out of work and/or walking to/from time clocks; (g) failing to properly pay for time spent submitting to or engaging in security checks, security screenings, bag checks, security/health procedures, and/or waiting in cars to go through security booth checks; (h) failure to provide proper meal periods or proper premium pay in lieu thereof; (i) failure to provide proper rest periods or proper premium pay in lieu thereof; (j) failure to reimburse business expenses, including but not limited to expenses related to personal cell phone use, masks, tools, uniforms, and footwear; (k) failure to provide compliant and/or timely wage statements; (l) failure to properly pay vested vacation time or timely pay vacation time pursuant to Labor Code section 227.3; (m) failure to properly maintain accurate employment or payroll records; (n) failure to timely pay all wages owed during employment; (o) failure to timely pay all wages owed upon termination of employment; (p) violations of the Unfair Competition Law based on the Labor Code claims released by this Settlement; (q) civil penalties under the Private Attorneys General Act (“PAGA”) based on the claims and legal theories released by this Settlement; and (r) any other claims, penalties or requests for interest alleged in or arising out of the claims alleged in the First Amended Complaint.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations raised in the Action or the merits of the claims or defenses asserted. The Court has made no ruling on the merits of Plaintiff’s claims or Defendants’ defenses thereto. Defendants deny the merits of Plaintiff’s claims, and deny Plaintiff’s claims are appropriate for class treatment.

By entering into the Settlement, Defendants do not admit, and in fact, expressly deny, all of Plaintiff’s allegations in this case. Specifically, Defendants assert that the Class Members were properly compensated at all times during the Class Period. Defendants further assert that Stremicks has maintained lawful wage-and-hour policies, practices, and procedures throughout the entirety of the Class Period.

Plaintiff and Defendants entered into settlement discussions in an attempt to resolve the disputed claims in this case. On April 24, 2023, the Parties negotiated a Settlement on behalf of themselves and the Class Members with the assistance of a third-party mediator. The Parties’ agreement has been documented in a Joint Stipulation of Settlement and Release of Class Action (“Joint Stipulation”). The Court has preliminarily approved the Joint Stipulation. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing. The Final Fairness and Approval Hearing (“Hearing”) on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED] on [REDACTED], in Department S303 of the Superior Court of California for the County of Riverside, 30755-D Auld Road, Murrieta, CA 92563. You may, but are not required to, attend the Hearing.

Questions? Contact the Settlement Administrator toll free at [REDACTED]

Attorneys for Plaintiff and the Class Members (“Class Counsel”) are:

Elliot J. Siegel
Erum Siddiqui
KING & SIEGEL LLP
(213) 465-4802
724 S. Spring Street, Ste. 201
Los Angeles, California 90014

Class Counsel has investigated and researched the facts and circumstances underlying the issues raised in this case and the applicable law. While Class Counsel believes Plaintiff’s claims in this lawsuit have merit, Class Counsel also recognizes that the risk and expense of continued litigation justify settlement. Because of this, Class Counsel believes the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

Summary of the Settlement Terms

Plaintiff and Defendants have agreed to settle this case on behalf of themselves and the Class Members for \$1,000,000.00 (“Maximum Settlement Amount”).

The Maximum Settlement Amount includes: (1) Individual Settlement Payments to Participating Class Members; (2) subject to Court approval, up to a \$15,000 service payment to the Plaintiff for his time and effort in pursuing this case and in exchange for a general release of claims against Defendants; (3) Settlement Administration Costs not to exceed \$25,000.00; (4) \$75,000 to the California Labor & Workforce Development Agency, representing the State of California’s portion of civil penalties under PAGA (or 75% of \$100,000); and (5) subject to Court approval of an application for fees and costs, an award of up to \$333,333.33 in attorneys’ fees and up to \$35,000 in litigation costs and expenses to Class Counsel. After deducting the service payments to Plaintiff, the Settlement Administration Costs, the payment of \$75,000 to settle the PAGA claims with the California Labor and Workforce Development Agency, and attorneys’ fees and costs/expenses, a total of approximately \$516,666.67 will be available to Class Members who do not opt out of the Settlement (“Net Settlement Amount”). Employer-side payroll taxes will be paid by Stremicks outside of the Maximum Settlement Amount.

Plan of Distribution to Class Members

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Participating Class Member worked during the Class Period (“Workweeks”). Specific calculations of Individual Settlement Payments will be made as follows:

- a. The Settlement Administrator will calculate the number of Workweeks per Participating Class Member during the Class Period based on records in Defendants’ possession, custody or control.¹ Workweeks will be determined based

¹ Defendants’ Workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All Workweek

on such data as is electronically available in Stremicks's existing timekeeping and payroll data.

- b. Using the Class Data, the Settlement Administrator will calculate the total Workweeks for all Settlement Class Members by adding the number of Workweeks worked by each Settlement Class Member during the Class Period. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member.
- c. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated Individual Settlement Payments.
- d. Using the Class Data, the Settlement Administrator will divide the total number of Workweeks from May 19, 2021 through July 23, 2023 ("PAGA Release Period"), and will divide that number by two, to arrive at the total number of "PAGA Pay Periods." Using the Class Data, the Settlement Administrator will also calculate the total number of Workweeks for each Settlement Class Member during the PAGA Release Period, and divide each of those numbers by two, to arrive at each individual's PAGA Pay Periods. The Settlement Administrator will divide each Aggrieved Employee's PAGA Pay Periods by the aggregate number of PAGA Pay Periods of all Aggrieved Employees during the PAGA Release Period to determine each Aggrieved Employee's pro rata portion of the portion of the PAGA payment allocated to Aggrieved Employees. A Class Member's pay periods shall be calculated to the nearest hundredth of a full pay period.
- e. According to Stremicks's records, you worked <<Workweeks>> Workweeks during the Class Period. Accordingly, your estimated payment pursuant to the terms of the Settlement is approximately <<estAmount>>.

If you believe the information provided above as to the number of your Individual Workweeks is incorrect and you wish to dispute it, please submit the Challenge Form attached to your Share Form to the Settlement Administrator at *Duenas v. Stremicks Heritage Foods Settlement Administrator, c/o* _____ no later than 30 days after the date this Notice of Class Action Settlement was mailed to you. The workweek count provided above is assumed to be correct unless you provide documentation to the Settlement Administrator that establishes otherwise. Any disputes, along with supporting documentation ("Disputes"), must be postmarked no later than _____. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

disputes will be resolved and decided by the Settlement Administrator in consultation with Class Counsel and counsel for Defendants. The Settlement Administrator's decision on all Workweek disputes will be final and non-appealable.

Questions? Contact the Settlement Administrator toll free at _____

Class Members' Taxes Owed on Settlement Payments

IRS Forms W-2 and 1099-MISC will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments Class Members receive under the Settlement. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this Settlement, 33% of each Individual Settlement Payment will be allocated to resolve the disputed amount of allegedly unpaid wages, 33% will be allocated to allegedly unpaid civil penalties, and 34% will be allocated to interest. Again, please consult with a tax advisor regarding the significance of how each Individual Settlement Payment is allocated between wages, penalties, and interest. This notice is not intended to provide legal or tax advice. To the extent this notice or any of its attachments is interpreted to contain or constitute advice regarding any United States or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

Your Options Under the Settlement

Option 1 - Automatically Receive a Payment from the Settlement

If you want to receive your payment from the Settlement, then **no further action is required** on your part. You will **automatically** receive your Individual Settlement Payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1** and the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”) against the Released Parties for the Release Period.

The Released Claims include:

All claims and causes of action alleged in the operative complaint or that reasonably could have been alleged based on the factual allegations and legal theories contained in the operative complaint and/or LWDA letter(s). This includes, but is not limited to, all of the following claims for relief: (a) failure to properly pay or calculate all wages owed, including but not limited to overtime, minimum, and sick pay wages; (b) failure to pay all wages owed at the applicable/correct regular rate of pay; (c) failure to pay all wages owed due “off-the-clock” work; (d) improper “rounding” of employees’ time entries and meal/rest breaks; (e) failing to properly pay for time spent donning and doffing of employees’ uniforms; (f) failing to properly pay for time spent waiting in line to clock in and out of work and/or walking to/from time clocks; (g) failing to properly pay for time spent submitting to or engaging in security checks, security screenings, bag checks, security/health procedures, and/or waiting in cars to go through security booth checks; (h) failure to provide proper meal periods or proper premium pay in lieu thereof; (i) failure to provide proper rest periods or proper premium pay in lieu thereof; (j) failure to reimburse

Questions? Contact the Settlement Administrator toll free at _____

business expenses, including but not limited to expenses related to personal cell phone use, masks, tools, uniforms, and footwear; (k) failure to provide compliant and/or timely wage statements; (l) failure to properly pay vested vacation time or timely pay vacation time pursuant to Labor Code section 227.3; (m) failure to properly maintain accurate employment or payroll records; (n) failure to timely pay all wages owed during employment; (o) failure to timely pay all wages owed upon termination of employment; (p) violations of the Unfair Competition Law based on the Labor Code claims released by this Settlement; (q) civil penalties under the Private Attorneys General Act (“PAGA”) based on the claims and legal theories released by this Settlement; and (r) any other claims, penalties or requests for interest alleged in or arising out of the claims alleged in the First Amended Complaint.

Released Parties means:

Defendants Stremicks Heritage Foods, LLC, Jack Noenickx, and their officers, directors, employees and agents; Dairy Farmers of America, Inc., a milk cooperative which is the owner and sole member of Defendant Stremicks Heritage Foods, LLC; and the farmer-owners of Dairy Farmers of America, Inc.

The Release Period means the period from September 26, 2020 to July 23, 2023.

Option 2 - Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written “Request for Exclusion from The Class Action Settlement” letter or card to the Settlement Administrator postmarked no later than [REDACTED]. Your written request must expressly and clearly state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *GERARDO DUENAS V. STREMICKS HERITAGE FOODS* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT.”

The written request for exclusion must include your name, address, telephone number, and last four digits of your Social Security number (or other Taxpayer Identification Number, if applicable). You must sign, date, and mail your written request for exclusion by U.S. First-Class Mail or equivalent, to the address below.

Duenas v. Stremicks Heritage Food Settlement Administrator

c/o [REDACTED]

[REDACTED]

Telephone: [REDACTED]

Questions? Contact the Settlement Administrator toll free at [REDACTED]

The written request to be excluded from the Settlement must be postmarked to the Settlement Administrator not later than [redacted] [30 days from mailing]. If you submit a request for exclusion which is not postmarked by [redacted], your request for exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will no longer be a Class Member. Therefore, you (1) will **not** receive any payment from the Settlement, with the exception of your pro-rata portion of the employee portion of the settlement of the PAGA cause of action to which allegedly Aggrieved Employees are entitled; (2) will not be deemed to have released any claims due to this Settlement with the exception of the PAGA cause of action; and (3) will be barred from filing an objection to the Settlement.

Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Option 3 - *File an Objection to the Settlement*

If you wish to object to the Settlement, you can mail a written objection to the Settlement Administrator. Your objection should provide: your full name, signature, address, and telephone number, the last four digits of your Social Security number (or other Taxpayer Identification Number, if applicable), the dates you were employed as a non-exempt employee of Stremicks Heritage Foods, LLC in California, and your objections to the Settlement, including the reasons you object and any legal support for each objection, together with any evidence in support of your objection. Your objection should be mailed to the Settlement Administrator at the address below, and must be postmarked on or before [redacted].

Duenas v. Stremicks Heritage Food Settlement Administrator

c/o [redacted]

[redacted]
[redacted]

Telephone: [redacted]

You may also appear at the Final Fairness and Approval Hearing set for [redacted] at [redacted] in Department S303 of the Superior Court of California for the County of Riverside, located at 30755-D Auld Road, Murrieta, CA 92563, to discuss your objections with the Court and the Parties. All costs associated with your travel and/or appearance at the Hearing must be paid at your own expense. You may appear at the Hearing regardless of whether you submitted a written objection. You may also retain an attorney to represent you at the Hearing at your own expense. All objections or other correspondence must state the name and number of the case, which is *Gerardo Duenas v. Stremicks Heritage Foods, LLC, et al.* Riverside County Case Number No. CVRI2202014.

Questions? Contact the Settlement Administrator toll free at [redacted]

If you choose **Option 3**, you will still be entitled to the money from the Settlement. You will remain a member of the Settlement Class, and if the Court overrules your objections and approves the Settlement, you will receive your Individual Settlement Payment and will be bound by the terms of the Settlement in the same way as Class Members who do not object, including being deemed to have released the Released Claims. You cannot both object to the settlement and exclude yourself. You must choose one option only.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Superior Court of California for the County of Riverside, during regular business hours of each court day.

All questions by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

You can view the final approval order and final judgment and payment schedule at [www. \[REDACTED\]](http://www. [REDACTED]).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH QUESTIONS. INSTEAD, YOU MAY CONTACT THE SETTLEMENT ADMINISTRATOR OR CLASS COUNSEL, WHOSE CONTACT INFORMATION IS PROVIDED BELOW:

Duenas v. Stremicks Heritage Food Settlement Administrator:

c/o [REDACTED]
[REDACTED]
[REDACTED]

Telephone: [REDACTED]

Class Counsel:

Elliot J. Siegel

Erum Siddiqui

KING & SIEGEL LLP

(213) 465-4802

724 S. Spring Street, Ste. 201

Los Angeles, California 90014

Questions? Contact the Settlement Administrator toll free at [REDACTED]

OBJECTION FORM

Gerardo Duenas v. Stremicks Heritage Foods, LLC and Jack Noenickx
Superior Court of the State of California, Riverside County
Case No. CVRI2202014

If you wish to remain a Class Member, but you object to the proposed Settlement (or any of its terms) and want the Court to consider your objection at the Final Fairness Hearing, then you may use this form. Only return this form if you wish to object to the Settlement. If you opt-out of the Settlement, you may not also object.

To object to the Settlement, complete this Objection Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than [Response Deadline]. You are requested, but not required, to provide supporting documentation for your objection.

Duenas v. Stremicks Heritage Food Settlement Administrator
c/o

Telephone:

Objection

I hereby certify that I am or was employed by Stremicks Heritage Foods, LLC as a non-exempt, hourly employees who worked at least one shift of 3.5 hours or more in California during the period from September 26, 2020 to July 23, 2023.

I have received the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (“Notice”) in the Action captioned above. I have decided to object to the proposed Settlement.

Please print legibly:

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Last Four Digits of Class Member's Social Security Number: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

**IT IS MY DECISION TO OBJECT TO THE CLASS ACTION SETTLEMENT
REFERRED TO ABOVE. THE BASIS FOR MY OBJECTION IS AS FOLLOWS:**

OPT-OUT FORM

Gerardo Duenas v. Stremicks Heritage Foods, LLC and Jack Noenickx
Superior Court of the State of California, Riverside County
Case No. CVRI2202014

This form is to be used only if you want to EXCLUDE yourself from the Settlement.

To be excluded from the Settlement, complete this Opt-Out Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than [Response Deadline**].**

Duenas v. Stremicks Heritage Food Settlement Administrator

c/o _____

Telephone: _____

Request for Exclusion

I hereby certify that I am or was employed by Stremicks Heritage Foods, LLC as a non-exempt, hourly employees who worked at least one shift of 3.5 hours or more in California during the period from September 26, 2020 to July 23, 2023.

I have received the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (“Notice”) in the Action captioned above, and I request to be excluded from the Settlement. I understand that by submitting this Opt-Out Form, I will not receive any money or other benefits under the Settlement, and I will not be bound by the Settlement, including the release of Released Claims, as described in the Notice and in the Settlement Agreement on file with the Court.

Please print legibly:

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Last Four Digits of Class Member’s Social Security Number: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit B

1 Elliot J. Siegel (Bar No. 312272)
2 elliot@kingsiegel.com
3 Erum Siddiqui (Bar No. 325984)
4 erum@kingsiegel.com
5 **KING & SIEGEL LLP**
6 724 South Spring Street, Suite 214
7 Los Angeles, California 90014
8 tel: (213) 465-4802
9 fax: (213) 289-2815

10 Attorneys for Plaintiff and the Settlement Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF RIVERSIDE**

13 **Gerardo Duenas**, individually and on behalf of
14 all similarly situated individuals,

15 Plaintiff,

16 vs.

17 **Stremicks Heritage Food**, a Delaware limited
18 liability company; **Jack Noenickx**, an
19 individual; and **Does 1-10**, inclusive;

20 Defendants.

CASE NO. CVRI2202014

[Assigned to Hon. Raquel A. Marquez, Dept.
S303]

CLASS ACTION

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

Date: _____ [Reserved]
Time: _____
Dept.: _____

1 Plaintiff's Unopposed Motion for Preliminary Approval of the proposed settlement of this
2 action on the terms set forth in the Joint Stipulation of Settlement and Release of Class Action (the
3 "Settlement" or "Stipulation") came on for hearing on [REDACTED], 2023.

4 Having considered the Settlement, all papers and proceedings held herein, and having
5 reviewed the entire record in this action, Case No. CVRI2202014, entitled *Gerardo Duenas v.*
6 *Stremicks Heritage Food, et al.* (the "Action"), and good cause appearing, the Court finds that:

7 WHEREAS, Plaintiff Gerardo Duenas ("Plaintiff") has alleged claims against Defendants
8 Stremicks Heritage Food and Jack Noenickx ("Defendants") on behalf of himself and on behalf of
9 others similarly situated, comprising: "*all persons who worked at least one shift as a non-exempt*
10 *employee in the State of California for Defendant from September 26, 2020 through July 23, 2023*"
11 ("Class Members"); and

12 WHEREAS, Plaintiff asserts class, PAGA, and individual claims in the Action against
13 Defendants for: (1) failure to properly pay or calculate all wages owed, including but not limited to
14 overtime, minimum, and sick pay wages; (2) failure to pay all wages owed at the applicable/correct
15 regular rate of pay; (3) failure to pay all wages owed due to "off-the-clock" work; (4) improper
16 "rounding" of employees' time entries and meal/rest breaks; (5) failing to properly pay for time
17 spent donning and doffing of employees' uniforms; (6) failing to properly pay for time spent waiting
18 in line to clock in and out of work and/or walking to/from time clocks; (7) failing to properly pay
19 for time spent submitting to or engaging in security checks, security screenings, bag checks,
20 security/health procedures, and/or waiting in cars to go through security booth checks; (8) failure
21 to provide proper meal periods or proper premium pay in lieu thereof; (9) failure to provide proper
22 rest periods or proper premium pay in lieu thereof; (10) failure to reimburse business expenses,
23 including but not limited to expenses related to personal cell phone use, masks, tools, uniforms, and
24 footwear; (11) failure to provide compliant and/or timely wage statements; (12) failure to properly
25 pay vested vacation time or timely pay vacation time pursuant to Labor Code section 227.3; (13)
26 failure to properly maintain accurate employment or payroll records; (14) failure to timely pay all
27 wages owed during employment; (15) failure to timely pay all wages owed upon termination of
28 employment; (16) violations of the Unfair Competition Law based on the Labor Code claims alleged

1 in the First Amended Complaint; (17) civil penalties under the Private Attorneys General Act
2 (“PAGA”) based on the claims and legal theories alleged in the First Amended Complaint; and
3 (18) any other claims, penalties, or requests for interest alleged in or arising out of the claims alleged
4 in the First Amended Complaint. WHEREAS, Defendants expressly deny the allegations of
5 wrongdoing and violations of law alleged in this Action, and further deny any liability whatsoever to
6 Plaintiff or to the Class Members; and

7 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendants
8 (collectively, the “Parties”) determined that it was mutually advantageous to settle this Action and
9 to avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

10 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on
11 [REDACTED], 2023, which provides for the final resolution of all class, PAGA, and individual claims
12 asserted by Plaintiff against Defendants in the Action, on the terms and conditions set forth in the
13 Stipulation, subject to the approval of this Court;

14 NOW, therefore, the Court grants preliminary approval of the Settlement, and

15 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

16 1. To the extent defined in the Stipulation, incorporated herein by reference, the terms
17 in this Order shall have the meanings set forth therein.

18 2. The Court has jurisdiction over the subject matter of this Action, Defendants, and
19 the Class.

20 3. The Class is defined as follows: “*all persons who worked at least one shift as a non-*
21 *exempt employee in the State of California for Defendant Stremicks Heritage Foods, LLC from September*
22 *26, 2020 through July 23, 2023.*”

23 4. The First Amended Complaint is hereby deemed filed and the operative Complaint
24 in this matter.

25 5. The Class is preliminarily certified for the purpose of settlement only.

26 6. The Court has determined that the intended Class Notice, attached to this Order as
27 **Exhibit 1**, to be given to the Class fully and accurately informs all persons in the Class of all material
28 elements of the proposed Settlement, constitutes the best notice practicable under the

1 circumstances, and constitutes valid, due, and sufficient notice to all Class Members.¹

2 7. The Court hereby grants preliminary approval of the Settlement and Stipulation as
3 fair, reasonable, and adequate in all respects to the Class Members, and orders the parties to
4 consummate the Settlement in accordance with the terms of the Stipulation.

5 8. The plan of distribution as set forth in the Stipulation providing for the distribution
6 of the Net Settlement Amount to Settlement Class Members is preliminarily approved as being fair,
7 reasonable, and adequate.

8 9. The Court preliminarily appoints as Class Counsel the following attorneys: Elliot J.
9 Siegel, Julian Burns King, and Erum Siddiqui of King & Siegel LLP, 724 S. Spring Street, Suite 201,
10 Los Angeles, California 90014.

11 10. The Court preliminarily approves the payment of attorneys' fees in the amount of
12 \$333,333.33 (or one-third of the Maximum Settlement Amount) to Class Counsel, which shall be
13 paid from the Maximum Settlement Amount.

14 11. The Court preliminarily approves the payment of incurred reasonable costs in an
15 amount not to exceed \$35,000 to Class Counsel, which shall be paid from the Maximum Settlement
16 Amount as defined in the parties' Stipulation.

17 12. The Court preliminarily approves a payment in the amount of \$75,000.00 to the
18 California Labor & Workforce Development Agency, representing the State of California's portion
19 of civil penalties under PAGA (or 75% of \$100,000), which shall be paid from the Maximum
20 Settlement Amount.

21 13. The Court preliminarily approves the payment of incurred reasonable
22 administration costs to the Settlement Administrator, CPT Group, Inc., in an amount not to exceed
23 \$25,000, which shall be paid from the Maximum Settlement Amount.

24 14. The Court preliminarily approves an enhancement award to the Class
25

26 ¹ The Settlement Administrator shall file a declaration concurrently with the filing of any motion for
27 final approval, authenticating a copy of every exclusion form received by the administrator. Further,
28 the Settlement Administrator shall provide notice to any objecting party of any continuance of the
hearing on the motion for final approval.

1 Representative, Gerardo Duenas, in the amount of \$15,000 which amount shall be paid from the
 2 Maximum Settlement Amount.

3 15. The Court preliminarily approves the California Bar’s Justice Gap Fund as the cy
 4 pres beneficiary under Paragraph 59 of the Settlement.

5 16. This Preliminary Approval Order and the Stipulation, and all papers related thereto,
 6 are not, and shall not be construed to be, an admission by Defendants of any liability, claim, or
 7 wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or
 8 wrongdoing in this Action or in any other proceeding.

9 17. In the event that the Settlement does not become effective in accordance with the
 10 terms of the Stipulation, then this Preliminary Approval Order shall be rendered null and void to
 11 the extent provided by and in accordance with the Stipulation and shall be vacated. In such event,
 12 all orders entered and releases delivered in connection herewith shall be null and void to the extent
 13 provided by and in accordance with the Stipulation, and each party shall retain his or its rights to
 14 proceed with litigation of the Action.

15 18. The Court orders the following Implementation Schedule² for further proceedings:

16 a.	Deadline for Defendants to submit Class Member data to the Settlement Administrator	_____ [15 calendar days from the date of the Court’s Order Granting Preliminary Approval].
17		
18 b.	Deadline for the Settlement Administrator to mail Notice of the Settlement to the Class Members	_____ [5 calendar days following the Settlement Administrator’s receipt of Class data]
19		
20 c.	Deadline for Class Members to postmark Requests for Exclusion from the Settlement	_____ [30 calendar days after the Settlement Administrator mails the Notice]
21		
22 d.	Deadline for Class Members to submit objections to the Settlement	_____ [30 calendar days after the Settlement Administrator mails the Notice, unless the Settlement Administrator is required to re-mail the notice, in which case the deadline shall be extended by 15 calendar days]
23		
24		
25 e.	Settlement Administrator to provide update to Class Counsel regarding Requests for Exclusion,	_____ [30 days prior to the Final Approval Hearing]
26		

27 _____
 28 ² If any date provided for by the Stipulation falls on a weekend or court holiday, the time to act shall be extended to the next business day, and will be as stated in this Implementation Schedule.

1	disputed amounts, and claims made for inclusion of the Settlement	
2		
3	f. Deadline for Class Counsel to file the Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	_____ [16 Court days prior to the Final Settlement Approval Hearing]
4		
5		
6	g. Deadline for the Parties' replies to any timely Class Member Objections to the Settlement	_____ [16 Court days prior to the Final Settlement Approval Hearing]
7		
8	h. Final Settlement Approval Hearing	_____, 2023 at _____ a.m./p.m.
9		
10	i. Settlement Administrator to Provide an Accounting of Funds	_____ [10 calendar days following the Effective Date of the Settlement]
11		
12	j. Deadline for Stremicks to deposit the entire Maximum Settlement Amount under the Settlement, plus all employer-side payroll taxes to the Settlement Administrator	_____ [10 business days following the Effective Date of the Settlement]
13		
14		
15	k. Deadline for Settlement Administrator to distribute payments to: (a) the Settlement Administrator; (b) the Labor and Workforce Development Agency; (c) Class Representatives; and (d) Class Counsel, in the amount approved by the Court in the Final Approval. The Settlement Administrator shall also send to Participating Class Members their Individual Settlement Payments	_____ [10 calendar days following receipt by the Settlement Administrator of the Maximum Settlement Amount]
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20		
21	l. Deadline for the Settlement Administrator to file written certification with the Court re: mailing of Individual Settlement Payments	[50 calendar days following the distribution of the Maximum Settlement Amount]
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IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

Hon. Raquel A. Marquez
Riverside County Superior Court Judge

Exhibit C

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

Gerardo Duenas, individually and on behalf of
all similarly situated individuals,

Plaintiff,

vs.

Stremicks Heritage Food, a Delaware limited
liability company; **Jack Noenickx**, an
individual; and **Does 1-10**, inclusive;

Defendants.

CASE NO. CVRI2202014

[Assigned to Hon. Raquel A. Marquez, Dept.
S303]

**CLASS AND REPRESENTATIVE
ACTION**

**[PROPOSED] ORDER FINALLY
APPROVING CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

Date: _____ [Reserved]

Time: _____

Dept.: _____

1 **[PROPOSED] ORDER & JUDGMENT**

2 Plaintiff's Unopposed Motion for Final Approval of the proposed settlement of this action
3 on the terms set forth in the Joint Stipulation of Settlement and Release of Class Action (the
4 "Settlement" or "Stipulation") came on for hearing on [REDACTED], 2023.

5 In conformity with California Rules of Court, rule 3.769, with due and adequate notice
6 having been given to Class Members (as defined in the Settlement Agreement), and having
7 considered the supplemental declaration of the Class Administrator, Settlement Agreement, all of
8 the legal authorities and documents submitted in support thereof, all papers filed and proceedings
9 had herein, all oral and written comments received regarding the Settlement Agreement, and having
10 reviewed the record in this litigation, and good cause appearing, the Court **GRANTS** final approval
11 of the Settlement Agreement and orders and makes the following findings and determinations and
12 enters final judgment as follows:

13 1. All terms used in this order shall have the same meanings given as those terms are
14 used and/or defined in the parties' Settlement Agreement and Plaintiff's Motion for Order
15 Granting Final Approval of Class Action Settlement. A copy of the Settlement Agreement is
16 attached to the Declaration of Elliot J. Siegel in Support of Plaintiff's Motion for Preliminary
17 Approval of Class Action Settlement as **Exhibit 1** and is made a part of this Order.¹

18 2. The Court has personal jurisdiction over the Parties to this litigation and subject
19 matter jurisdiction to approve the Settlement Agreement and all exhibits thereto.

20 3. The Court finally certifies the Class as defined in the Settlement and as follows:

21 *"All persons who worked at least one shift as a non-exempt employee in the State of*
22 *California for Defendant Stremicks Heritage Foods, LLC from September 26, 2020*
through July 23, 2023."

23 4. The Court deems this definition sufficient for the purpose of rule 3.765(a) of the
24 California Rules of Court for the purpose of effectuating the Settlement.

25 5. The Court finds that an ascertainable class of [REDACTED] Participating Class
26 Members exists and a well-defined community of interest exists on the questions of law and fact
27

28 ¹ The Court previously granted preliminary approval of the Settlement on [REDACTED].

1 involved because in the context of the Settlement: (i) all related matters, predominate over any
2 individual questions; (ii) the claims of the Plaintiff are typical of claims of the Class Members; and
3 (iii) in negotiating, entering into and implementing the Settlement, Plaintiff and Class Counsel have
4 fairly and adequately represented and protected the interest of the Class Members.

5 6. The Court finds that the Settlement Agreement has been reached as a result of
6 informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have
7 conducted extensive investigation and research, and their attorneys were able to reasonably evaluate
8 their respective positions.

9 7. The Court finds that the Settlement constitutes a fair, adequate, and reasonable
10 compromise of the Class's claims and will avoid additional and potentially substantial litigation
11 costs, as well as the delay and risks of the Parties if they were to continue to litigate the case. After
12 considering the monetary recovery provided as part of the Settlement in light of the challenges
13 posed by continued litigation, the Court concludes that Class Counsel secured significant relief for
14 Class Members.

15 8. The Court hereby approves the terms set forth in the Settlement Agreement and
16 finds that the Settlement is, in all respects, fair, adequate, and reasonable, consistent and compliant
17 with all applicable requirements of the California Code of Civil Procedure, the California and
18 United States Constitutions, including the Due Process clauses, the California Rules of Court, and
19 any other applicable law, and in the best interests of each of the Parties and Class Members.

20 9. The Court is satisfied that [REDACTED], which functioned as the Settlement
21 Administrator, completed the distribution of Class Notice to the Class in a manner that comports
22 with California Rule of Court 3.766. The Class Notice informed the prospective Class Members of
23 the Settlement terms, their right to do nothing and receive their settlement share, their right to
24 submit a request for exclusion, their rights to comment on or object to the Settlement, and their
25 right to appear at the Final Approval and Fairness Hearing, and be heard regarding approval of the
26 Settlement. Adequate periods of time to respond and to act were provided by each of these
27 procedures. [REDACTED] Class Member(s) filed written objections to the Settlement as part of this notice
28 process; [REDACTED] Class Member(s) filed a written statement of intention to appear at the Final Approval

1 and Fairness Hearing; and [REDACTED] Class Member(s) submitted a request for exclusion. Those Class
2 Members who requested exclusion, specifically [REDACTED], will not be bound by the Settlement
3 and will not receive any portion of the Net Settlement Amount.

4 10. The Court appoints Plaintiff as Class Representative and finds him to be adequate.

5 11. The Court appoints Elliot J. Siegel, Julian Burns King, and Erum Siddiqui of King &
6 Siegel LLP as Class Counsel, and finds each of them to be adequate, experienced, and well-versed
7 in class action litigation.

8 12. The terms of the Settlement Agreement, including the Maximum Settlement
9 Amount of \$1,000,000 and the allocation for determining Individual Settlement Payments, are fair,
10 adequate, and reasonable to the Class and to each Class Member, and the Courts grants final
11 approval of the Settlement set forth in the Settlement Agreement, subject to this Order.

12 13. The Court further approves the following distributions from the Maximum
13 Settlement Amount, which fall within the ranges stipulated by and through the Settlement
14 Agreement:

15 a. The amount of \$ [REDACTED] designated for payment to the Settlement
16 Administrator is fair and reasonable. The Court grants final approval of it and orders the
17 Parties to make the payment to the Settlement Administrator in accordance with the
18 Settlement Agreement.

19 b. The amount requested by Plaintiff and Class Counsel for the Class Counsel's
20 attorneys' fees, representing one-third of the Maximum Settlement Amount or \$333,333.33,
21 is fair and reasonable in light of the benefit obtained for the Class. The Court grants final
22 approval of, awards, and orders the Class Counsel fees payment to be made in accordance
23 with the Settlement Agreement.

24 c. The Court awards Class Counsel \$ [REDACTED] in litigation costs, which is an
25 amount which the Court finds to be reflective of the actual and reasonable costs incurred.
26 The Court grants final approval of Class Counsel's litigation expenses payment and orders
27 payment of this amount to be made in accordance with the Settlement Agreement.

28

1 d. The \$15,000 class representative incentive payment requested for Named
2 Plaintiff is fair and reasonable. The Court grants final approval of the payment and orders
3 the payment to be made in accordance with the Settlement Agreement.

4 e. The Court approves of the \$100,000.00 allocation assigned for claims under
5 the Labor Code Private Attorneys General Act of 2004, and orders 75% thereof (*i.e.*,
6 \$75,000.00) to be paid to the California Labor and Workforce Development Agency in
7 accordance with the terms of the Settlement Agreement. The remainder is to be paid to the
8 Aggrieved Employees per the Settlement Agreement.

9 14. The Court orders the Parties to comply with and carry out all terms and provisions
10 of the Settlement Agreement, to the extent that the terms thereunder do not contradict with this
11 order, in which case the provisions of this order shall take precedence and supersede the Settlement
12 Agreement.

13 15. All Participating Class Members shall be bound by the Settlement and this order,
14 including the release of claims as set forth in the Settlement Agreement. In addition, the State of
15 California and the Aggrieved Employees are bound by the Settlement and release of PAGA claims
16 set forth in this order.

17 16. The Parties shall bear their own respective attorneys' fees and costs except as
18 otherwise provided in this order and the Settlement Agreement.

19 17. All checks mailed to the Class Members must be cashed within 180 days after mailing.
20 Any envelope transmitting a settlement distribution to a class member shall bear the notation,
21 "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." The Settlement
22 Administrator shall mail a reminder postcard to any class member whose settlement distribution
23 check has not been negotiated within 60 days after the date of mailing.

24 18. Plaintiff shall file with the Court a report regarding the status of distribution no later
25 than fifty (50) days after all funds have been distributed.

26 19. The Court approves the California Bar's Justice Gap Fund as the *cy pres* beneficiary
27 and finds that it complies with all requirements under C.C.P. § 384. Per Section 384(b), the Court
28

1 will amend this Judgment after Counsel provides the Court with the report regarding distribution
2 of funds to direct that any uncashed funds be paid to the California Bar's Justice Gap Fund.

3 20. No later than 10 days from this order, the Settlement Administrator shall give notice
4 of judgment to Class Members pursuant to California Rules of Court, rule 3.771(b) by posting a copy
5 of this Order and Final Judgment on its website assigned to this matter.

6 21. The Court retains continuing jurisdiction over the Action and the Settlement,
7 including jurisdiction pursuant to rule 3.769(h) of the California Rules of Court and Code of Civil
8 Procedure section 664.6, solely for purposes of (a) enforcing the Settlement Agreement,
9 (b) addressing settlement administration matters, and (c) addressing such post-judgment matters
10 as may be appropriate under court rules or applicable law.

11 22. This final judgment is intended to be a final disposition of the above-captioned action
12 in its entirety and is intended to be immediately appealable. This final judgment resolves all claims
13 released by the Settlement Agreement against Defendants.

14 23. The Court hereby sets a hearing date of [REDACTED] at [REDACTED] a.m./p.m. for a
15 hearing on the final accounting and distribution of the settlement funds.

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IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

Hon. Raquel A. Marquez
Riverside County Superior Court Judge

Exhibit D

1 Elliot J. Siegel (Bar No. 286798)
2 elliot@kingsiegel.com
3 Erum Siddiqui (Bar No. 325984)
4 erum@kingsiegel.com
5 **KING & SIEGEL LLP**
6 724 South Spring Street, Suite 201
7 Los Angeles, California 90014
8 tel: (213) 465-4802
9 fax: (213) 465-4803

10 Attorneys for Plaintiff and the Settlement Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF RIVERSIDE**

13 **Gerardo Duenas**, individually and on behalf of
14 all similarly situated individuals,

15 Plaintiff,

16 vs.

17 **Stremicks Heritage Food**, a Delaware limited
18 liability company; **Jack Noenickx**, an
19 individual; and **Does 1-10**, inclusive;

20 Defendants.

CASE NO. CVRI2202014

[Assigned to Hon. Raquel A. Marquez, Dept.
S303]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) **Failure to Pay Minimum Wage for All Hours Worked (Lab. Code §§ 246; 227.3, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198);**
- 2) **Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1198);**
- 3) **Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 1198);**
- 4) **Failure to Provide Rest Periods (Cal. Lab. Code §§ 226.7 and 1198);**
- 5) **Failure to Provide and Maintain Complete and Accurate Wage Statements;**
- 6) **Failure to Provide Wages When Due (Lab. Code §§ 201-204); and**
- 7) **Failure to Reimburse Necessary Business Expenses (Lab. Code § 2802);**
- 8) **PAGA Penalties (Lab. Code §§ 2699, et seq.); and**
- 9) **Violation of California Business & Professions Code §§ 17200, et seq. (Unlawful Business Practices).**

Jury Trial Requested

1 Plaintiff hereby brings this action on behalf of himself and all other similarly situated current and
2 former employees, by and through his counsel of record, alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff **Gerardo Duenas** (“Plaintiff”) has been
5 a resident of Los Angeles, California. Plaintiff is currently an hourly, non-exempt employee of Defendants
6 and was hired in April 2017. Plaintiff was subject to the policies and practices described in this complaint
7 at all times during his employment at Defendants.

8 2. Defendant **Stremicks Heritage Foods, LLC** (“Stremicks”) is a food manufacturing
9 **company that** specializes in dairy products. On information and belief, Stremicks employs at least 100
10 hourly, non-exempt employees. Upon information and belief, Stremicks’ operates facilities in California
11 in Santa Ana, CA and Riverside, CA.

12 3. Defendant **Jack Noenickx** (“Noenickx” or hereinafter “Defendants” with Defendant
13 Stremicks) is the Chief Financial Officer at Stremicks Heritage Foods, LLC. Upon information and belief,
14 he is a resident of the County of Orange in the State of California. Since Mr. Noenickx is a managing agent,
15 director, and/or officer of Defendants and because he caused or directed the acts described herein, he is
16 personally liable for the Labor Code violations set forth in this Complaint under Labor Code section 558.1.

17 4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10.
18 Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this
19 information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of
20 the causes of action asserted, either through its own conduct, or vicariously through the conduct of others.
21 All further references in this complaint to any of the named Defendants includes the fictitiously named
22 defendants.

23 5. At all times alleged herein, each Defendant was an agent, servant, joint employer, em-
24 ployee, partner, and/or joint venture of every other Defendant and was acting within the scope of the
25 Defendants’ relationship. Moreover, the conduct of every Defendant was ratified by each other Defend-
26 ant.

27 **VENUE AND JURISDICTION**

28 6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,

1 § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California stat-
2 utes and law, including the Labor Code and the Business & Professions Code. Because putative class mem-
3 bers were employed by Defendants, the policies and practices complained of herein were implemented in
4 Riverside, and Defendants transact business within Riverside County, Defendant is within the jurisdiction
5 of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any
6 person acting on their own behalf may bring an action in any court of competent jurisdiction.

7 7. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil
8 Procedure § 395. Defendants transact business and/or have offices in this county, employ putative class
9 members in this County, and the acts and omissions alleged herein took place in this county. Moreover,
10 this action is brought on behalf of the State of California as a private attorney general and has jurisdiction
11 in this venue.

12 **CLASS ACTION ALLEGATIONS**

13 8. At all times relevant to this Complaint, Defendants have implemented a uniform time clock
14 rounding policy that results in Class Members being consistently denied minimum wages and overtime
15 compensation for all hours worked. Upon information and belief, rather than paying wages based on time
16 actually worked, Defendants rounded each clock-in and clock-out to the nearest 15-minute interval, result-
17 ing in underpayment when, for example, an employee clocks in a minute early or clocks out a minute late,
18 or both. Upon information and belief, this rounding policy results in the systemic underpayment of em-
19 ployee wages over time and in the aggregate.

20 9. In addition, on information and belief, at all times relevant to this Complaint, Defendants
21 have implemented other uniform policies that resulted in off-the-clock work and underpayment of wages
22 owed to Plaintiff and other Class Members. Upon information and belief, off-the-clock work resulted from
23 Plaintiff and Class Members being required to wait in line to clock in and out of work; being required to
24 change their clothes before clocking in and/or after they clocked out (i.e., being required to “don” and
25 “doff” off-the-clock); being required to pass through security, health, and/or bag check points before
26 clocking in or after clocking out; being required to wait in line to pass through such security, health, and/or
27 bag check points; and time spent walking to or from time clock stations before clocking in or after clocking
28 out.

1 10. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit
2 non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7 based on
3 several uniform policies and practices. First, Defendants’ rounding policy results in the provision of meal
4 periods that are frequently less than 30 minutes; by rounding time, a meal period of less than 30 minutes
5 is recorded in Defendants’ time keeping system as 30 minutes, illegally depriving employees of a full meal
6 period or premium pay in lieu thereof. *Donahue v. Amn Servs.*, 11 Cal.5th 58, 69 (Cal. 2021) (“Small round-
7 ing errors can amount to a significant infringement on an employee’s right to a 30-minute meal period.”).
8 Similarly, upon information and belief, Defendants’ rounding policy results in the provision of rest periods
9 that are less than 10 minutes; by rounding time, a rest period of less than 10 minutes is recorded in De-
10 fendants’ time keeping system as 10 minutes, illegally depriving employees of a full rest period or premium
11 pay in lieu thereof.

12 11. Additionally, Defendants penalize employees using a point system when they clock in late
13 for their meal periods or appear late to the start of their shifts. In conjunction with Defendants’ rounding
14 policy, this frequently causes employees to cut meal periods short to return to work or risk being disci-
15 plined for being late to their workstation.

16 12. Accordingly, Defendants failed to authorize and permit compliant meal periods as required
17 by law.

18 13. As a matter of uniform and systemic policy, Defendants require non-exempt employees to
19 remain on-premises during their rest periods. These policies prohibited employees from using rest periods
20 in the manner of their choosing, free from their employer’s dominion and control. Accordingly, Defend-
21 ants failed to authorize and permit compliant rest periods as required by law.

22 14. In failing to authorize and/or permit meal and rest periods, Defendants have also imple-
23 mented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt em-
24 ployees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal
25 and rest periods.

26 15. As a matter of uniform and systemic policy, Defendants required non-exempt employees
27 to utilize their personal cell phones for work-related purposes, including answering texts and calls from
28 their supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work,

1 being assigned tasks, and general administrative matters, and required the use of various mobile phone
2 applications. Defendants further failed to compensate their non-exempt employees for reasonable costs
3 associated with utilizing their personal cell phones for work-related purposes.

4 16. As a matter of uniform and systemic policy, Defendants required non-exempt employees
5 to purchase work-related equipment, including footwear, uniforms, masks, and tools, necessary for per-
6 formance of their work duties without reimbursing those employees for the costs associated with their
7 equipment purchases.

8 17. Plaintiff therefore brings this action on behalf of himself and as a class action on behalf of
9 the following defined Class:

10 **Non-Exempt Employee Class:**

11 *All persons who worked at least one 3.5-hour shift as a non-exempt employee in the State of Cali-*
12 *fornia from the period four years prior to the filing of the Action and the date of trial (“Class”).*

13 18. Common methods of proof exist for determining these issues on a class-wide basis, includ-
14 ing but not limited to, Defendants’ employment records, payroll records, timesheets, policies, and disci-
15 plinary records.

16 19. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 50
17 Class Members have been employed as non-exempt employees by Defendants within the state of Califor-
18 nia. The number of Class Members is sufficiently numerous such that joinder of all members is impossible
19 or impracticable.

20 20. **Typicality.** Plaintiff’s claims are typical of all Class Members. Plaintiff, like all other Class
21 Members, was subjected to the policies and practices set forth above. Plaintiff’s job duties were typical of
22 Class Members in all relevant respects.

23 21. **Adequacy.** There are no material conflicts between the claims of the representative Plain-
24 tiff and Class Members that would make class certification inappropriate. Plaintiff understands his obliga-
25 tion to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will
26 fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing De-
27 fendants’ illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent
28 counsel experienced in both class action and employment litigation. Plaintiff’s attorneys, the proposed

1 class counsel, are versed in the rules governing class action discovery, certification, and settlement, and
2 will vigorously assert the claims of all Class Members. Plaintiff have incurred, and will continue to incur,
3 costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this
4 action for the substantial benefit of each Class Member.

5 22. **Existence and Predominance of Common Issues.** Common questions of law and fact ex-
6 ist as to all Class Members and predominate over issues affecting individual Class Members, including,
7 but not limited to:

- 8 a. Whether Defendants had a common policy and/or practice of rounding non-ex-
9 empt employees' time records to the detriment of those employees;
- 10 b. Whether Defendants' had a common policy and/or practice of requiring employees
11 to perform work-related duties while off-the-clock;
- 12 c. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and
13 Class Members at a minimum wage for all hours worked as a result of its rounding
14 policies;
- 15 d. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and
16 Class Members required overtime wages as a result of its rounding policies;
- 17 e. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and
18 Class Members at a minimum wage for all hours worked as a result of its policies or
19 practices requiring off-the-clock work;
- 20 f. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and
21 Class Members required overtime wages as a result of its policies or practices re-
22 quiring off-the-clock work;
- 23 g. Whether Defendants had a common policy and/or practice of depriving Plaintiff
24 and Class Members of compliant, off-duty meal and/or rest periods;
- 25 h. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Mem-
26 bers of compliant, off-duty meal and/or rest periods;
- 27 i. Whether Defendants unlawfully and/or willfully failed to timely and properly pay
28 Plaintiff and Class Members vested vacation time in violation of Labor Code section

1 227.3;

- 2 j. Whether Defendants unlawfully and/or willfully failed to timely and properly pay
3 all sick time wages owed to Plaintiff and Class Members;
- 4 k. Whether Defendants unlawfully and/or willfully failed to properly calculate and pay
5 all wages owed at the applicable regular rate of pay;
- 6 l. Whether Defendants have a common policy and/or practice of failing to maintain
7 accurate payroll records in the State of California;
- 8 m. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll
9 records in the State of California;
- 10 n. Whether Defendants have a common policy and/or practice of failing to provide
11 accurate wage statements reflecting hours worked and wages earned to Plaintiff and
12 Class Members;
- 13 o. Whether Defendants unlawfully and/or willfully failed to provide accurate wage
14 statements reflecting hours worked and wages earned to Plaintiff and Class Mem-
15 bers;
- 16 p. Whether Defendants have a common policy and/or practice of failing to reimburse
17 Plaintiff and Class Members for reasonable business expenses;
- 18 q. Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and
19 Class Members for reasonable business expenses;
- 20 r. Whether Defendants has a policy and/or practice of failing to pay Plaintiff and Class
21 Members final wages owed upon termination;
- 22 s. Whether Defendants unlawfully and/or willfully failed to promptly pay compensa-
23 tion due to Plaintiff and Class Members upon termination of employment in viola-
24 tion of Labor Code §§ 201, 202, and 203;
- 25 t. Whether Plaintiff and Class Members sustained damages as a result of any of the
26 aforementioned violations, and, if so, the proper measure of those damages, includ-
27 ing interest, penalties, costs, attorneys' fees, and equitable relief; and
- 28 u. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code

1 § 17200, et seq., by violating the above provisions of law.

2 23. **Superiority.** A class action is superior to other available means for the fair and efficient
3 adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are
4 small compared to the burden and expense of individual prosecution of the complex and expensive litiga-
5 tion necessary to address Defendants’ conduct. Even if Class Members themselves could afford individual
6 litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought re-
7 dress. In addition, individualized litigation increases the delay and expense to all parties and to the court
8 system resulting from the complex legal and factual issues of this case. Individualized litigation also pre-
9 sents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents
10 far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed
11 because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adju-
12 dication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates
13 providing individual notice to members of the class defined above as identified through Defendants’ rec-
14 ords.

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 ***California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198***

18 ***Unpaid Minimum Wages***

19 **(Plaintiff and Class Against Defendants)**

20 24. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
21 paragraphs as if fully set forth herein.

22 25. California law requires employers to compensate employees for all time that an employee
23 is “suffered or permitted to work,” which includes all time “when any employer ‘directs, commands or
24 restrains’ an employee.” *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000), as modified
25 (May 10, 2000); *see also* Code Regs. tit. 8, § 11070 (“‘Hours worked’ means the time during which an
26 employee is subject to the control of an employer and includes all the time the employee is suffered or
27 permitted to work, whether or not required to do so.”).

28 26. Under applicable California law, rounding of time is only allowed when the policy is “fair

1 and neutral on its face and it is used in such a manner that it will not result, over a period of time, in failure
2 to compensate the employees properly for all the time they have actually worked.” *See’s Candy Shops, Inc.*
3 *v. Superior Court*, 210 Cal. App. 4th 889, 907 (2012); *see also* 29 C.F.R. § 785.48 (“For enforcement pur-
4 poses this practice of computing working time will be accepted, provided that it is used in such a manner
5 that it will not result, over a period of time, in failure to compensate the employees properly for all the
6 time they have actually worked.”).

7 27. Defendants employed a timeclock rounding policy that consistently and as a matter of com-
8 mon policy and practice failed to pay Class Members at least minimum wages for all hours worked. Addi-
9 tionally, Defendants’ time policies were not fair and neutral on their face because Defendants’ written
10 policies subjected employees to discipline for showing up late to the start of their shift or after a break but
11 not for arriving early, thus penalizing employees when rounding worked to their favor but not when it
12 worked against them.

13 28. Defendants implemented other uniform policies and practices resulting in off-the-clock
14 work and underpayment of wages, including requiring Class Members to: wait in line to clock in and out
15 of work; change clothes before clocking in and/or after clocking out; pass through security, health, and/or
16 bag check points before clocking in or after clocking out; wait in line to pass through such security, health,
17 and/or bag check points; and walk to or from time clock stations before clocking in or after clocking out.

18 29. Finally, Defendants failed to pay other wages (either in full or at the correct rate), including
19 payment of vested and accrued vacation pay and/or sick pay at Class Members’ regular rates of pay in
20 violation of Labor Code §§ 246, 227.3, and 226.7.

21 30. As a result of Defendants’ failure and refusal to comply with California law, Plaintiff and
22 Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive
23 relief and reasonable attorney’s fees and costs. Lab. Code §§ 1194, 1197.1.

24 **FIRST CAUSE OF ACTION**

25 ***California Labor Code §§ 510 and 1198***

26 ***Unpaid Overtime***

27 **(Plaintiff and Class Against Defendants)**

28 31. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth

1 herein.

2 32. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons with-
3 out compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of
4 pay, depending on the number of hours worked by the person on a daily or weekly basis.

5 33. Plaintiff and Class Members who work more than eight hours in a day or more than forty
6 hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of
7 eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes
8 all remuneration for employment paid to, or on behalf of, the employee, including commissions, sick pay,
9 non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th
10 542, 573 (2018), as modified (Apr. 25, 2018).

11 34. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime
12 premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a
13 day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty
14 hours in a week, because all hours worked were not recorded as a direct consequence of Defendants'
15 rounding policy.

16 35. Defendants knew or should have known that its rounding policy resulted in Plaintiff and
17 Class Members working unpaid overtime. Because Plaintiff and Class Members sometimes worked shifts
18 of more than eight hours a day or forty hours a week, some of the time lost pursuant to Defendants' round-
19 ing policy should have been compensated at the appropriate overtime rate of pay. Accordingly, Defend-
20 ants' time clock rounding policy resulted in Plaintiff and Class Members being deprived of earned over-
21 time wages.

22 36. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their
23 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

24 **THIRD CAUSE OF ACTION**

25 ***California Labor Code §§ 226.7, 512(a), and 1198***

26 ***Meal Period Violations***

27 **(Plaintiff and Class Against Defendants)**

28 37. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth

1 herein.

2 38. At all times relevant to this complaint, Defendants knew they were obligated to provide
3 legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7. La-
4 bor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period
5 of more than five hours per day without providing the employee with a meal period of not less than 30
6 minutes. An employer may not employ an employee for a work period of more than 10 hours per day
7 without providing the employee with a second meal period of not less than 30 minutes.”

8 39. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an em-
9 ployee to work during any meal period mandated by an applicable order of the IWC. “An off-duty meal
10 period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . .
11 .an employer’s obligation is to provide an off-duty meal period: an uninterrupted 30–minute period during
12 which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035
13 (2012).

14 40. Since at least four years prior to the filing of this action, Defendants consistently denied
15 their non-exempt employees the opportunity to take compliant 30-minute meal periods in accordance with
16 these mandates. Defendants’ rounding policy applied to meal period clock-in and clock-outs and fre-
17 quently resulted in automatic adjustments to time records for meal periods that were less than 30-minutes
18 but characterized for payroll purposes as having lasted for 30-minutes. *See Donohue v. Amn Servs.*, 11
19 Cal.5th 58, 69 (Cal. 2021) (“By requiring premium pay for any violation, no matter how minor, the struc-
20 ture makes clear that employers must provide compliant meal periods whenever such a period is triggered.
21 This corroborates the conclusion that rounding is improper []. A premium pay scheme that discourages
22 employers from infringing on meal periods by even a few minutes cannot be reconciled with a policy that
23 counts those minutes as negligible rounding errors.”).

24 41. Defendants’ policies and practices served to deprive the Class of a full 30-minute break
25 period free of employer control or relieved of all duties. Upon information and belief, employees were
26 required to skip breaks, take breaks after the fifth hour of work, or work through them due to Defendants’
27 policies and practices.

28 42. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result

1 of Defendants' formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-
2 minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

3 43. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover
4 from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required
5 meal period was not provided.

6 **FOURTH CAUSE OF ACTION**

7 ***Labor Code §§ 226.7 and 1198***

8 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

9 **(Plaintiff and Class Against Defendants)**

10 44. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
11 herein.

12 45. At all times relevant to this complaint, Defendants knew they were obligated to provide
13 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

14 46. Labor Code § 226.7 provides:

15 (a) No employer shall require any employee to work during any meal or rest
16 period mandated by an applicable order of the Industrial Welfare Commission.

17 (b) If any employer fails to provide an employee a meal period or rest period
18 in accordance with an applicable order of the Industrial Welfare Commission, the
19 employer shall pay the employee one additional hour of pay at the employee's reg-
20 ular rate of compensation for each work day that the meal or rest period is not
21 provided.

22 47. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee
23 to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order
24 No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal
25 periods: "A rest period, in short, must be a period of rest."¹ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d

26 ¹ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; see also Depart-
27 ment of Industrial Relations, "Rest Periods/Lactation Accommodations," available at
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work
premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
rest period requirement itself.")

1 823, 834 (2016).

2 48. Employees must also be free to leave the employer’s premises during their rest period. *See*
3 *id.* at 270 (“In the context of a 10-minute break that employers must provide during the work period, a
4 broad and intrusive degree of control exists when an employer requires employees to remain on call and
5 respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes
6 back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly
7 cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.”);
8 *see also* Department of Industrial Relations, “Rest Periods,” *available at*
9 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work
10 premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
11 rest period requirement itself.”).

12 49. Defendants failed to authorize or permit all required compliant paid rest periods for shifts
13 between 3.5 and ten hours. Defendants further failed to authorize or permit a compliant third rest period
14 for shifts in excess of 10 hours.

15 50. On information and belief, Defendants’ rounding policy applied to rest period clock-in and
16 clock-outs and resulted in automatic adjustments to time records for rest periods that were less than 10-
17 minutes but characterized for payroll purposes as having lasted at least 10-minutes.

18 51. Defendants also failed to implement a lawful rest period policy that relieved Plaintiff and
19 Class Members from all duties and/or allowed them to leave their worksite during rest periods. Further,
20 Defendants’ written policies require employees to clock out when they take their rest breaks, rendering
21 them unpaid, in violation of the above mandates.

22 52. As a direct and proximate result of Defendants’ willful and unlawful conduct, Plaintiff and
23 Class Members have sustained damages, including lost compensation resulting from missed or non-com-
24 pliant rest periods, in an amount to be established at trial.

25 53. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members
26 are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift
27 that a compliant rest period was not provided. Defendants were aware that their actions were a violation
28 of applicable law but consistently refused to pay premium pay as required by law.

1 **FIFTH CAUSE OF ACTION**

2 ***Labor Code §§ 226 and 1174***

3 ***Failure to Provide Complete and Accurate Wage Statements***

4 **(Plaintiff and Class Against Defendants)**

5 54. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
6 paragraphs as if fully set forth herein.

7 55. Labor Code § 226 requires employers to furnish employees with an accurate, itemized
8 statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the
9 employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the in-
10 clusive dates of the period for which the employee is paid; (6) the name of the employee and the last four
11 digits of his or her social security number; (7) the name and address of the legal entity that is the employer;
12 and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee.

14 56. At all times relevant to this complaint, Defendants' policies of rounding employees' time
15 and requiring off-the-clock work ensured that Class Members' itemized wage statements did not reflect
16 the true number of hours worked by the employee, and thus inaccurately reflected the amount of gross and
17 net wages earned for both minimum and overtime wages. In addition, Defendants' failure to pay premium
18 wages for missed meal and/or rest periods further ensured that Class Members' wage statements inaccu-
19 rately reflected gross and net wages earned. Finally, Defendants' failure to properly calculate and pay all
20 wages owed at the applicable regular rate of pay resulted in inaccurate itemized wage statements.

21 57. Defendants have also failed to keep accurate payroll records for Plaintiff and Class Mem-
22 bers in accordance with Labor Code § 1174. Defendants' failure to keep and maintain accurate payroll
23 records reflecting hours worked and wages earned has impeded Plaintiff and Class Members' ability to
24 calculate unpaid wages earned.

25 58. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226,
26 causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were
27 injured by these failures because, among other things, they were confused about whether they were paid
28

1 properly and/or they were misinformed about how much compensation was owed. These damages in-
2 clude, but are not limited to, costs incurred calculating the correct net wages for each pay period and the
3 amount of employment taxes that were not paid to state and federal tax authorities.

4 59. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not
5 being provided with an accurate itemized wage statement is entitled to recover the greater of all actual
6 damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each
7 subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others
8 similarly situated are entitled to injunctive relief to ensure Defendant’s compliance with Labor Code
9 § 226, as well as attorney’s fees and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 ***Labor Code §§ 201, 202, 203, and 204***

12 ***Failure to Pay Wages When Due***

13 **(Plaintiff and Class Against Defendants)**

14 60. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as
15 if fully set forth herein.

16 61. Labor Code § 201 provides, in relevant part, that:

17
18 If an employee not having a written contract for a definite period quits his or her
19 employment, his or her wages² shall become due and payable not later than 72
20 hours thereafter, unless the employee has given 72 hours previous notice of his or
21 her intention to quit, in which case the employee is entitled to his or her wages at
22 the time of quitting. Notwithstanding any other provision of law, an employee who
quits without providing a 72-hour notice shall be entitled to receive payment by
mail if he or she so requests and designates a mailing address. The date of the
mailing shall constitute the date of payment for purposes of the requirement to
provide payment within 72 hours of quitting.

23 62. Defendants do not include definite periods of service in their contracts of employment for
24 Class Members employed at their California facility. Plaintiff’s contract of employment did not include a
25 definite term.

26
27 ² Labor Code § 200 defines “wages” as “all amounts for labor performed by employees of every
28 description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission
basis, or other method of calculation.” “Labor” is defined as “labor, work, or service . . . if the labor to be
paid for is performed personally by the person demanding payment.”

1 63. Labor Code § 203 provides:

2
3 If an employer willfully fails to pay, without abatement or reduction, in accordance
4 with § 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
5 who quits, the wages of the employee shall continue as a penalty from the due date
6 thereof at the same rate until paid or until an action therefor is commenced; but
7 the wages shall not continue for more than 30 days.

8 64. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and
9 202, are due and payable twice during each calendar month, on days designated in advance by the employer
10 as regular paydays.

11 65. Failure to Timely Pay Wages Due. As set forth above, Defendants failed to timely pay the
12 minimum wages, overtime wages, sick pay, and meal and rest period premiums resulting from its deficient
13 timekeeping, meal and rest period policies, off-the-clock policies, and other unlawful policies and prac-
14 tices.

15 66. Failure to Pay Upon Termination. Plaintiff and many Class Members have left Defend-
16 ants' employ during the Class Period. As discussed above, Defendants knowingly failed to pay Plaintiff
17 and Class Members all earned wages upon termination. Instead, Defendants willfully and intentionally
18 refused to pay the earned overtime, vacation time, rest and/or meal period premiums, and earned mini-
19 mum wages, including at the applicable regular rate of pay, as alleged herein to Plaintiff and Class Members
20 in violation of Labor Code §§ 201 and 202.

21 67. Relief. Defendants' failure to pay Plaintiff and those Class Members who are no longer
22 employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two
23 (72) hours of their leaving Defendants' employment, violates Labor Code §§ 201 and 202. Plaintiff and
24 formerly employed Class Members are therefore entitled to recover from Defendants the statutory penalty
25 wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under
26 Labor Code § 203.

1
2 **SEVENTH CAUSE OF ACTION**

3 ***California Labor Code § 2802 -***

4 ***Failure to Reimburse Necessary Business Expenses***

5 **(Plaintiff and Class Against Defendants)**

6 68. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this
7 paragraph, all the allegations of this Complaint.

8 69. Labor Code section 2802 provides that “[a]n employer shall indemnify his or his employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
10 of his or his duties, or of his or his obedience to the directions of the employer.” Lab. Code § 2802. The
11 purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business
12 and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App.
13 4th 1137, 1144 (2014).

14 70. Defendants required Plaintiff and Class Members to use their cellphones in the regular
15 course of employment by answering texts and calls from their supervisors while at work or on a break, for
16 purposes of scheduling and re-scheduling future work, being assigned tasks, and general administrative
17 matters, and required the use of various mobile phone applications.

18 71. Defendants further required Plaintiff and Class Members to purchase work-related equip-
19 ment, including footwear, cell phone use, masks, tools, and uniforms.

20 72. Defendants failed to reimburse a reasonable portion of the Class Members’ cellphone re-
21 lated expenses despite requiring the use of the device and/or applications that required a data plan. *See*
22 *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (“We hold that when employees must
23 use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to
24 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes,
25 the reimbursement owed is a reasonable percentage of their cell phone bills.”). Defendant further failed
26 to reimburse Plaintiff and the Class Members for the purchase of work-related equipment.

27 73. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a rea-
28 sonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys’ fees and

1 costs. Lab. Code § 2802.

2 **EIGHTH CAUSE OF ACTION**

3 ***Labor Code §§ 558, 2698, et seq.***

4 ***Private Attorneys General Act (“PAGA”) Penalties***

5 **(Plaintiff and Class Against Defendants)**

6 74. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set
7 forth herein.

8 75. Entitlement to Penalties. Under the California Private Attorneys General Act (“PAGA”),
9 Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney
10 general, on behalf of herself and other current or former employees as well as the general public, to recover
11 penalties for an employer’s violations of the Labor Code and IWC Wage Orders. These penalties are in
12 addition to any other relief available under the Labor Code and are allocated seventy-five percent to the
13 Labor and Workforce Development Agency and twenty-five percent to the affected employees.

14 76. These penalties may be “stacked” separately for each of Defendants’ violations of the La-
15 bor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D.
16 Cal. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is appropri-
17 ate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal.
18 June 30, 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-
19 hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, mini-
20 mum wage and overtime, and workers’ compensation.”).

21 77. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants dur-
22 ing the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he
23 seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendants,
24 the civil penalties provided by PAGA, including civil penalties for Defendants’ violations of Labor Code
25 §§ 201, 202, 203, 204, 226, 226.7, 227.3, 246, 510, 512, 558, 1182.12, 1401, 1174, 1194, 1198, 2802, and
26 Industrial Wage Order No. 1, plus reasonable attorneys’ fees and costs.

27 78. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a rep-
28 resentative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46

1 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may
2 choose to seek certification of the PAGA claims.

3 79. Labor Code § 2699(a), which is part of PAGA, provides:

4
5 Notwithstanding any other provision of law, any provision of this code that pro-
6 vides for a civil penalty to be assessed and collected by the Labor and Workforce
7 Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be re-
9 covered through a civil action brought by an aggrieved employee on behalf of
10 themselves or themselves and other current or former employees pursuant to the
11 procedures specified in § 2699(a).

12 80. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

13
14 For all provisions of this code except those for which a civil penalty is specifically
15 provided, there is established a civil penalty for a violation of these provisions, as
16 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
17 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
18 employee per pay period for the initial violation and two hundred dollars (\$200)
19 for each aggrieved employee per pay period for each subsequent violation.

20 81. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to
21 be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set
22 forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay
23 period, and \$200 for each subsequent violation per employee per pay period. Plaintiff, the aggrieved em-
24 ployees, and the State of California are entitled to recover the maximum civil penalties allowed by law for
25 the violations of the Labor Code and IWC Wage Order No. 4 as alleged in this Complaint.

26 82. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of
27 California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other
28 penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely
payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each
subsequent violation, plus 25% of the amount unlawfully withheld, and Labor Code § 558 in the amount
\$50 per underpaid employee for each pay period for which the employee was underpaid and for each sub-
sequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
the employee was underpaid.

83. Procedural Requirements Met. Plaintiff electronically filed an amended notice of claims

1 with the LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail.
2 Plaintiff has not received notice from the LWDA that it was exercising jurisdiction over the allegations set
3 forth in the amended notice. As of 65 days from date of electronic filing, all requirements for administrative
4 exhaustion for bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

5 **NINTH CAUSE OF ACTION**

6 ***California Business & Professions Code §§ 17200, et seq.***

7 ***Unlawful Business Practices***

8 **(Plaintiff and Class Against Defendants)**

9 84. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully
10 set forth herein.

11 85. Defendants Stremicks and Noenickx are “persons” as defined by California Business &
12 Professions Code § 17201, as they are a natural person, corporations, firms, partnerships, joint stock com-
13 panies, and/or associations.

14 86. Unlawful Business Practices. Defendants’ knowing violations of the Labor Code consti-
15 tutes an unlawful business practice as set forth in Business & Professions Code § 17200, et seq.

16 87. Defendants’ failure to abide by the laws discussed herein provided Defendants an unfair
17 advantage over their competitors at the expense of their workers. Instead, Defendants cuts corners in the
18 name of higher profits and at the expense of employee well-being. Defendants’ actions thereby constitute
19 an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, et
20 seq.

21 88. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
22 Defendant’s willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired
23 through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff
24 seeks an award of costs and attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

25 **DEMAND FOR JURY TRIAL**

26 Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues
27 so triable.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully prays judgment as follows:

- 3 A. For an Order:
- 4 a. Certifying the Class;
- 5 b. Appointing Plaintiff as representative of the Class;
- 6 c. Appointing Plaintiff's counsel as Class Counsel;
- 7 B. For actual and liquidated damages according to proof at trial;
- 8 C. For statutory and civil penalties and special damages, according to proof at trial;
- 9 D. For pre- and post-judgment interest on monetary damages;
- 10 E. For preliminary and permanent injunctive relief;
- 11 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and
- 12 G. For such other relief as this Court deems just and proper.

13

14

15 Dated: June 22, 2023

Respectfully submitted,

16 **KING & SIEGEL LLP**

17

18 By: Elliot J. Siegel

19 Elliot J. Siegel

20 Erum Siddiqui

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June 22, 2023

Via electronic filing to:

LABOR & WORKFORCE DEVELOPMENT AGENCY

1515 Clay Street, Ste. 801
Oakland, CA 94612

Via certified mail to:

Evan R. Moses
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Catherine.brackett@ogletree.com
**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

Re: Gerardo Duenas, et al. v. Stremicks Heritage Foods, LLC, et al.;
Amended Notice of Suit (Case No. LWDA-CM-884702-22)

To Whom it May Concern:

We represent Gerardo Duenas (“Plaintiff”) and a proposed class of current and former employees of defendant **Stremicks Heritage Foods, LLC** (“Defendant Stremicks”) in a lawsuit (the “Action”) filed against Defendant Stremicks and Jack Noenickx (collectively, “Defendants”) in Riverside County Superior Court (Civil Case No. CVRI2202014).

We intend to amend the complaint to assert additional causes of action and factual allegations for the causes of action previously identified in Mr.

King & Siegel ||| LLP

Duenas' original PAGA letter dated May 19, 2022 (LWDA Case No. LWDA-CM-884702-22)

A copy of the First Amended Complaint that will be filed contemporaneously with this letter is enclosed as **Exhibit A**.

Together with this correspondence, the enclosed complaint serves as our amended notice pursuant to Labor Code § 2699.3 that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of Aggrieved Employees employed by Defendants based on the violations enumerated in **Exhibit A**. *See* Cal. Lab. Code §§ 2699, *et seq.*

Please feel free to contact us with any questions.

Sincerely,



Elliot J. Siegel
KING & SIEGEL LLP