

**HG FOODS WAGE AND HOUR CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (“Settlement Agreement”) is entered into by and between Defendant HG FOODS LLC (“HG FOODS”) and Plaintiff JAMIE BRANNAN (“Representative Plaintiff”) on behalf of themselves individually, and on behalf of all members of the “Plaintiff Class” as described herein.

**DEFINITIONS**

1. “Action” means the proceeding captioned *Jamie Brannan, individually, and on behalf of all others similarly situated vs. HG Foods LLC, d.b.a. Burger King, and DOES 1 through 100, inclusive* (Case No. 19STCV42187), filed in the Superior Court for the State of California, County of Los Angeles. As of the date of execution of this Settlement Agreement, the parties have stipulated to the transfer of this matter to the Tulare County Superior Court.

2. “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement and/or pursuant to Court Order, securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of a Judgment terminating the Action, and expenses for any experts. Class Counsel will apply for, and Defendant will not oppose, attorneys’ fees not to exceed 35% of the Gross Settlement Fund, or Two Hundred and Sixty-Two Thousand, Five Hundred Dollars and no cents (\$262,500.00). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs/expenses associated with Class Counsel’s litigation and settlement of the Action, subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above. If the Court does not approve an award of 35 % of the

Gross Settlement Fund and/or the full amount of costs requested, the difference between this/these amount(s) and the actual amount(s) approved shall be returned to the Net Settlement Fund to be distributed to the Settlement Class Members, according to the formula set forth below. These fees and costs are included in, and come from, the Gross Settlement Fund and will be paid directly to Class Counsel by the Settlement Administrator. Only Class Counsel will be issued an IRS Form 1099 for their award of attorneys' fees. No portion of these fees shall be part of any Form 1099 issued to the Representative Plaintiff.

3. "Class Counsel" means Scott Cole & Associates, APC.

4. "Class Notice" means a form substantially similar to the attached Exhibit "A," which shall be disseminated to all members of the Plaintiff Class, subject to Court approval. This Class Notice is incorporated by reference into this Settlement Agreement.

5. "Compensable Pay Period" means any pay period in which a member of the Plaintiff Class received wages for hours worked during the Settlement Period.

6. "Defendant" means HG Foods LLC.

7. "Defendant's Counsel" means Littler Mendelson, P.C..

8. "Defendant HG Foods Releasees" means HG Foods LLC and each of its past, present and/or future, direct and/or indirect, officers, directors, employees, agents, principals, representatives, fiduciaries, attorneys, accountants, auditors, consultants, partners, investors, shareholders, administrators, insurers and reinsurers, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and/or any party that was or could have been named as defendants in the Action.

9. "Effective Date" means 60 days following the date on which the Superior Court's Order granting final approval of this Settlement Agreement ("Final Approval Order") becomes final. The Superior Court's Order "becomes final" upon the last of the following to occur:

- a. If there are no objections to this Settlement Agreement, or if any objection is filed and subsequently withdrawn, the date of Entry of the Final Approval Order. Class Counsel shall not be required to file and/or serve a Notice of Entry of Judgment or similar Notice for the Effective Date to occur;
- b. If there are objections to this Settlement Agreement, and if an appeal, review, or writ is not sought from the Order, the 65<sup>th</sup> day after entry of the Final Approval Order; or
- c. If an appeal, review, or writ is sought from the Final Approval Order, the date after the Final Approval Order is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval Order is no longer subject to further review or modification.

10. “Gross Settlement Fund” refers to the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000.00), which represents the maximum amount payable in this Settlement by Defendant (including payment by the employer of its share of payroll taxes, which shall be subtracted from the Gross Settlement Fund), which includes, without limitation, the cash payments to the members of the Plaintiff Class, the attorneys’ fees and costs, the costs of settlement administration by the Settlement Administrator, the enhancement awards to the Representative Plaintiff, and payment to the California Labor & Workforce Development Agency (“LWDA”) for release of claims under the Private Attorneys General Act (“PAGA”) pursuant to California Labor Code §§ 2699, et seq., all as further described below.

11. “Net Settlement Fund” shall be calculated by deducting approved Class Counsel’s attorneys’ fees and litigation costs, the enhancement award to Representative Plaintiff, the payment to the LWDA for release of claims under PAGA (California Labor Code §§ 2699, et seq.), the payment of employer-side taxes on the wage portions of this settlement, and the fees and expenses of the Settlement Administrator from the Gross Settlement Fund.

12. “Parties” refers to Plaintiff Jamie Brannan, the Plaintiff Class, and Defendant, collectively.

13. “Plaintiff Class” comprises all current and former non-exempt employees who worked at any time for Defendant HG Foods in California from November 25, 2015 through the date of preliminary approval, excluding any such individuals who opt out of this Settlement.

14. “Representative Plaintiff” refers to Plaintiff Jamie Brannan.

15. “Settlement Administrator” refers to the third-party company responsible for administering the Settlement. The Settlement Administrator shall be CPT Group.

16. “Settlement Administration Expenses” are those expenses incurred by the Settlement Administrator in effectuating the Settlement.

17. “Settlement Class” and/or “Settlement Class Members” refers collectively or individually to those members of the Plaintiff Class who do not timely submit a valid opt-out(s) consistent with the processes described herein.

18. “Settlement Period” is November 25, 2015 through the date of preliminary approval.

#### **BACKGROUND**

19. On November 25, 2019, Plaintiff Jamie Brannan filed a Class Action Complaint alleging various wage and hour claims against Defendant, with two amended Complaints being filed thereafter. Defendant has not yet filed an Answer to the operative Complaint, yet the parties agree the Answer previously filed by Defendant will serve as an Answer to the currently operative Complaint and no other response by Defendant thereto shall be necessary.

20. This Settlement Agreement affects claims of the Plaintiff Class arising during the Settlement Period. Representative Plaintiff alleges that Defendant violated wage and hour laws and seek, on her own behalf, as well as on behalf of the class alleged therein, unpaid wages and interest thereon, penalties, unreimbursed business expenses, liquidated damages, equitable relief, and reasonable attorneys’ fees and costs, under, *inter alia*, Title 8 of the California Code of Regulations, California Business & Professions Code §§ 17200, *et seq.*, various Industrial Welfare Commission Wage Order(s), California Code of Civil Procedure §1021.5, and various provisions of the California Labor Code.

21. Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action, as that term is defined herein. Nothing contained in this Settlement Agreement, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing by Defendant.

22. The Parties intend to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising during the Settlement Period alleged by the Plaintiff Class in the Complaint for Damages and/or any amendments and/or modifications thereto, as well as known and unknown claims which could have been brought based on the specific factual allegations contained therein, including, but not limited to claims for unpaid wages, unpaid overtime, record-keeping violations, paycheck violations, meal period and rest period violations, and “waiting time” penalties which arose between November 25, 2015 and the date of preliminary approval, as well as all PAGA claims which arose between November 25, 2018 to the date of preliminary approval.

23. The Parties intend that this Settlement Agreement shall include a full and complete settlement and release, as described herein, and which includes in its effect all of the Defendant HG Foods Releasees.

24. Class Counsel represent that they have conducted a sufficiently thorough investigation into the claims of the Plaintiff Class against Defendant. Based on their own independent investigation and evaluation and all known facts and circumstances, including the risk of significant defenses asserted by Defendant, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Plaintiff Class.

25. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement and to effectuate all aspects of this Settlement Agreement.

### **SETTLEMENT CERTIFICATION OF THE PLAINTIFF CLASS**

26. For settlement purposes only, the Parties agree that the Plaintiff Class (as defined in the Second Amended Complaint) shall be certified. This Settlement Agreement is contingent upon the approval and certification by the Court of the Plaintiff Class for settlement purposes only. Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification for any purpose should the Court not approve the Settlement Agreement. Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Actions via this Settlement but, to the extent this Settlement is deemed void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Actions upon all procedural, merit, and factual grounds, including, without limitation, the ability to challenge Representative Plaintiff's statutory wage and hour and PAGA claims on any grounds, as well as asserting any and all other privileges and potential defenses. The Representative Plaintiff agrees that Defendant retains and reserves these rights, and the Representative Plaintiff agrees not to argue or present any argument, and hereby waives any argument that, based on this Settlement, Defendant cannot contest Representative Plaintiff's statutory wage and hour claims and/or PAGA claims on any grounds whatsoever, or assert any and all other privileges or potential defenses if this Action were to proceed. In connection with the proposed certification of the Plaintiff Class, the Parties shall cooperate and present to the Court for its consideration competent evidence, as may be requested by the Court, under the applicable due process requirements and standards for class certification.

### **SETTLEMENT APPROVAL PROCEDURE**

27. This Settlement Agreement will become final and effective upon occurrence of all of these (subsections (a) through (e), inclusive) events:

- a. Execution of this Settlement Agreement by the Parties and their respective counsel of record;
- b. Entry of an Order by the Court (i) granting preliminary approval of the Settlement Agreement, including conditional certification of the Plaintiff Class for settlement purposes only, (ii) approving the proposed Class Notice (the Parties' proposed form is attached hereto as Exhibit "A," respectively), and (iii) scheduling a hearing date for final approval of the Settlement Agreement;
- c. Filing by Class Counsel, at least five (5) calendar days prior to the final approval hearing, of the Settlement Administrator's written verification that the Class Notice has been disseminated in accordance with the Court's preliminary approval Order;
- d. Entry of an Order by the Court granting final approval of the Settlement Agreement;
- e. Occurrence of the Effective Date, as defined above.

#### **SETTLEMENT PAYMENT AND CALCULATION OF CLAIMS**

28. In consideration of the mutual covenants and promises set forth herein, the Parties agree, subject to the Court's approval, as follows:

29. Settlement Amount. Defendant agrees to pay a Maximum Settlement Amount of Seven Hundred and Fifty Thousand Dollars (\$750,000.00). This amount includes: (i) payments made to Settlement Class Members as described in this Settlement Agreement, (ii) an enhancement award (i.e., service payment) to the Representative Plaintiff of up to \$7,500, (iii) \$7,500 (75% of the \$10,000 allocated as PAGA penalties) to the LWDA for its share of the settlement of claims; (iv) fees and expenses of the Settlement Administrator; (v) Class Counsel's approved attorneys' fees, (vi) Class Counsel's approved litigation costs, and (vii) employer-side payroll taxes. Defendant will pay Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to fund the Gross Settlement Fund within 15 days after the Effective Date.

30. The LWDA, the Representative Plaintiff (for her enhancement award payments), Class Counsel (for their awarded attorneys' fees and expenses), the Settlement Administrator (for its fees and expenses) and Settlement Class Members will be mailed their portions of the Gross Settlement by the

Settlement Administrator within five (5) business days after Defendant fully funds the Gross Settlement Fund.

31. Payments to the California Labor & Workforce Development Agency. The Parties shall apply to the Court for approval of a payment under PAGA. The Parties have agreed to allocate Ten Thousand Dollars (\$10,000) (the “PAGA Payment”) from the Gross Settlement Fund towards a release of the PAGA claims, as described more fully herein. The Parties agree that this amount is reasonable in light of the facts and circumstances presented in the Action. If approved, the LWDA shall be paid seventy-five percent (75%) of the total amount allocated towards PAGA claims. If approved, twenty-five percent (25%) of the total amount allocated towards PAGA claims shall be included in the calculation of the Net Settlement Fund and thereafter be distributed to the Settlement Class in accordance with the terms of this agreement. In the event the LWDA or Court rejects this allocation, the parties will meet and confer with the Court and the LWDA to reach a penalty allocation that is acceptable to all parties and that does not materially alter the terms of the Settlement Agreement. Notably, the LWDA has been notified of the pendency of the Action and has elected not to pursue penalties or any other remedy for the alleged violations described in the Action.

32. Enhancement Awards. Subject to Court approval, in addition to any payment Plaintiff receives in her capacity as a Class Member, Plaintiff will individually receive an enhancement award from the Gross Settlement Fund for her services as the Representative Plaintiff in an amount up to Seven Thousand, Five Hundred Dollars (\$7,500). If the Court does not approve the full amount sought for the enhancement award, the difference between this amount and the actual amount approved shall be returned to the Net Settlement Fund to be distributed to the Settlement Class Members according to the formula set forth below. The Representative Plaintiff’s enhancement award will be distributed by the Settlement Administrator, will not be treated by the Parties as subject to taxation, and will include the issuance of an



IRS Form 1099 in connection with this payment. No other Form 1099s will issue to the Representative Plaintiff.

33. Attorneys' Fees and Costs. In conjunction with final approval of this Settlement Agreement, Class Counsel will apply to the Court for an award of attorneys' fees in an amount totaling up to 35 % of the Gross Settlement Fund (i.e., \$262,500.00), plus actual costs. Defendant will not oppose such application. If the Court does not approve an award of 35 % of the Gross Settlement Fund, the difference between this amount and the actual amount approved shall be returned to the Net Settlement Fund to be distributed to the Settlement Class Members, according to the formula set forth below. These fees and costs are included in, and come from, the Gross Settlement Fund and will be paid directly to Class Counsel by the Settlement Administrator. Only Class Counsel will be issued an IRS Form 1099 for their award of attorneys' fees. No portion of these fees shall be part of any Form 1099 issued to the Representative Plaintiff.

34. Cost of Settlement Administration. The fees and expenses of the Settlement Administrator shall be paid from the Gross Settlement Fund within five (5) business days after Defendant fully funds the Gross Settlement Fund. If Defendant opts to terminate the Settlement Agreement pursuant to the terms of this agreement, then Defendant shall bear the cost of such fees and expenses. If the Settlement Agreement is not given final approval by the Court for any other reason, the Parties shall bear the cost of such fees and expenses equally.

35. Settlement Awards to Settlement Class Members. Each Settlement Class Member shall be entitled to receive a pro rata portion of the Net Settlement Fund (his/her "Individual Settlement Share"), calculated based upon the number of Compensable Pay Periods worked thereby during the Settlement Period, divided by the total number of Compensable Pay Periods worked by all Settlement Class Members during said period. The Settlement Administrator will calculate the number of Compensable Pay Periods worked by Settlement Class Members, the amount to be paid per Compensable Pay Period, and the

Individual Settlement Share to be paid to each Settlement Class Member. The payment to the Settlement Class Members shall be funded by the remainder of the Gross Settlement after funding the payments to the LWDA, the Representative Plaintiff (for her enhancement award payments), to Class Counsel (for their awarded attorneys' fees and expenses), and to the Settlement Administrator (for its fees and expenses).

### **ALLOCATION AND TAX TREATMENT**

36. The Parties agree that 45% of the Individual Settlement Share that is distributed to each Settlement Class Member will be considered penalties, 40% will be considered interest, and 15% will be considered wages. The wages portion will be reported as such to each Settlement Class Member on an IRS Form W-2. Appropriate federal, state, and local withholding taxes will be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2 with respect to this portion of the Individual Settlement Share. The penalties and interest portions will be reported as such to each Settlement Class Member via an IRS Form 1099.

37. Any tax obligation arising from the Settlement Payments, the Representative Plaintiff's enhancement award, and/or Class Counsel's fees and costs made under the terms of this Agreement will be the sole responsibility of each person receiving such payment(s). Each Settlement Class Member is responsible to pay his or her portion of the taxes due on any payment he or she receives under this Settlement Agreement.

38. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

39. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT

OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

40. The employer’s taxes include all statutory FICA, FUTA and California payroll and withholding taxes arising from any payments to Settlement Class Members and shall be subtracted accordingly from the Gross settlement fund. Such amounts will be computed by the Settlement

Administrator based on the amounts paid to the Settlement Class Members. The Settlement Administrator shall be responsible for making all necessary filings in connection with such payments.

41. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Member may be entitled under any benefit plans.

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

#### **APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

43. The Settlement Administrator will perform the duties of distributing notice, independently reviewing requests for exclusion and objections, and verifying and distributing any amounts due to Settlement Class Members as described in this Settlement Agreement. The Settlement Administrator will report, in summary or narrative form, the substance of its findings. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully carried out.

44. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that

certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to the Settlement, and whether any Class Member has submitted a challenge to any information contained in his/her Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

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

#### **NOTICE TO THE PLAINTIFF CLASS**

46. Subject to Court approval of its form and content, the Class Notice shall be sent to the Plaintiff Class, by first class mail, within five (5) business days of receipt by the Administrator of the Plaintiff Class List from Defendant. The Class Notice will, subject to Court approval, advise all Class Members of the nature of the case, the terms of the Settlement, the binding nature of the release, the final approval hearing date, and Class Members' right to opt out or object. The Settlement Administrator will, at the time of mailing of Class Notice, cause to be published the Class Notice, the Second Amended Complaint, this Settlement Agreement and the Court's Order preliminarily approving the Settlement on a website designed for this Settlement, with the URL for such website appearing in the mailed Class Notice.

47. Within seven (7) business days of the entry of an Order granting preliminary approval of the Settlement and Class Notice, Defendant will provide the Settlement Administrator a "Plaintiff Class List," which shall include the first and last name, the last known address, the social security number, date of hire, and date of termination, if applicable, of each member of the Plaintiff Class worked for Defendant during the Settlement Period. Defendant agrees to confer, if necessary, with the Settlement Administrator and Class Counsel regarding the format of the Plaintiff Class List. .

48. The Settlement Administrator will use the United States Postal Service National Change of Address (“NCOA”) List to verify the accuracy of all addresses on the Plaintiff Class List before the initial mailing date to ensure that the Class Notice is sent to all Plaintiff Class Members at the addresses most likely to result in immediate receipt of the claim documents. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) calendar days of the mailing, the Class Member received the Class Notice. With respect to any returned envelopes, the Settlement Administrator will perform a routine skip trace procedure to obtain a current address and, if an updated address is located, shall then re-mail the envelope to such address within three (3) court days of the receipt of the returned envelope. Plaintiff Class Members to whom Class Notices were re-sent after having been returned undeliverable to the Settlement Administrator shall have ten (10) calendar days thereafter to object or opt out of the settlement. Class Notices that are so re-mailed shall be accompanied by a short cover letter from the Settlement Administrator informing the recipient of this adjusted deadline. No third mailing shall occur without good cause, as determined by the Settlement Administrator.

49. Class Counsel shall provide the Court, at least five (5) calendar days prior to the final approval hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Class Notice.

#### **CLAIM, OPT-OUT AND OBJECTION PROCESSES**

50. Members of the Plaintiff Class shall not be required to submit claims and/or a claim form and will, but for a valid objection thereto or the election to opt out of the settlement, receive payment for their claims as set forth further in this Agreement.

51. Members of the Plaintiff Class may opt out of the Settlement by following the directions in the Class Notice. Any such request must be postmarked not more than thirty (30) calendar days after the date the Class Notice is mailed to the Plaintiff Class (or not more than ten (10) calendar days after the

date the Class Notice is re-mailed, in the circumstance described above). Requests to opt out that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Persons who are eligible to and do submit valid and timely requests to opt out of the Settlement will not participate in the Settlement, nor will they be bound by the terms of the proposed Settlement, if it is approved, or the Final Judgment in this Action.

52. By signing this agreement, the Representative Plaintiff waives her rights to opt out from the Settlement Class and any such request for an exclusion will be void and of no force and effect.

53. Objections to the Settlement must be submitted to the Settlement Administrator and postmarked not more than thirty (30) calendar days after the date the Class Notice is mailed to the Plaintiff Class (or not more than ten (10) calendar days after the date the Class Notice is re-mailed, in the circumstance described above). The Settlement Administrator shall promptly forward any objections received to counsel for the Parties.

54. Objections must describe why the objector believes the Settlement is unfair and whether the objector intends to appear at the final approval hearing. Deficient or untimely objections shall not be considered. Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court. Class Counsel and Defendant's Counsel may, at least five (5) court days (or some other number of days as the Court shall specify) before the Final Approval Hearing, file responses to any written objections submitted to the Court.

55. Upon completion of its calculation of payments, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member. The Settlement Administrator's report shall not include each Settlement Class Member's personal identifying information such as name, address, telephone number, email

address, or Social Security number. After receiving the Settlement Administrator's report, Class Counsel and Defendant's Counsel shall jointly review the Settlement Administrator's report to determine if the calculation of payments to Settlement Class Members is consistent with this Settlement.

56. Defendant will not retaliate against members of the Plaintiff Class for any actions taken or not taken with respect to this Settlement or retaliate against the Representative Plaintiff for filing and/or pursuing the litigation. In response to any inquiry concerning the Representative Plaintiff, Defendant will only provide a neutral statement regarding the Representative Plaintiff as to her dates of service and job title.

#### **CLAIM AMOUNT DISPUTE PROCESS**

57. The Class Notice will apprise each member of the Plaintiff Class of the approximate dates he or she held an eligible position during the Settlement Period as well as his or her total number of Compensable Pay Periods. These calculations shall be based on Defendant's records. Defendant's records are presumed to be accurate.

58. If a member of the Plaintiff Class does not wish to challenge the information set forth in the Class Notice, then the member need do nothing, and payment (so long as member of the Plaintiff Class does not opt-out of the settlement altogether) will be made based on Defendant's records.

59. If a member of the Plaintiff Class wishes to challenge the information set forth in the Class Notice, then the member must submit a written, signed challenge along with supporting documents, if any exist, to the Settlement Administrator at the address provided on the Class Notice within twenty (20) calendar days of the date the Class Notice was mailed to the member of the Plaintiff Class (or within ten (10) calendar days of the date the Class Notice was re-mailed, in the circumstance described above).

60. No dispute will be considered timely if it is postmarked more than the number of days set forth in the preceding paragraph of this Agreement. Absent an agreement between Class Counsel and



Defendant's Counsel regarding how to address the dispute, the Settlement Administrator shall have authority to resolve the challenge and make a final and binding determination without hearing or right of appeal. Defendant agrees to provide the Settlement Administrator with additional documents necessary to assess the challenge, if such documents exist. All disputes shall be resolved, either by agreement of Class Counsel and Defendant's Counsel, or by decision of the Settlement Administrator as provided herein, prior to submitting the Settlement Administrator's declaration to the Court for final approval.

61. Settlement checks issued to the Representative Plaintiff and Settlement Class Members shall remain valid for one hundred and eighty (180) calendar days from the date of issuance. This expiration or cancellation date shall be clearly printed on the front of the check ("Void Date"). If the Representative Plaintiff or any Settlement Class Member does not cash his or her settlement payment check(s) before the Void Date, the funds will be distributed to the State Bar's Justice Gap Fund. Settlement checks can be reissued to Settlement Class Members upon request within this 180-day period, but any reissued checks shall have the same Void Date as the original settlement check. Those Settlement Class Members who fail to cash their settlement checks by the Void Date will be deemed to have waived irrevocably any right in or claim to any proceeds from the Settlement and to any payments by Defendant, but the terms of this Agreement shall remain binding upon them.

### **RELEASES**

62. By Settlement Class Members. All members of the Plaintiff Class who do not timely request exclusion, and the State of California release the Defendant HG Foods Releasees from any and all debts, liabilities, costs, demands, obligations, claims, causes of action, or complaints arising during the Settlement Period that were pled, or which could have been pled based on the same facts as pled in the Plaintiffs' Second Amended Complaint, all preceding Complaints, and the LWDA letter. This includes claims relating to the alleged failure of the Defendant to provide any of the Class Members with compensation as required by law relating to wages, claims for overtime hours worked, meal periods, rest periods, business expense reimbursements, itemized wage statement/pay stub violations, civil penalties,

or waiting-time penalties as required by law or regulations, the failure to pay penalties, or that are based upon, or derive from the claims asserted in the Action, including alleged violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 450, 510-512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, and 2698, et seq. as well as the relevant Industrial Welfare Commission Wage Order(s), California Business and Professions Code Sections 17200, et seq., as well as claims for interest, costs, attorneys' fees, compensatory damages, and all claims for restitution and other equitable relief, injunctive relief, liquidated damages, and any other remedies owed or available under the law related to the facts set forth in the Action. As to the foregoing claims only, Settlement Class Members and the State of California expressly waive the benefits of California Civil Code § 1542, which provides:

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

63. By the Representative Plaintiff. In consideration for the service payments being paid to the Representative Plaintiff, upon the Court's approval of the Settlement, Representative Plaintiff hereby fully and finally releases and discharges the Defendant HG Foods Releasees from all known and unknown claims that the Representative Plaintiff may have against the Defendant HG Foods Releasees, of every nature or description whatsoever, up to the date of the Court's final approval of the Settlement, in addition to the Settlement Members' Released Claims described above. This general release of claims includes any and all known or unknown contract, tort, statutory, common law, constitutional, discrimination, public policy, retaliation, wrongful discharge, and other claims of any type whatsoever, to the fullest extent such claims are releasable by law, arising out of the Representative Plaintiff's employment with Defendant,

and any other dealings with the Defendant HG Foods Releasees. The Representative Plaintiff waives all rights and benefits afforded by § 1542 of the California Civil Code, which provides:

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

Accordingly, if the facts relating in any manner to this Stipulation are found hereafter to be other than or different from the facts now believed to be true, the General Release contained herein shall remain effective. The Representative Plaintiff and Defendant acknowledge that the foregoing General Release was separately bargained for and is a material element of the Settlement.

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

64. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. Class Counsel shall promptly submit this Settlement Agreement to the Court in support of Representative Plaintiff's Motion for Preliminary Approval for determination by the Court as to its fairness, adequacy, and reasonableness and apply for the entry of a preliminary Order substantially in the following form:

- a. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Plaintiff Class;
- b. Approving the proposed Class Notice;
- c. Preliminarily approving the Settlement; and
- d. Preliminarily certifying the Plaintiff Class for purposes of settlement only.

**DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

65. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to

be heard at the final approval hearing. Following final approval by the Court of this Settlement Agreement, Class Counsel will submit a proposed final Order and judgment:

- a. Approving the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Approving and awarding Class Counsel's fees and costs, the settlement administration costs, and the enhancement awards as set forth in the Settlement Agreement; and
- c. Entering judgment in accordance with the terms and conditions of the Settlement Agreement and retaining jurisdiction over the Parties to enforce the terms of the judgment.

#### **RIGHT TO WITHDRAW**

66. Notwithstanding any other provision contained in this Settlement, if more than five percent (5%) of all members of the Plaintiff Class submit timely and valid requests for exclusion from the Settlement during the Opt-Out Period outlined herein, Defendant shall have the option, in its sole discretion, to withdraw from this Settlement ("Right to Withdraw"), whereupon the Settlement shall be null and void for any and all purposes and may not be used or introduced in the Action or any other proceeding. In that instance, the parties will be restored to their respective positions in the litigation as if this Settlement was never negotiated, drafted, or agreed upon. However, if Defendant exercises its Right to Withdraw, Defendant will be responsible for all Settlement Administration Costs incurred up to the date when the Defendant exercises its Right to Withdraw. The Settlement Administrator shall notify Class Counsel and Counsel for Defendant of the number of timely opt-outs within five (5) business days after the expiration of the right of the Plaintiff Class Members to Opt-Out of the Settlement. If Defendant elects to exercise its Right to Withdraw under this provision, Defendant will so notify Class Counsel and the Court no later than six (6) business days after receiving notice of the number of opt-outs.

67. If, despite the best efforts and cooperation of the Parties as required under this Agreement, the Court will not approve any material condition of this Settlement Agreement or effects a fundamental

change of the Parties' Settlement, with the exception of any changes to the Class Notice, the award of Class Counsel's fees/costs, and/or the award of an enhancement award, then the entire Settlement Agreement will be voidable and unenforceable at the option of either Party hereto. In such case, the Settlement shall not be used or be admissible in any subsequent proceeding, either in the Action, or in any other Court or forum. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning. Any funds paid into the Settlement Fund shall be returned to the Defendant, less any deductions for reasonable costs incurred by the Settlement Administrator.

68. Either Party may void this Settlement Agreement as provided in the preceding paragraph in this Agreement, by giving notice in writing to all other Parties and the Court at any time prior to final approval of the Settlement Agreement by the Court.

#### **PARTIES' AUTHORITY**

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

70. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that

this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

### **MUTUAL FULL COOPERATION**

71. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant's Counsel, take all necessary steps to secure the Court's final approval of this Settlement Agreement.

72. Defendant understands that, in the course of applying for settlement approval, Representative Plaintiff may be required to submit sufficient evidence to support the fairness of the proposed settlement terms. Defendant affirmatively agrees to assist and support Representative Plaintiff in providing such evidence and, if requested by Representative Plaintiff, will provide declaration(s) or other admissible evidence reflecting class size, compensation information, and Compensable Pay Periods worked during the Settlement Period.

73. The Parties agree that neither they nor their counsel will solicit or otherwise encourage, directly or indirectly, Class Members to request exclusion from the Settlement Class, object to the settlement, or appeal the final judgment.

74. No Public Comment. Other than necessary disclosures made to or by order of the Court or to the Class Members, Plaintiff shall not directly or indirectly disclose the fact, amount, or the terms of the Settlement to the media, the press, or on any website, or otherwise issue any public statements or advertisement in any form or media concerning the Settlement, provided that if Plaintiff receives inquiries

from the media, she may state only that the Action has been resolved on the terms set forth in the Stipulation that was publicly filed. Similarly, Class Counsel shall not initiate contact with the media/press or otherwise contact putative class members and/or aggrieved employees for any purpose not otherwise in furtherance of the terms of this settlement agreement. If Class Counsel receives inquiries from the media, it may state only that the Action has been resolved on the terms set forth in the Stipulation that was publicly filed. This provision shall not prohibit Class Counsel from responding to specific questions from Class Members and nothing herein shall be interpreted as preventing any good faith communication by Class Counsel and/or any Parties with the Court, the Class Members, or the Claims Administrator. Further, this provision shall not require Class Counsel to materially alter or delete the summary of this Action as posted on Class Counsel's firm website as of October 7, 2020; however, Class Counsel is precluded from making additional or altered statements on its website related to this matter and the Settlement. Additionally, this provision shall not preclude Class Counsel from disclosing information regarding this Action and Settlement to courts as necessary to demonstrate its experience in wage and hour class actions.

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

#### **NO ADMISSION OF LIABILITY**

76. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant risk, inconvenience, and expense. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code Section 1152, et seq., be inadmissible as evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

## ENFORCEMENT OF THE SETTLEMENT AGREEMENT

77. In the event that one or more of the Parties to this Settlement Agreement institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the prevailing Party or Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

## NOTICES

78. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be (a) in writing, (b) deemed given on the third business day after mailing, and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Representative Plaintiff:

Scott Edward Cole, Esq.  
SCOTT COLE & ASSOCIATES, APC  
555 12<sup>th</sup> St., Suite 1725  
Oakland, California 94607  
Email: scole@scalaw.com  
Telephone: (510) 891-9800

To Defendant:

Ivy Fitzgerald, Esq.  
LITTLER MENDELSON, P.C.  
5200 North Palm Avenue, Suite 302  
Fresno, CA 93704-2225  
Email: IFitzgerald@littler.com  
Telephone: (559) 244-7536



## CONSTRUCTION AND INTERPRETATION

79. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

80. Paragraph titles are inserted as a matter of convenience and for reference, and in no way define, limit, extend and/or describe the scope of this Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

81. This Agreement shall be subject to and governed by the laws of the State of California. The parties acknowledge that they are subject to the continuing jurisdiction of the Court to enforce the terms of the Settlement contained herein.

## MODIFICATION

82. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties.

## INTEGRATION CLAUSE

83. This Settlement Agreement contains the entire agreement between the Parties relating to any and all matters addressed in the Settlement Agreement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, with respect to such matters are extinguished. No rights hereunder may be waived or modified except in a writing signed by all Parties.

**BINDING ON ASSIGNS**

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

**CLASS COUNSEL SIGNATORIES**

85. It is agreed that it is impossible or impractical to have each member of the Plaintiff Class execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if each member of the Plaintiff Class executed this Settlement Agreement.

**COUNTERPARTS**

86. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

**IT IS SO AGREED:**

**REPRESENTATIVE PLAINTIFF:**

DATED: 10/12/2020, 2020

By:

DocuSigned by:  
*Jamie Brannan*  
BDFF397F4453419...

Jamie Brannan  
Representative Plaintiff

**CLASS COUNSEL SIGNATORIES**

85. It is agreed that it is impossible or impractical to have each member of the Plaintiff Class execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if each member of the Plaintiff Class executed this Settlement Agreement.

**COUNTERPARTS**

86. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

**IT IS SO AGREED:**

**REPRESENTATIVE PLAINTIFF:**

DATED: \_\_\_\_\_, 2020

By: \_\_\_\_\_

Jamie Brannan  
Representative Plaintiff

**DEFENDANT:**

DATED: 10-13-2020, 2020

**HG FOODS LLC**

By: \_\_\_\_\_

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*Jennifer Geiger*

**DEFENDANT:**

DATED: \_\_\_\_\_, 2020

**HG FOODS LLC**

By: \_\_\_\_\_  
[Authorized Signatory]

***APPROVED AS TO FORM:***

**CLASS COUNSEL:**

DATED: 11/13, 2020

**SCOTT COLE & ASSOCIATES, APC**

By: \_\_\_\_\_  
Scott Edward Cole, Esq.  
Attorneys for the Representative  
Plaintiff and the Plaintiff Class

**DEFENDANT'S COUNSEL:**

DATED: November 12, 2020

**LITTLER MENDELSON, P.C.**

By: \_\_\_\_\_  
Ivy Fitzgerald, Esq.  
Attorneys for Defendant  
HG Foods LLC