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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SANTA CLARA**

10 JACOB BLEA, individually, and on behalf of  
11 aggrieved employees pursuant to the Private  
12 Attorneys General Act (“PAGA”);

13 Plaintiff,

14 v.

15 PACIFIC GROSERVICE INC., a California  
16 corporation; PITTSBURG WHOLESALE  
17 GROCERS, INC. d/b/a PITCO FOODS, a  
18 California corporation; and DOES 1 through  
100, inclusive;

19 Defendants.

**Electronically Filed  
by Superior Court of CA,  
County of Santa Clara,  
on 11/8/2022 3:21 PM  
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Case #20CV375150  
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Case No.: 20CV375150

Assigned for All Purposes to:  
Honorable Sunil Kulkarni  
Department 1

**CLASS ACTION**

**DECLARATION OF DOUGLAS HAN IN  
SUPPORT OF PLAINTIFF’S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL APPROVAL  
HEARING DATE**

[Notice of Motion and Motion for Preliminary  
Approval; Declaration of Proposed Settlement  
Administrator (Julie Green); and [Proposed]  
Order filed concurrently herewith]

Hearing Date: December 8, 2022  
Hearing Time: 1:30 p.m.  
Hearing Place: Department 1

Complaint Filed: December 28, 2020  
FAC Filed: May 11, 2022  
Trial Date: None Set

1 **DECLARATION OF DOUGLAS HAN**

2 I, DOUGLAS HAN, hereby declare as follows:

3 1. I am an attorney duly licensed to practice law before all courts of the State of  
4 California. I am the founding member of Justice Law Corporation. I am the attorney of record for  
5 Plaintiff Jacob Blea (“Plaintiff”) and the Class in the instant action. I have personal knowledge of the  
6 facts set forth below, and if called to testify, I could and would do so competently.

7 2. In May of 2004, I graduated from Pepperdine University School of Law with a  
8 Juris Doctor degree. In May of 2001, I obtained a Bachelor of Science degree in Political Science with  
9 a minor in English from the University of Houston. I was admitted to practice in California in 2004  
10 and Washington in 2022.

11 3. Since its inception in April 2013, our firm has almost exclusively focused on  
12 prosecuting consumer and employment class actions involving wage-and-hour claims, unfair business  
13 practices, or consumer fraud. Since that time, our firm has successfully litigated to conclusion over  
14 two hundred fifty (250) wage-and-hour class or representative actions. We are the attorneys of record  
15 in over a dozen employment-related putative class actions in state and federal courts in the State of  
16 California. During this relatively short time, in association with other law firms, we have obtained  
17 millions of dollars on behalf of thousands of individuals in California.

18 ***EXAMPLES OF CLASS ACTION RESULTS***

19 4. Attached hereto as **Exhibit 1** is a true and correct copy of a spreadsheet listing  
20 matters in which Justice Law Corporation was appointed as Class Counsel and/or obtained approval  
21 of Class Action or representative PAGA settlements.

22 5. Shunt Tatavos-Gharajeh is an Of Counsel at my office. Shunt received his  
23 undergraduate degree from the University of California, Los Angeles, and earned a Juris Doctor degree  
24 from Southwestern University School of Law. Shunt was admitted to practice in California in 2010  
25 and in Washington in 2022. The focus of Shunt’s practice is class action wage-and-hour law. Shunt  
26 has worked on numerous class action cases that have been granted final approval, including *Keles, et*  
27 *al. v. The Art of Shaving – FL, LLC* Alameda County Superior Court, Case No. RG13687151; *Esters*  
28 *et al v. HDB LTD. Limited Partnership* Kern County Superior Court, Case No. S-1500-CV-279879

1 DRL; *Bridgette Guzman, et al. v. International City Mortgage, Inc.*, San Bernardino County Superior  
2 Court, Case No. CIVDS1502516; *Davidson et al. v. Lentz Construction General Engineering*  
3 *Contractor*, Kern County Superior Court, Case No. S-1500-CV-279853 LHB; *Betancourt v. Hugo*  
4 *Boss USA, Inc.*, Los Angeles County Superior Court, Case No. BC506988; *Porras et al. v. DBI*  
5 *Beverage, Inc. et al.*, Santa Clara County Superior Court, Case No. 1-14-CV-266154; *Hartzell et al. v.*  
6 *Truitt Oilfield Maintenance Corporation*, Kern County Superior Court, Case No. S-1500-CV-283011;  
7 *Navarro-Salas et al. v. Markstein Beverage Co. et al.*, Sacramento County Superior Court, Case No.  
8 34-2015-00174957-CU-OE-GDS; *David White, et al. v. Pilot Travel Centers, LLC*, San Joaquin  
9 County Superior Court, Case No. STK-CV-UOE-2013-0009098; *McKinnon, et al. v. Renovate*  
10 *America, Inc., et al.*, San Diego County Superior Court, Case No. 37-2015-00038150-CU-OE-CTL;  
11 *Evelyn Antoine, et al. v. Riverstone Residential CA, Inc., et al.*, Sacramento County Superior Court,  
12 Case No. 34-2013-00155974; *Pina v. Zim Industries, Inc.*, Kern County Superior Court, Case No. S-  
13 1500-CV-284498 SPC; *Amaya v. Certified Payment Processing et al.*, Sacramento County Superior  
14 Court, Case No. 34-2015-00186623-CU-OE-GDS; *Burke v. Petrol Production Supply, Inc.*, Kern  
15 County Superior Court, Case No. BCV-15-101092; *Ceron et al v. Hydro Resources-West, Inc.*, Kern  
16 County Superior Court, Case No. BCV-15-101461; *Chavana v. Golden Empire Equipment, Inc.*, Kern  
17 County Superior Court, Case No. BCV-16-102796; *De La Torre et al. v. Acuity Brands Lighting, Inc.*,  
18 San Bernardino County Superior Court, Case No. CIVDS1601800; *Dobbs v. Wood Group PSN, Inc.*,  
19 Case No. BCV-16-101078 Kern County Superior Court, Case No. BCV-16-101078-DRL; *Gonzalez*  
20 *et al v. Matagrano, Inc.*, San Francisco County Superior Court, Case No. CGC-16-550494;  
21 *Harbabikian et al. v. Williston Financial Group, LLC*, Ventura County Superior Court, Case No. 56-  
22 2016-004485186-CU-OE-VTA; *Prince v. Ponder Environmental Services, Inc.*, Kern County Superior  
23 Court, Case No. BCV-16-100784; *Ramirez v. Crestwood Operations, LLC*, Kern County Superior  
24 Court, Case No. BCV-17-100503; *Reyes v. Halliburton Energy Services, Inc.*, Kern County Superior  
25 Court, Case No. S-1500-CV-280215; *Rodriguez v. B&L Casing Serve, LLC et al.*, Kern County  
26 Superior Court, Case No. S-1500-CV-282709; *Marketstar Wage and Hour Cases*, Alameda County  
27 Superior Court, Case No. JCCP004820; *Rodriguez et al. v. Delta Sierra Beverage, LLC*, Sacramento  
28 County Superior Court, Case No. 34-2017-00206727; *Stuck v. Jerry Melton & Sons Construction, Inc.*,

1 Kern County Superior Court, Case No. BCV-16-101516; *Blevins v. California Commercial Solar, Inc.*,  
2 Kern County Superior Case, No. BCV-17-100571; *Cisneros et al v. Wilbur-Ellis Company*, LLC, Kern  
3 County Superior Court, Case No. BCV-17-102836; and *Castro et al. v. General Production Service of*  
4 *California, Inc.*, Kern County Superior Court, Case No. BCV-15-101164. Shunt was also certified as  
5 class counsel in *Fulmer et al. v. Golden State Drilling, Inc.*, Kern County Superior, Court Case No. S-  
6 1500-CV-279707; *Manas et al. v. Kenai Drilling Limited*, Los Angeles County Superior, Court Case  
7 No. BC546330; and *Nuncio et al. v. MMI Services, Inc.*, Kern County Superior Court, Case No. S-  
8 1500-CV-282534, cases that were certified after a contested class certification. Shunt is managing at  
9 least a dozen class actions currently pending in California.

10           6.       John M. Bickford is a Senior Associate at my office. John received his  
11 undergraduate degree in 2008 from California State University Channel Islands, graduating with an  
12 Economics B.A. John earned his Juris Doctor degree and graduated *cum laude* from Pepperdine  
13 University School of Law in 2011. While in law school, John externed for Chief Judge Alex Kosinski  
14 for the United States Court of Appeals for the Ninth Circuit. He was also the Business Production  
15 Editor for the Pepperdine Law Review and the Chair and Problem Author for Pepperdine’s annual  
16 National Entertainment Law Moot Court Competition. John was admitted to practice in California in  
17 2011. The focus of John’s practice is currently on class actions, wage-and-hour law, and employment  
18 law, and he specializes in complex legal writing and research. John has been appointed class counsel  
19 in numerous class actions cases, including *Wilson v. The La Jolla Group*, Fourth District Court of  
20 Appeal, Division One, Case No. 37-2018-00046934-CU-OE-CTL; *Vasquez v. Leprino Foods Co.*,  
21 United States District Court for the Eastern District of California, Case No. 1:17-cv-00796-AWI-  
22 BAM; *Howell v. Leprino Foods Co.*, United States District Court for the Eastern District of California,  
23 Case No. 1:18-CV-01404-AWI-BAM; *Pena v. Taylor Farms Pac., Inc.*, United States Court of  
24 Appeals for the Ninth Circuit, Case Nos. 15-15965 and 15-15966; *Pole v. Estenson Logistics, LLC*,  
25 United States District Court for the Central District of California, Case No. CV 15-07196 DDP  
26 (Ex); *Clemens v. Hair Club for Men, LLC*, United States District Court for the Northern District of  
27 California, Case No. C 15-01431 WHA; *Campbell v. Vitran Express Inc.*, United States District Court  
28 for the Central District of California, Case No. CV 11-5029 RGK (SHx). John has also argued

1 numerous times before the California Courts of Appeal and the United States Court of Appeals for the  
2 Ninth Circuit, including in *Moss Bros. Toy, Inc. v. Ruiz*, Fourth District Court of Appeal, Division  
3 Two, Case No. E067240; *Nelsen v. Legacy Partners Residential Inc.*, Fourth District Court of Appeal,  
4 Division One, Case No. A132927; *Campbell v. DoorDash Inc.*, First District Court of Appeal, Case  
5 No. A159296; *Ruiz v. Moss Bros. Toy, Inc.*, Fourth District Court of Appeal, Division Two, Case No.  
6 E063953; *Heller v. Carmel Partners Inc.*, Second District Court of Appeal, Division Two, Case No.  
7 B253512; *Malone v. Superior Court*, Second District Court of Appeal, Division Three, Case No.  
8 B253891. John has been selected by Super Lawyers as a Rising Star every year since 2016.

9           7.       At the time of this declaration, the number of Class Members confirmed by  
10 Defendants Pacific Groservice Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods  
11 (“Defendants”) is estimated to be one thousand four hundred seventy-four (1,474).

12           8.       Defendants are a wholesale distributor of grocery, beverage, frozen, and  
13 janitorial products to members that include independent grocery stores, markets, gas stations, and  
14 convenience stores. This case involves all current and/or former hourly paid non-exempt persons  
15 employed by Defendants in California at any time beginning December 28, 2016, through and  
16 including July 27, 2022 (“Class,” “Class Members,” and “Class Period”). Plaintiff alleges that during  
17 the Class Period, Defendants’ non-exempt employees worked on an hourly basis.

18           9.       On August 19, 2020, Plaintiff Blea, a former hourly-paid, non-exempt worker  
19 at Defendants’ facility, provided written notice to the California Labor and Workforce Development  
20 Agency (“LWDA”) of the specific provisions of the Labor Code he contends Defendants violated and  
21 the theories supporting his contentions.

22           10.      On December 28, 2020, after the sixty-five (65) day notice period expired,  
23 Plaintiff Blea filed a representative Private Attorneys General Act of 2004 (“PAGA”) action against  
24 Defendants in the Superior Court of California, County of Santa Clara. Specifically, Plaintiff Blea  
25 claimed Defendants: (a) failed to pay for all hours worked, (b) failed to pay minimum and overtime  
26 wages; (c) failed to provide compliant meal and rest breaks; (d) failed to timely pay wages during  
27 employment; (d) failed to timely pay wages upon termination; (e) failed to provide complete and  
28 accurate wage statements; and (f) failed to reimburse business expenses.

1           11.     The Parties attended mediation on Plaintiff Blea’s claims with mediator Jeffery  
2 Ross, Esq. on April 27, 2022. Under the auspices of the mediator, the Parties were eventually able to  
3 reach an agreement on settlement of the action.

4           12.     Following mediation and pursuant to the terms of the settlement, on May 11,  
5 2022, Plaintiff Blea filed a First Amended Complaint in the Superior Court of California, County of  
6 Santa Clara, adding the following wage-and-hour class action claims: (1) violation of Labor Code  
7 sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a)  
8 (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period  
9 premiums); (4) violation of Labor Code sections 1194, 1197.1, and 1191 (unpaid minimum wages);  
10 (5) violation of Labor Code sections 201, 202, 203 (final wages not timely paid), and 204; (6) violation  
11 of Labor Code section 226 (non-compliant wage statements); (7) violation of Labor Code sections  
12 2800 and 2802 (failure to reimburse business expenses); and (8) violation of California Business and  
13 Professions Code section 17200, *et seq.*

14           13.     Defendants generally and specifically deny any and all liability or wrongdoing  
15 of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability  
16 of any sort, and contend that for any purpose other than settlement, the Class Action is not appropriate  
17 for class or representative treatment. Defendants assert several defenses to the claims and have denied  
18 any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action.

19           14.     After Plaintiff Blea filed the representative PAGA action, Plaintiff engaged in  
20 discovery. Plaintiff propounded one (1) set of form interrogatories, one (1) set of special  
21 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of  
22 documents. Plaintiff also prepared a draft *Belaire-West* notice and began the process of meeting and  
23 conferring to obtain the witness contact information. Plaintiff’s diligent pursuit of formal discovery  
24 led the Parties to meet and confer and agreed to attend mediation and engage in an informal exchange  
25 of data.

26           15.     Prior to the mediation on April 27, 2022, and both before and after the lawsuit  
27 was first filed, the Parties conducted a significant investigation of the facts and law. Specifically,  
28 Defendants produced hundreds of pages of documentation relating to its policies, practices, and

1 procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours  
2 worked, meal and rest period policies, bonus plans, shift differentials, and payroll and operational  
3 policies and time and pay records. Plaintiff reviewed time records, pay records, and information  
4 relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number  
5 of workweeks in the Class Period. Plaintiff also analyzed arbitration agreements that may have  
6 prevented the matter from moving forward as a representative matter. Plaintiff also interviewed several  
7 Class Members who worked for Defendants during the Class Period. In all, the sampling included data  
8 for 650 Class Members consisting of 129,000 shifts of time data and 26,929 corresponding pay period  
9 data.

10           16.     The Parties agree that the above-described investigation and evaluation, as well  
11 as the information exchanged during the settlement negotiations, are more than sufficient to assess the  
12 merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

13           17.     Based upon the information provided by Defendants and interviews Class  
14 Counsel had with non-exempt employees, Plaintiff contends – and Defendants denies – that  
15 Defendants failed to provide employees with legally mandated rest breaks. Firstly, Plaintiff asserts  
16 that, in practice, employees were regularly pressured to forgo receiving compliant rest breaks.  
17 Specifically, employees were supposedly assigned heavy workloads that frequently forced them to  
18 work through or take late rest breaks. For example, if employees were in the middle of delivery,  
19 Plaintiff contends employees had no choice but to complete their delivery before they were permitted  
20 to take rest breaks. Furthermore, Plaintiff asserts that the nature of employees' work (*i.e.*, inventory  
21 management with tight shipping and receiving windows) apparently came at the expense of skipping  
22 their rest breaks to ensure they satisfied Defendants' expectations. Even when employees were able to  
23 take rest breaks, they were allegedly interrupted by coworkers and supervisors asking work-related  
24 questions and being reminded about work-related tasks. Finally, Plaintiff contends that despite these  
25 violations, Defendants' policy purportedly failed to properly advise employees of their right to  
26 premium wages, and employees were not paid such wages for non-compliant rest breaks.

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1           18. Plaintiff also asserts – and Defendants deny – that Defendants failed to provide  
2 employees with legally mandated meal breaks. Specifically, Plaintiff contends that, like rest breaks,  
3 heavy workloads coupled with the nature of employees’ work (*i.e.*, donning and doffing PPEs, waiting  
4 in line) supposedly pressured employees to skip, cut short, or take late meal breaks. For example, if  
5 employees were in the middle of a task (*i.e.*, delivering goods), they allegedly had no choice but to  
6 either work through or take their meal breaks at later times. Plaintiff contends that this apparently  
7 extended to not receiving second meal breaks even if employees were scheduled to work shifts  
8 exceeding ten (10) hours. Finally, Plaintiff contends that despite these alleged violations, Defendants’  
9 policy supposedly failed to advise employees of their right to receive premium wages, and employees  
10 were not consistently paid premium wages for non-compliant meal breaks.

11           19. Next, Plaintiff alleges – and Defendants deny – that Defendants failed to pay  
12 employees for all hours worked. Defendants purportedly had in place stringent policies that left  
13 employees feeling like they had no choice but to work additional hours off-the-clock. Firstly, the  
14 overtime policy also apparently discouraged overtime and double-time work by requiring employees  
15 to obtain prior approval from supervisors with the threat of disciplinary action attached. Collectively,  
16 this allegedly deterred employees from reporting all hours worked to avoid giving the appearance of  
17 working unauthorized overtime or double time even if they were forced to perform pre-shift  
18 preparatory work. This was apparently made worse by Defendants’ attendance policy that expected  
19 employees to be at the workstations and ready to work by the start of their shifts, forcing employees  
20 to arrive at work earlier than usual to perform any and all preparatory work prior to clocking in. Finally,  
21 some off-the-clock work employees were purportedly forced to perform included waiting in line to  
22 clock in and out, cleaning trucks, organizing inventory, COVID-19 screening, donning and doffing  
23 PPEs, and security checks. Thus, a combination of stringent policies and improper, uniform practices  
24 allegedly resulted in Defendants failing to compensate employees for all hours worked.

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1           20.     Next, Plaintiff asserts – and Defendants deny – that Defendants failed to include  
2 bonuses and incentives in employees’ regular rates of pay for purposes of overtime compensation,  
3 overtime wages, and sick leave pay. Defendants paid certain employees various bonuses and  
4 incentives, including a driver bonus, referral bonus, sign-on bonus, and other bonuses. However,  
5 allegedly Defendants did not factor these payments into employees’ regular rates when calculating  
6 overtime and paying overtime wages and sick leave. Instead, the pay records Defendants produced  
7 reveal that Defendants purportedly calculated overtime as only one and one half (1.5) times employees’  
8 base hourly rates and paid both overtime wages and sick leave at employees’ base hourly rates. These  
9 practices supposedly resulted in employees being under-compensated.

10           21.     Additionally, Plaintiff alleges – and Defendants deny – that Defendants failed  
11 to reimburse employees for necessary business expenses. Specifically, Plaintiff contends that  
12 Defendants required employees to use their personal cell phones every day to communicate with  
13 coworkers, supervisors, and customers. Moreover, Defendants allegedly expected employees to use  
14 their personal vehicles for work-related purposes, such as picking up lunches. However, Defendants  
15 purportedly did not reimburse employees for their personal cell phone usage or the gas and mileage  
16 for personal vehicles.

17           22.     Moreover, Plaintiff alleges – and Defendants deny – that Defendants are liable  
18 for issuing non-compliant wage statements. Specifically, Defendants supposedly issued wage  
19 statements in violation of Labor Code section 226(a) because of the underlying violations discussed  
20 above (*i.e.*, failure to properly and consistently pay all meal and rest break premiums owed; failure to  
21 accurately record all hours worked; failure to calculate bonuses and incentives into employees’ regular  
22 rates for purposes of overtime compensation and sick leave pay). Even if Defendants assert that its  
23 violation of section 226(a) (which it denies) is trivial, the California courts have held that strict  
24 compliance with section 226(a) is exactly what is intended.

25           23.     Finally, Plaintiff contends – and Defendants deny – that Defendants are liable  
26 for waiting time penalties. Specifically, Plaintiff asserts that Defendants’ employees are entitled to  
27 back underpaid overtime and compensation for time purportedly worked off-the-clock as well as  
28 supposedly non-compliant meal and rest breaks, thereby triggering waiting time penalties under Labor

1 Code section 203, according to Plaintiff. Thus, Plaintiff contends that Defendants owes wages and  
2 compensation for missed meal and rest breaks as a matter of fact and law. Plaintiff further contends  
3 that Defendants intentionally failed or refused to perform an act, which was required to be done,  
4 constituting “willful” conduct, and justifying “waiting-time” penalties under Labor Code section 203  
5 to its former employees.

6           24. Defendants deny Plaintiff’s contentions in their entirety. Among other things,  
7 Defendants deny Plaintiff’s meal and rest break contentions on the grounds that it provided breaks  
8 within compliant times and those non-exempt employees were allowed to use their meal and rest break  
9 time for their own purposes. Defendants also point to meal break waivers signed by most of its non-  
10 exempt employees that relieved it of the obligation to provide meal periods in many instances.  
11 Defendants also contend that it did not assign heavy workloads, nor did the nature of employees’ work  
12 force them to forgo receiving compliant meal and rest breaks. By extension, Defendants argue that its  
13 meal and rest break policies were compliant throughout the Class Period. Further, Defendants counter  
14 that whether non-exempt employees took meal and rest breaks during compliant time frames and were  
15 relieved of all duties are questions that can only be resolved by resorting to individualized inquiries of  
16 each non-exempt employee and, therefore, class certification is not appropriate. Defendants also assert  
17 that it paid its employees for all hours worked, including overtime, minimum, and premium wages.  
18 Moreover, Defendants counter that it did not have policies or practices that pressured employees to  
19 work additional hours off-the-clock. Defendants also assert that the bonuses paid were discretionary  
20 and that they did not need to be factored into the regular rate. In addition, Defendants counter that only  
21 some employees were eligible for such payments. Defendants further contend that it reimbursed  
22 employees for all necessary business expenses, including personal cell phone and vehicle use, to the  
23 extent such expenses were necessarily incurred. Finally, Defendants argue that any failure to comply  
24 with California labor laws (which it denies) was an honest mistake made in good faith. Thus,  
25 Defendants contend any alleged conduct cannot be deemed “willful” under Labor Code section 203.

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1           25.     The Parties agreed to go to mediation with an experienced wage-and-hour  
2 mediator, Jeffery Ross, Esq., that took place on April 27, 2022. During the mediation, the Parties  
3 discussed the risks of continued litigation as well as the risks of certification and risks on the merits of  
4 the claims versus the benefits of settlement. With the assistance of the mediator, the Parties were able  
5 to reach an agreement on settlement, the terms of which were memorialized in the Joint Stipulation  
6 and Settlement Agreement (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or  
7 “Settlement”), that the Parties now seek Preliminary Approval of. Attached hereto as **Exhibit 2** is a  
8 true and correct copy of the Agreement.

9           26.     The Parties have agreed (subject to and contingent upon the Court’s approval)  
10 that this action be settled and compromised for the non-reversionary total sum of \$2,500,000 (“Gross  
11 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to Class  
12 Counsel in an amount not to exceed \$875,000 (35% of the Gross Settlement Amount) to compensate  
13 Class Counsel for work already performed and all work remaining to be performed in documenting  
14 the settlement, administrating the settlement, and securing Court approval; (b) the Cost Award to Class  
15 Counsel in an amount not to exceed \$25,000 for reimbursement of litigation costs and expenses; (c)  
16 the Class Representative Enhancement Payment in the amount of \$10,000 to Plaintiff for his service  
17 as the Class Representative and in recognition of his work and efforts in obtaining the benefits for the  
18 Class and undertaking the risk of paying litigation costs in the event this matter had not successfully  
19 resolved; (d) Administration Costs to CPT Group, Inc. (“CPT Group”), the Settlement Administrator,  
20 in an amount not to exceed \$20,000; and (e) the PAGA Payment of \$100,000, seventy-five percent  
21 (75%) of which (\$75,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$25,000)  
22 (“PAGA Distribution”) will be part of the Net Settlement Amount to be distributed to Class Members,  
23 on a pro rata basis, in accordance with the Agreement.

24           27.     The amount of actual litigation costs will be provided to the Court in  
25 conjunction with Plaintiff’s motion for final approval. At that time, Plaintiff will ask the Court to  
26 approve the amount of these costs. If Plaintiff’s actual litigation costs exceed \$25,000, Plaintiff will  
27 only seek reimbursement in the amount of \$25,000. If the amount awarded is less than the amount  
28 requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall

1 become part of the Net Settlement Amount and will be distributed to all Class Members who do not  
2 submit a valid and timely request to exclude themselves from the Settlement (“Participating Class  
3 Members”).

4           28. After all Court-approved deductions from the Gross Settlement Amount, it is  
5 estimated that \$1,472,000 (“Net Settlement Amount”) will be distributed to Class Members – with an  
6 average gross Individual Settlement Share estimated at \$998.64.

7           29. The Settlement Agreement was reached because of arm’s-length negotiations.  
8 Though cordial and professional, settlement negotiations have always been adversarial and non-  
9 collusive in nature. At the mediation, both Parties’ counsel conducted extensive arm’s-length  
10 settlement negotiations until an agreement was ultimately reached by all Parties.

11           30. Plaintiff and Class Counsel believe in the merits of the case but also recognize  
12 the expense and length of continued proceedings necessary to continue the litigation against  
13 Defendants through class certification, trial, and any possible appeals. Plaintiff and Class Counsel have  
14 also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties  
15 and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement  
16 negotiations, including formal mediation on April 27, 2022. Based on the foregoing, Plaintiff and Class  
17 Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable  
18 settlement and is in the Class’s best interests.

19           31. The Parties thoroughly investigated and evaluated the factual strengths and  
20 weaknesses of Plaintiff’s claims and Defendants’ defenses before reaching the proposed Settlement  
21 and engaged in sufficient investigation, research, and discovery to support the Settlement. The  
22 proposed Settlement was only possible following significant investigation and evaluation of  
23 Defendants’ relevant policies and procedures, as well as the data Defendants produced for the putative  
24 class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential  
25 damages. Furthermore, this case has reached the stage where “the Parties certainly have a clear view  
26 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*  
27 *Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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1           32. This investigation and evaluation informed Plaintiff’s central theories of  
2 liability. These claims are predicated on Defendants’ alleged failure to: (a) properly calculate and pay  
3 overtime wages; (b) failure to provide meal and rest breaks and pay applicable premiums; (c) failure  
4 to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements;  
5 (f) failure to reimburse business expenses; (g) violation of Labor Code section 2698, *et seq.* (PAGA);  
6 and (h) violation of Business & Professions Code sections 17200, *et seq.*

7           33. Defendants vehemently deny Plaintiff’s theories of liability and contend, as  
8 stated above, that all meal and rest breaks were provided in compliance with California law, that all  
9 wages were properly calculated and paid to Class Members, and that all wages were paid in a timely  
10 manner, that wage statements were provided in compliance with Labor Code section 226, and that all  
11 business expenses were reimbursed. Defendants further contend that any mistakes made (which it  
12 denies) were honest rather than willful. Finally, Defendants argue that if litigation were to continue,  
13 they feel confident that they would prevail.

14           34. Although Plaintiff believes the case is suitable for certification on the basis that  
15 there are company-wide policies that Plaintiff contends violate California law and uniformly affect the  
16 putative class members, uncertainties with respect to certification are always present. As the California  
17 Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class  
18 certification is always a matter of the trial court’s sound discretion. Decisions following *Sav-On Drug*  
19 *Stores, Inc.* have reached different conclusions concerning the certification of wage-and-hour claims.<sup>1</sup>

20           35. In addition to being able to discover the strengths and vulnerabilities associated  
21 with Plaintiff’s claims, in preparing for mediation, Defendants provided Plaintiff with a sampling of  
22 time and pay records and information regarding the estimated number of pay periods and workweeks  
23 worked by Class Members and along with their average hourly rate of pay. Defendants confirmed that

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24  
25 <sup>1</sup> (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of  
26 class claiming misclassification and ordering summary adjudication in favor of employees], review  
27 granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes  
28 only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class  
claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 [reversing  
denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141 Cal.App.4th 1422 [affirming denial of  
certification].)

1 there were approximately 95,703 workweeks worked by Class Members. Plaintiff was also able to  
2 determine that the average hourly rate for Class Members was \$17.89.

3           36. Specifically, Plaintiff asserts that Defendants failed to provide employees with  
4 legally mandated meal and rest breaks. Plaintiff also asserts Defendants failed to pay premium wages  
5 for non-compliant meal and rest breaks. An analysis of Defendants' time records has revealed that  
6 there were approximately 455,116 shifts that were eligible for rest breaks. Due to Defendants' alleged  
7 improper, uniform policies and practices described above, Plaintiff estimates that Defendants'  
8 exposure for rest break premiums would likely be approximately \$1,628,405 ((455,116 shifts x 20%  
9 violation rate) x \$17.89). Plaintiff's expert also analyzed that there were approximately 47,528 shifts  
10 that had either late, short, or missing first meals. It is likely that half these shifts (23,764) were not  
11 caused by Defendants' improper, uniform policies or practices, meaning employees chose to take late  
12 or short meal breaks. There were also approximately 6,106 shifts worked more than twelve (12) hours  
13 without a recorded meal break, for which a waiver would not apply. If proven, Defendants' exposure  
14 for meal break premiums would likely be approximately \$534,374.30 (29,870 shifts x \$17.89).

15           37. Moreover, Plaintiff contends that Defendants failed to compensate employees  
16 for all hours worked, including hours worked off-the-clock. Based on a reasonable estimate that Class  
17 Members would be able to prove that they worked approximately one (1) hour of off-the-clock work  
18 per week, a reasonable estimate of damages for this claim at trial would be approximately  
19 \$1,712,126.60 (95,703 workweeks x 1-hour x \$17.89). If using the overtime rate, as certain shifts  
20 exceeded eight (8) hours per day or forty (40) hours per week, the estimated damages at trial would be  
21 around \$2,567,711.40 (95,703 workweeks x 1-hour x rate of \$26.83).

22           38. Furthermore, Plaintiff asserts that Defendants failed to include non-  
23 discretionary bonuses and incentives in employees' regular rates of pay. Specifically, according to  
24 Plaintiff's expert's analysis, Defendants owe about \$35,737 in unpaid overtime wages due to  
25 Defendants' failure to factor bonuses and incentives into employees' regular rates for overtime  
26 compensation and sick leave pay purposes.

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1           39. Plaintiff also contends that Defendants failed to reimburse employees for all  
2 necessary business expenses. Specifically, Defendants purportedly expected employees to use their  
3 personal cell phones for work-related purposes yet supposedly failed to reimburse them for this usage.  
4 Arguably, at least twenty percent (20%) of the Class Members' personal cell phone charges are  
5 attributed to work. Using an average monthly charge of \$80.00, each monthly cost would be  
6 approximately \$16.00 per month. As a result, under Plaintiff's theory, the total amount that Defendants  
7 must reimburse employees for personal cell phone use is likely \$353,360 (22,085 months x \$16.00).  
8 In addition, Defendants purportedly required employees to use their personal vehicles for work-related  
9 purposes but apparently failed to reimburse them for gas or mileage. Likely ten percent (10%) of gas  
10 and mileage can be attributed to work. Using an average monthly gas bill of \$100, each monthly cost  
11 would be approximately \$10.00. Consequently, under Plaintiff's theory, the total amount that must be  
12 reimbursed for personal vehicle use is approximately \$220,850 (22,085 months x \$10.00). If proven,  
13 Defendants' total exposure for unreimbursed business expenses is \$574,210.

14           40. Furthermore, Plaintiff alleges that Defendants issued wage statements in  
15 violation of Labor Code section 226(a) and that its exposure to statutory penalties is substantial.  
16 Plaintiff calculates Defendants' maximum potential exposure as to this claim to be approximately  
17 \$3,432,000 (\$4,000 x 858 employees) (based on 51 average pay periods, which exceeds the maximum  
18 aggregate penalty of \$4,000).

19           41. Finally, Plaintiff asserts that Defendants is liable for waiting time penalties.  
20 Plaintiff calculates Defendants' maximum potential exposure as to this claim to be about \$4,035,984  
21 (8 hours x \$17.89 average hourly rate x approximately 940 former non-exempt employees x 30 days).

22           42. The provisions of the Labor Code potentially triggering PAGA penalties, in this  
23 case, include but are not limited to Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3,  
24 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2699, 2800, and 2802. Defendants asserted that,  
25 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but  
26 permissive and discretionary. Defendants also maintained that, in addition to its strong arguments  
27 against the underlying claims, it had a strong argument that it would be unjust to award maximum  
28 PAGA penalties given the law's unsettled state.

1           43.     Class Counsel calculated penalties under this cause of action by multiplying the  
2 number of active Class Members (because of the shortened statutory period for this claim) by the civil  
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code  
4 section 2699.5 that were applicable in this case. Class Counsel then applied discounts in light of the  
5 countervailing arguments with regard to the other causes of action, as well as the Court’s power to  
6 award “a lesser amount than the maximum civil liability.” (Lab. Code, § 2699, subd. (e)(2).)

7           44.     Given the state of the law and the range of PAGA penalties requested and  
8 actually awarded in California courts, it is difficult to determine a reasonable value and actual exposure  
9 for PAGA penalties. However, if PAGA penalties are granted on any one of the violations alleged in  
10 Plaintiff’s operative complaint, the total penalties exposure for the eligible pay periods could be  
11 approximately \$4,375,800 ([51 x \$100] x 858 employees).<sup>2</sup> Plaintiff calculated Defendants’ PAGA  
12 exposure using a one hundred percent (100%) violation rate based on the average number of pay  
13 periods (51) during the one-year statutory period. Multiplying the PAGA exposure by the number of  
14 alleged violations under the PAGA theories of recovery (6) gives potential civil penalties of  
15 \$26,254,800.

16           45.     Although Plaintiff argued they could obtain over \$26 million for PAGA  
17 penalties, it seems highly unlikely that the Court would award such a large amount. As noted above,  
18 courts have reduced PAGA penalties by about ninety percent (90%) where there are mitigating  
19 circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial  
20 court’s award of less than 10% of maximum PAGA penalty for meal break violations where the  
21 company sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as to  
22 whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be recovered  
23 in the same pay period for different Labor Code violations. On the one hand, Labor Code section 2699,  
24 subdivision (f) establishes “a civil penalty for a violation” (emphasis added), implying a separate civil  
25

26 \_\_\_\_\_  
27 <sup>2</sup> A recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual  
28 finding of a violation by a Labor Commissioner or court. (*Bernstein v. Virgin Am., Inc.* (9th Cir. 2021)  
990 F.3d 1157, 1172-1173.) As a result, Plaintiff estimated the amount of PAGA penalties using the  
“initial” penalty amount of \$100 under PAGA.



1 penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision  
2 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in subdivision  
3 (f)...on behalf of himself or herself and other current or former employees against whom one or more  
4 of the alleged violations was committed” (emphasis added). However, Defendants contended that the  
5 Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and  
6 *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which preclude the aggregation of PAGA  
7 penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and  
8 limited to the initial violation, the PAGA penalties would be limited to \$85,800 (858 employees x \$100  
9 initial violations) on the low end and \$514,800 (858 employees x \$100 x 6 theories of recovery) on  
10 the high end.

11           46. To the extent Defendants’ exposure remains in the millions of dollars, the civil  
12 penalties could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken  
13 liberties to dramatically reduce the civil penalties. (See e.g. *Viceral v. Mistras Grp., Inc.* (N.D. Cal.  
14 Oct. 11, 2016, 2016 WL 5907869 at 9\* [preliminarily approving class action settlement that included  
15 a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where “Plaintiffs  
16 face[d] a substantial risk of recovering nothing on either class or PAGA claims”]; *Costter v. Lyft, Inc.*  
17 (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class action settlement allocating  
18 a PAGA set-aside worth a fraction of the PAGA claims’ potential value, where the defendant’s  
19 obligations were “genuinely unclear” and there was no evidence the defendant acted deliberately or  
20 negligently failed to learn about its obligations].) Thus, under a more conservative approach, Class  
21 Counsel considered the possibility that the Court could assess only the initial violation rate, bringing  
22 the basic PAGA penalty to \$514,800 (858 employees x \$100 x 6 theories of recovery).

23           47. Plaintiff also recognized the risk that any PAGA award could be significantly  
24 reduced. Many of the causes of action brought were duplicative of the statutory claims, such as  
25 violations of Labor Code sections 201, 202, 203, 226.3, 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198,  
26 2800, and 2802. Thus, the maximum penalties for each pay period are not justified. It was indeed  
27 arguable whether the Court would award the maximum penalties under the law. Thus, allocating  
28 \$100,000 to PAGA civil penalties was reasonable as it represents nearly twenty percent (19.5%) of the

1 realistic PAGA exposure. Also given the fact that Defendants are also paying an additional \$2,400,000  
 2 in the class settlement is a sufficient deterrent that achieves the policy goals of PAGA. When PAGA  
 3 penalties are negotiated in good faith and “there is no indication that [the] amount was the result of  
 4 self-interest at the expense of other Class Members,” such amounts are generally considered  
 5 reasonable.<sup>3</sup>

6 48. Excluding the civil penalties, which could be completely discretionary, for the  
 7 reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial,  
 8 would be approximately \$11,952,837 on the low end and \$12,808,422 on the high end.

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,628,405.00	70%	50%	\$244,260.75
Meal Break Premiums	\$534,374.30	50%	30%	\$187,030.90
Overtime/Minimum Wage: Off-the-Clock Work	\$1,712,126.60 to \$2,567,711.40	60%	60%	\$273,940.25 to \$410,833.82
Overtime/Minimum Wage: Regular Rate	\$35,737.00	10%	25%	\$24,122.47
Unreimbursed Business Expenses	\$574,210.00	25%	70%	\$129,197.25
Wage Statement Penalty	\$3,432,000	50%	50%	\$858,000.00
Waiting Time Penalty	\$4,035,984	50%	30%	\$1,412,594.40
<b>MAXIMUM TOTAL EXPOSURE</b>	\$11,952,837 to \$12,808,422			\$3,129,146.02 to \$3,266,039.59

20 49. Based on the rest break theories described above, Class Counsel believes a  
 21 seventy percent (70%) certification risk and a fifty percent (50%) merits risk are justified. Plaintiff  
 22 contends that, due to the nature of their work and the heavy workloads, employees were supposedly  
 23 regularly forced to work through or postpone their rest breaks. Moreover, even when employees were  
 24 able to take rest breaks, these breaks were allegedly interrupted or cut short by supervisors and  
 25

26  
 27 <sup>3</sup> (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009  
 28 U.S.Dist.LEXIS 33900, at \*24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,  
 “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any  
 damages to the PAGA claims.”.)

1 coworkers. However, Class Counsel understands obtaining certification for non-compliant rest breaks  
2 due to improper, uniform practices will be difficult and problematic because rest breaks are not  
3 recorded. Proving the existence of improper, uniform practices would require Class Counsel to  
4 undertake the time-consuming process of collecting declarations from putative class members and  
5 establishing a uniform practice. Further, Defendants may produce evidence and testimony at trial  
6 demonstrating that employees were rarely, if ever, assigned heavy workloads. In other words,  
7 employees were choosing to skip, cut short, or take late rest breaks rather than being pressured to do  
8 so. Thus, Class Counsel believes this justifies a seventy percent (70%) certification risk and a fifty  
9 percent (50%) merits risk.

10           50.     Class Counsel also applies a fifty percent (50%) certification risk and a thirty  
11 percent (30%) merits risk based on the meal break theories described above. Plaintiffs contend that  
12 employees were allegedly prevented from taking compliant meal breaks for the same reasons they  
13 were supposedly prevented from taking compliant rest breaks. That is, a combination of heavy  
14 workloads and the nature of employees' work purportedly left employees with no choice but to forgo  
15 taking compliant meal breaks. But while meal break violations are easier to prove than rest break  
16 violations because they are recorded, Class Counsel understands there are still risks associated with  
17 obtaining certification. Moreover, Defendants can be expected to point to meal break waivers signed  
18 by Class Members. Class Counsel would have to undertake the arduous task of gathering declarations  
19 from putative class members to prove the existence of improper, uniform meal break practices. In  
20 addition, Defendants may bring in evidence and testimony at trial to show that it had no knowledge  
21 employees were not receiving compliant meal breaks. This would mean that employees were choosing  
22 to work through, postpone, and/or shorten their meal breaks or to stay on the work premises during  
23 their meal breaks instead of being pressured to do so by heavy workloads, non-compliant policies, or  
24 Defendants' expectations. Nevertheless, the basis of the exposure is based on time-keeping data that  
25 shows clear facial violations, thereby justifying less risk once the case proceeds to trial. Thus, Class  
26 Counsel applies a fifty percent (50%) certification risk and a thirty percent (30%) merits risk.

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1           51.     Moreover, Class Counsel believes Plaintiff’s theories regarding unpaid wages  
2 due to off-the-clock work warrant a sixty percent (60%) certification risk and another sixty percent  
3 (60%) merits risk. Plaintiff contends that Defendants’ policies, enforced with the threat of disciplinary  
4 action, allegedly pressured employees to work additional hours off-the-clock without asking for  
5 compensation. This purportedly ranged from Defendants’ policies incorporating arbitrary terms to  
6 downplay hours worked, generally discouraging overtime and double-time work, and pressuring  
7 employees to arrive to work earlier than usual. As a result, Plaintiff alleges that Defendants purportedly  
8 underpaid its employees. However, Class Counsel understands that it will be difficult to certify theories  
9 involving off-the-clock work as they are not recorded. Like Plaintiff’s meal and rest break claims, this  
10 will force Class Counsel to gather declarations from putative class members to prove Defendants had  
11 improper, uniform practices in place. Additionally, Defendants may produce evidence and testimony  
12 at trial to reveal that its policies were never intended to pressure off-the-clock work or discourage  
13 overtime or double-time work. In other words, employees chose to work off-the-clock at their volition  
14 without Defendants’ knowledge rather than being forced to do so. Defendants may also present  
15 testimony to show that any employee who worked off-the-clock was promptly compensated if the issue  
16 was brought up to Defendant. By extension, Defendants can also bring in evidence to argue that  
17 supervisors generally approved overtime and double-time work requests. This would mean that  
18 supervisors and Defendants’ policies were not pressuring employees to arrive to work earlier than  
19 usual to complete preparatory work without recording all hours worked. Consequently, Class Counsel  
20 believes this warrants a sixty percent (60%) certification risk and another sixty percent (60%) merits  
21 risk.

22           52.     Further, Class Counsel assigns a ten percent (10%) certification risk, and a  
23 twenty-five percent (25%) merits risk regarding Plaintiff’s regular rates theories. Specifically, Plaintiff  
24 contends that Defendants allegedly paid its employees non-discretionary bonuses and incentives but  
25 failed to include these bonuses and incentives in employees’ regular rates of pay for purposes of  
26 overtime compensation, premium wages, and sick leave pay. Instead, based on the pay records  
27 Defendants produced, Plaintiff asserts that Defendants calculated overtime as one and one half (1.5)  
28 times employees’ base hourly rates and paid both premium wages and sick leave at employees’ base

1 hourly rates, which resulted in significant amounts of wages. Hence, these regular rates theories are  
2 readily certifiable, which justifies Class Counsel’s relatively low certification risk. However, no class  
3 certification is guaranteed. Defendants may introduce evidence and testimony at trial to show that not  
4 all employees were eligible for or may have received non-discretionary bonuses and incentives. By  
5 extension, Defendants may even produce evidence to indicate that these non-discretionary bonuses  
6 and incentives were not paid every pay period, meaning most pay periods were unaffected. Finally,  
7 Defendants can bring in evidence to argue that the payment of its bonuses and incentives was  
8 discretionary, which can offset the entirety of Plaintiff’s argument. Thus, Class Counsel assigns a ten  
9 percent (10%) certification risk, and a twenty-five percent (25%) merits risk.

10 53. Next, Class Counsel believes a twenty-five percent (25%) certification risk and  
11 a seventy-five percent (75%) merits risk for unreimbursed business expenses are warranted. Plaintiff  
12 contends that Defendants required employees to use their personal cell phones and personal vehicles  
13 for work-related purposes. This ranged from speaking to coworkers and supervisors to pick up lunch  
14 for coworkers. However, Plaintiff asserts that Defendants failed to reimburse employees for work-  
15 related personal cell phone usage or gas and mileage. But Defendants may produce evidence and  
16 testimony at trial to show that few if any, employees were required to use their personal cell phones or  
17 vehicles for work-related purposes. By extension, Defendants might bring in evidence and testimony  
18 to reveal that employees who incurred such expenses were promptly reimbursed if they made a  
19 reimbursement request. This would also mean that if employees were not reimbursed, it is because  
20 they failed to request for reimbursement. For these reasons, Class Counsel believes this warrants a  
21 twenty-five percent (30%) certification risk and a seventy-five percent (75%) merits risk.

22 54. Plaintiff’s Labor Code section 226(a) claim for wage statement penalties is  
23 based on Defendants’ failure to maintain accurate records. Specifically, Defendants purportedly failed  
24 to accurately record all hours worked, failed to pay premium wages for non-compliant meal and rest  
25 breaks, and failed to factor in non-discretionary bonuses and incentives into employees’ regular rates  
26 for purposes of overtime compensation, premium wages, and sick leave pay. This purportedly resulted  
27 in Defendants issuing wage statements that failed to accurately state the total hours worked, the gross  
28 wages earned, and the net wages earned in violation of section 226(a). However, Defendants’ errors

1 most likely did not affect all employees. Also, Defendants can be expected to argue that its employees’  
2 wage statements were not inaccurate as to wages paid and that premium payments are not wages for  
3 purposes of section 226(a). Class Counsel applies a fifty percent (50%) certification risk, and another  
4 fifty percent (50%) merits risk.

5           55. Finally, Plaintiff’s Labor Code section 203 claim for waiting time penalties is  
6 based on Plaintiff’s claims for underpaid minimum and overtime wages, as well as missed meal and  
7 rest breaks. If Plaintiff prevails on these underlying claims, it will lead to waiting time penalties.  
8 However, Defendants may argue that any failure to pay wages due and owing to employees in a timely  
9 manner (which it denies) was not “willful” under section 203 and was instead an honest mistake made  
10 in good faith. Moreover, because certification of this claim derives from the successful prosecution of  
11 the other claims, additional risk and merits discounts must be credited. For these reasons and the  
12 reasons explained in the previous sections, Class Counsel believes a fifty percent (50%) certification  
13 risk and a thirty percent (50%) merits risk are justified.

14           56. Based on this analysis, the realistic recovery for this case is \$3,129,146.02 on  
15 the low end and \$3,266,039.59 on the high end. The Gross Settlement Amount of \$2,500,000 is about  
16 seventeen percent (19.51%) of the maximum potential exposure and is approximately seventy-five  
17 percent (76.65%) of the maximum realistic exposure at trial, which is a good settlement.

18           57. The settlement payout to Class Members will be apportioned twenty percent  
19 (20%) in compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of  
20 claims for alleged non-wage amounts, including penalties, interest, and reimbursement. The maximum  
21 exposure totals \$12,808,422. Of this amount, \$2,603,338.40 is derived from claims for wages  
22 (overtime, underpayment of wages due to regular rate, and off-the-clock work). The remaining  
23 \$10,204,973 derives from non-wages (meal and rest break penalties, 226 and 203 penalties, and  
24 reimbursement claims). The wage claims consist of twenty percent (20%) of the total potential  
25 exposure.

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1           58.     The proposed Class is ascertainable and numerous as to make it impracticable  
2 to join all Class Members, and there are common questions of law and fact that predominate over any  
3 questions affecting any individual Class Member. Plaintiff contends that as a former hourly-paid, non-  
4 exempt employee of Defendant, his claims are typical of the claims of the Class, and Class Counsel  
5 will fairly and adequately protect the interests of the Class. Also, Plaintiff asserts that the prosecution  
6 of separate actions by individual Class Members would create the risk of inconsistent or varying  
7 adjudications, and a class action is, therefore, superior to other available means for the fair and efficient  
8 adjudication of the case. As discussed below, this case is amenable to class certification.

9           59.     This case involves one thousand four hundred seventy-four (1,474) Class  
10 Members, which was confirmed by Defendant. Therefore, the Class is sufficiently numerous.<sup>4</sup>  
11 Furthermore, all Class Members can and will be identified by Defendants to the Settlement  
12 Administrator through a review of Defendants' employment records concerning hourly-paid non-  
13 exempt persons employed by Defendants in California at any time during the Class Period.

14           60.     Plaintiff asserts common issues of fact and law predominate as to each of the  
15 claims alleged. Plaintiff contends all hourly-paid non-exempt persons employed by Defendants during  
16 the Class Period were subject to the same or similar employment practices, policies, and procedures.  
17 All Plaintiff's claims surround Defendants' alleged common schemes of failing to maintain compliant  
18 meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully  
19 and properly compensate employees for, *inter alia*, all hours worked, overtime work, non-compliant  
20 meal and rest breaks, and sick leave pay, and for wage statement and waiting time penalties.

21           61.     Plaintiff is a former employee of Defendant. Plaintiff alleges he and the Class  
22 Members were employed by the same company and injured by Defendants' common policies and  
23 practices related to: (a) meal and rest breaks; (b) uncompensated off-the-clock work; (c) improper  
24 rounding; (d) underpaid and properly calculated overtime wages, premium wages, and sick leave pay;  
25 (e) unreimbursed business expenses; (f) untimely paid wages; and (g) inaccurate wage statements.  
26 Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. Thus, Plaintiff's

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27 \_\_\_\_\_  
28 <sup>4</sup> (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that  
a proposed class of "as many as 190 current and former employees" is sufficiently numerous].)

1 claims as alleged arise from the same employment practices and are based on the same legal theories  
2 as those applicable to the Class.

3           62. Plaintiff has proven to be an adequate Class Representative. He has conducted  
4 himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary  
5 obligations, and has actively participated in the prosecution of this case. Plaintiff has spent time in  
6 meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding  
7 of his work environment and requirements. Further, Plaintiff has no interest that is adverse to the  
8 interests of the other Class Members.

9           63. The proposed Settlement is the product of serious, informed, non-collusive  
10 negotiations, has no obvious defects, does not improperly grant preferential treatment to the Class  
11 Representative, PAGA Representative, or segments of the Class, and falls within the range of fair and  
12 reasonable settlements. I believe that this non-reversionary settlement is in the best interests of the  
13 Class as fair, reasonable, and adequate. Therefore, I recommend approval of the Settlement.

14           64. The Settlement calls for the payment of the Attorney Fee Award in an amount  
15 of up to \$875,000. This request is fair, reasonable, and adequate to compensate Class Counsel for the  
16 substantial work they have put into this case and the risk they assumed by taking it in the first place. I  
17 have practiced law in Southern California since December of 2004, with most of my time focused  
18 solely on the prosecution of employment and wage-and-hour class action litigation. I am aware that  
19 the common and acceptable rate for contingency representation in wage-and-hour class action  
20 litigation is normally forty percent (40%) before trial, with the range being from thirty-three and one-  
21 third percent (33.3%) up to fifty percent (50%).

22           65. The Attorney Fee Award is intended to reimburse Class Counsel for all  
23 uncompensated work that they have already done and for all the work they will continue to do in  
24 carrying out and overseeing notification of the Class, communication with the Class regarding the  
25 proposed Settlement, and the settlement administration if the Settlement Agreement is preliminarily  
26 approved.

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# **EXHIBIT 1**

<b>Cases</b>	<b>Court</b>	<b>Case Number</b>	<b>Judge</b>
Jamie Contreras v. Stueves's Milk Transport, Inc.	San Bernardino County Superior Court	CIVDS1304440	David Cohn
Art Kelly et al. v. Barker Management, Inc.	Los Angeles County Superior Court	BC506120	Kenneth Freeman
Patrick Arrellano v. Tolt, LLC; Tolt Service Group, Inc.	Los Angeles County Superior Court	BC512644	Amy Hogue
Derya Keles et al. v. The Art of Shaving-FL, LLC	Alameda County Superior Court	RG13687151	Wynne Carville
Marc Newman v. Hyder & Company	San Diego County Superior Court	37-2013-00051617-CU-OE-CTL	John Meyer
Abigail Stahl v. Fred Leeds Properties, Inc.	Los Angeles County Superior Court	BC509716	John Wiley, Jr.
Johnny Esters et al. v. HBD LTD, Limited Partnership	Kern County Superior Court	S-1500-CV-279879 DRL	David Lampe
Brian Davidson et al. v. Lentz Construction General Engineering Contractor, Inc.	Kern County Superior Court	S-1500-CV-279842-LHB	Lorna Brumfield
Lindsay Griffiths v. Paper Source, Inc.	Los Angeles County Superior Court	BC506121	William Highberger
Gabriel Betancourt v. Hugo Boss USA	Los Angeles County Superior Court	BC506988	Kenneth Freeman
Stephen McDougale et al. v. Ensign Drilling Company (California), Inc.	Kern County Superior Court	S-1500-CV-279842-LHB	Lorna Brumfield
Cody Pierce v. Progress Rail Services Corporation	Kern County Superior Court	S-1500-CV-282596	David Lampe
Michael Weston et al. v. Helmerich & Payne International Drilling Co.	Kern County Superior Court	1500 CV279549	David Lampe
Rod Rodriguez v. B&L Casing Service, LLC	Kern County Superior Court	S-1500-CV-282709-DRL	David Lampe
Jose Duval et al. v. DBI Beverage, Inc.	Santa Clara County Superior Court	1-14-CV-266154	Peter Kirwan
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Kijana Wicker v. ASC Profiles LLC (PAGA)	Sacramento County Superior Court	34-2019-00270803-CU-OE-GDS	Judith S. Craddick
Janet Ugale et al. v. Allen Distribution, LP	San Joaquin County Superior Court	STK-CV-UOE-2020-0005807	Barbara Kronlund
Angela Burmayan v. Weck Analytical Environmental Services, Inc.	Los Angeles County Superior Court	20STCV30871	William F. Highberger
Rick Beltran v. Stremicks Heritage Foods, LLC	Orange County Superior Court	30-2019-01043445-CU-OE-CXC	Peter Wilson
Luis Searls v. Central Valley Eggs LLC	Kern County Superior Court	BCV-20-101910-JEB	J. Eric Bradshaw
Elisala Tela v. Metrocell Constrution, Inc. (PAGA)	San Bernardino County Superior Court	CIVDS1918537	David Cohn
Nina Brooks v. Action Property Management, Inc. (PAGA)	Los Angeles County Superior Court	BC562417	Daniel J. Buckley
Joshua Mendoza v. Savage Services Corporation	Los Angeles County Superior Court	18STCV04798	Daniel J. Buckley
Eddie Fulinara v. Genmark Diagnostics, Inc.	San Diego County Superior Court	37-2019-00000877-CU-OE-CTL	Ronald F. Frazier
Janine Salinas v. Jafra Cosmetics International, Inc.	Los Angeles County Superior Court	20STCV04284	Carolyn Kuhl
Joseph Hernandez v. Buttonwillow Warehouse Company, Inc.	Kern County Superior Court	BCV-19-100202-BCB	Bernard C. Barmann
Zulema Diaz v. Roxbury Surgery Center, LLC, et al.	Los Angeles County Superior Court	20STCV46531	Mel Red Recana
Daniel Rodriguez v. Means Engineering, Inc.	San Diego County Superior Court	37-2020-00024397-CU-OE-CTL	Katherine Bacal
Erika Martinez v. N.A.F.T.A Distributors	San Bernardino County Superior Court	CIVDS1938970	David Cohn
Juan Gomez v. IHI Power Services Corp.	Merced County Superior Court	20CV-02657	Brian McCabe
Jose Zuniga v. Central Valley Concrete, Inc.	Merced County Superior Court	20CV-00490	Brian McCabe
Brian Perez, et al. v. Merit Aluminum, Inc.	Riverside County Superior Court	RIC1904580	Sunshine S. Sykes
Jacob Schumacher, et al. v. Georgia Pacific Corrugated LLC	Central District Federal Court	CV 19-8632-DMG (AFMx)	Dolly M. Gee
Gerald Angeles, et al., v. iKrusher, Inc.	Contra Costa County Superior Court	MSC20-01312	Edward Weil
Robert Enriquez v. MCE Corporation	Contra Costa County Superior Court	MSC20-01744	Edward Weil
Buck Walsh, et al., v. Tandem Diabetes Care, Inc.	San Diego County Superior Court	A281153-48	Joan M. Lewis
Michane Greene v. Information Resources, Inc. d/b/a Scanscape	San Bernardino County Superior Court	CIVSB2024620	David Cohn
Francesca Burke, et al., v. Old Republic Home Protection Company, Inc., et al.	Contra Costa County Superior Court	MSC20-02203	Edward G. Weil
Shonie Shoemaker v. Broken Arrow Communications, Inc.	Merced County Superior Court	21CV-03517	Brian McCabe
David Pena v. San Joaquin Supply dba Ernest Packaging	Los Angeles County Superior Court	19STCV43500	Amy D. Hogue

<b>Cases</b>	<b>Court</b>	<b>Case Number</b>	<b>Judge</b>
Blain Smith, et al. v. KS Industries, L.P.	Kern County Superior Court	S-1500-CV-284188-BCB Consolidated with BCV-21-101300	Bernard C. Barmann
Daniel Ybanez v. Navy Federal Credit Union	San Diego County Superior Court	37-2019-00016815-CU-OE-CTL	Gregory W. Pollack
Amanda Cunningham v. Cottonwood H.C., Inc. dba Cottonwood Post-Acute Rehab	Yolo County Superior Court	CV2021-1375	Daniel M. Wolk
Devon Zabalza v. Customized Distribution Services, Inc.	San Bernardino County Superior Court	CIVDSI931371	David Cohn
Adedeji Adejobi v. Nulaid Foods, Inc. et al.	San Joaquin County Superior Court	STK-CV-UOE-2020-0008625	Barbara Kronlund
Robert Enriquez v. Global Modular, Inc.	Merced County Superior Court	20CV-03162	Brian McCabe
Nguyen Ngo, et al. v. Medimpact Healthcare Systems, Inc.	San Diego County Superior Court	37-2020-00015657-CU-OE-CTL	Keri Katz
Liduvina Jurado v. Gallo Cattle Company	Merced County Superior Court	18CV-01342	Brian McCabe
Aharon Spry, et al. v. Prime Lube, Inc, et al.	San Bernardino County Superior Court	CIVDS2018738	David Cohn
Gorge Monjaraz v. H & U, Inc. d/b/a Sun Noodle California, LLC	Los Angeles County Superior Court	20MCV00285	Thomas D. Long
Eileen Velasquez, et al. v. Hi-Temp Insulation, Inc.	Merced County Superior Court	21CV-02505	Brian McCabe
Steven Jefferson v. McCormack Baron Management, Inc.	San Francisco County Superior Court	CGC-20-588162	Richard B. Ulmer Jr.
Mario Ceja v. Silvergate Bank	San Diego County Superior Court	37-2020-0016207-CU-OE-CTL	Ronald F. Frazier
Allen Morgan v. Wehah Farm, Inc dba Lundberg Family Farms	Butte County Superior Court	20CV02554	Stephen E. Benson
Sean Hammond, et al. v. Paul Durham Electric, Inc. fka Harold E. Nutter & Son, Inc.	Sacramento County Superior Court	34-2020-00291142-CU-OE-GDS	Christopher Krueger
Fateema Brown v. Fair Oaks Estates, Inc.	Sacramento County Superior Court	34-2020-00278787	Richard Sueyoshi
Charisma Coleman, et al. v. H&E Equipment Services, Inc. et al.	Alameda County Superior Court	RG20069157	Brad Seligman
Daria Regester, et al. v. The Jackson Laboratory dba The Jackson Laboratory, West	Sacramento County Superior Court	34-2021-00310014-CU-OE-GDS	Christopher E. Kreugar
Theresa Romandia v. Mattson Technology, Inc.	Alameda County Superior Court	RG20053121	Brad Seligman
Christopher Luque, et al. v. Glovis America, Inc.	Ventura County Superior Court	56-2021-00550720-CU-OE-VTA	Jeffrey G. Bennett
Earl Rhodes, et al. v. Cavotec Dabico US Inc., et al.	Orange County Superior Court	30-2021-01177305-CU-OE-CXC	Peter Wilson
Stacey Collins v. Mobile Medical Examination Services, LLC dba MEDXM, et al.	Orange County Superior Court	30-2020-01130693-CU-OE-CXC	Glenda Sanders
Alexandra Pelgrift v. The 21st Amendment Brewery Cafe	San Francisco County Superior Court	CGC-20-585227	Ethan P. Schulman
Kevin McNeil, et al. v. KIK International, LLC., et al.	San Bernardino County Superior Court	CIVDS1915438	Bryan F. Foster
Jose Lozano v. Peterson Brothers Consutruction, Inc.	Merced County Superior Court	22CV-00103	Brian McCabe
Sterling Skinner v. MoreFlavor, Inc.	Alameda County Superior Court	RG20084231	Brad Seligman
Tom Tesene v. Serrato- McDermott, Inc. dba Allied Auto Stores	Alameda County Superior Court	RG21090589	Brad Seligman
Joseph Jimenez v. Makita USA, Inc.	Los Angeles County Superior Court	20STCV21732	Lawrence P. Riff
Tiffany Gaston, et al. v. Onrad, Inc.	Riverside County Superior Court	RIC2004221	Craig Riemer
Brittany Dam v. Rubber-Cal, Inc.	Orange County Superior Court	30-2020-01176087-CU-OE-CXC	Peter Wilson
Justin Avalos v. Indio Products, Inc.	Los Angeles County Superior Court	20STCV40470	Elihu M. Berle
Gene Weber v. Sunrise Medical (US) LLC	Merced County Superior Court	20CV-01461	Brian McCabe
Roberto Flores v. Rivermaid Trading Company	San Joaquin County Superior Court	STK-CV-UOE-2020-0008623	Jayne Lee

<b>Cases</b>	<b>Court</b>	<b>Case Number</b>	<b>Judge</b>
Tom Tesene v. Bossard, Inc.	Alameda County Superior Court	RG21088612	Frank Roesch
Jose Rivera, et al. v. Acco Brands Corporation, et al.	San Bernardino County Superior Court	CIVDS2020490	David Cohn
Katrina Trester, et al. v. Delicato Vineyards	San Benito County Superior Court	CU-22-00016	J. Omar Rodriguez
Beverly Salom, et al. v. Lumentum Operations LLC, et al.	Santa Clara County Superior Court	19CV354198	Sunil R. Kulkarni
Alfredo Salas v. Golden Specialty Foods, LLC	Merced County Superior Court	22CV-00393	Brian McCabe
Alan Childs, et al. v. Dal Chem, Inc. dba Alexis Oil Company	Riverside County Superior Court	CVRI2100684	Craig Riemer
Wesley v. Premier Equipment Rental, Inc.	Kern County Superior Court	BCV-20-101-858-BCB	Bernard C. Barmann

# **EXHIBIT 2**

## JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Jacob Blea (“Plaintiff”), on behalf of the Class (as defined below) and Defendants Pacific Groservice Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

### I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$18,000.00, shall not exceed \$20,000.00 and shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award**: The amount, not to exceed 35% of the Gross Settlement Amount or \$875,000.00 finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Class**: All hourly-paid or non-exempt employees employed by Defendants within the State of California during the Class Period, excluding those persons that have signed release agreements.
- E. **Class Action**: The representative action filed by Plaintiff Jacob Blea pursuant to the Private Attorneys General Act on December 28, 2020, entitled *Jacob Blea v. Pacific Groservice, Inc.*, Case No. 20CV375150 in the State of California, Santa Clara County Superior Court and the First Amended Complaint adding class claims for (1) failure to pay regular and overtime wages under state law; (2) failing to maintain and provide accurate time records and wage statements; (3) failure to pay minimum wages; (4) failure to timely pay final wages; (5) waiting time penalties; (6) failure to provide or pay for meal breaks, including failure to pay premiums calculated at the regular rate including bonuses and sick pay; (7) failure to provide or pay for rest periods, including failure to pay premiums calculated at the regular rate; (8) failure to reimburse business expenses; and (9) violation of California’s unfair competition law, Filed May 11, 2022.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, and Phillip D. Song of Justice Law Corporation.

- G. Class Data:** The Class Data means information regarding Class Members that Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member's full name; (ii) each Class Member's last-known address and telephone number; (iii) each Class Member's Social Security and Employee ID number, if any; (iv) the Class Member's relevant dates of employment; and (v) any information in Defendant's possession that the Settlement Administrator may reasonably need to calculate workweeks, pay periods, Participating Class Members' Individual Settlement Shares, and Eligible Aggrieved Employees' Individual PAGA Payments.
- H. Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. Class Notice:** The Notice of Class and Representative Action Settlement, which will be provided to Class Members in both English and Spanish, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- J. Class Period:** The time period from December 28, 2016, to July 27, 2022, or the date of preliminary approval, whichever is sooner.
- K. Class Representative or Plaintiff:** Jacob Blea.
- L. Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff Jacob Blea for his services as a Class Representative, which will not exceed \$10,000. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This enhancement is subject to approval of the Court.
- M. Complaint:** The class action complaint filed by Plaintiff which includes the original representative action complaint filed on December 28, 2022, and the First Amended Complaint filed in May 11, 2022.
- N. Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs subject to proof, which shall not exceed \$25,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- O. Counsel for Defendant:** Attorneys Donald P. Sullivan and Kathleen B. Roney of Jackson Lewis, P.C.
- P. Court:** The State of California, Santa Clara County Superior Court.

- Q. Defendants:** Pacific Groservice, Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods.
- R. Effective Final Settlement Date:** The effective date of this Settlement will be when the Defendants fully fund the Gross Settlement Amount (“GSA”), which will be no later than fourteen (14) calendar days after entry of the order granting final approval. If an objection is made but no appeal filed, Defendants will pay the GSA no later than fourteen (14) calendar days after the running of the appeal period. If an appeal is filed, Defendants will pay the GSA no later than fourteen (14) calendar days after the final judgment becomes final and is no longer subject to appeal.
- S. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA payment shall consist of all hourly-paid or non-exempt employees employed by Defendants within the State of California during the PAGA Period.
- T. Exclusion Form:** The Election Not To Participate In (“Opt Out From”) Class Action Settlement Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- U. Judgment or Final Approval:** The final Order entered by the Court finally approving this Agreement.
- V. Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Two Million, Five Hundred Thousand Dollars (\$2,500,00.00). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant’s portion of payroll taxes as the Class Members’ current or former employer is not included in the GSA and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- W. Individual PAGA Payment(s):** The amount payable to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employee under the terms of this Settlement Agreement. Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment.
- X. Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members

are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement.

- Y. LWDA:** California Labor and Workforce Development Agency.
- Z. Net Settlement Amount or NSA:** The total amount of money available from the GSA for distribution to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement, the PAGA Payment, and Administration Costs.
- AA. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- BB. PAGA Notice:** The PAGA Notice refers to the pre-filing notice of Labor Code violations served by Plaintiff on the LWDA on August 19, 2020.
- CC. PAGA Payment:** The PAGA Payment consists of \$100,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Class Action. Seventy-five percent (75%) of the PAGA Payment (\$75,000) shall be paid to the LWDA, and twenty-five percent (25%) (\$25,000) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- DD. PAGA Period:** The period between August 19, 2019, and July 27, 2022, or the date of preliminary approval, whichever is sooner.
- EE. PAGA Released Claims:** PAGA Released Claims means all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the operative complaint or in the PAGA Notice that arose during the PAGA Period, which includes, inter alia, alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 246(1), 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802. The period of the PAGA release extends to the limits of the PAGA period.
- FF. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement.
- GG. Parties:** Plaintiff Jacob Blea as an individual and as a Class Representative, and Defendants Pacific Groservice, Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods.
- HH. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.



- II. Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff and Class Counsel.
- JJ. Released Claims:** The released claims means all claims alleged or could have been alleged based on the facts alleged in the operative complaint, including all of the following causes of action: (a) Violation of California Labor Code §§ 510 and 1198 (Unpaid Wages and Overtime); (b) Violation of California Labor Code §§ 226.7, 512(a) (Unpaid Meal Period Premiums); (c) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (d) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages); (e) Violation of California Labor Code § 203 (Wages and Final Wages Not Timely Paid); (f) Violation of California Labor Code §§ 226, 432, and/or 1198.5 (Non-Compliant Wage Statements, Personnel Records, and Time Records); (g) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (h) Violations of California Business & Professions Code § 17200, *et seq.*; (i) Violation of California Labor Code § 246 (Failure to Pay Sick Pay); (j) Claims for Statutory Penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698 *et seq.* (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The release does not include claims that as a matter of law cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims for the recovery of workers’ compensation benefits.
- KK. Released Parties:** Pacific Groservice, Inc., Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods, and their parents, predecessors, successors, all affiliates, subsidiaries, officers, directors, members, agents, employees, and stockholders.
- LL. Response Deadline:** Sixty (60) calendar days from the initial mailing of the Class Notice.
- MM. Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is CPT Group, Inc..

## **II. RECITALS**

- A.** Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. Prior to mediation, Defendants produced documents relating to its policies, practices, and procedures regarding, inter alia, payment of wages, reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, overtime pay policies, and payroll and operational policies. As part of Defendants’ production, Plaintiff also reviewed time records, pay records, and information relating to the size and

scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. Plaintiff also interviewed several Class Members who worked for Defendants throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

- B. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including a formal mediation on April 27, 2022. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- C. Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- D. Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than this Settlement, the Class Action is not appropriate for class or representative treatment. Defendants assert a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.
- E. Plaintiff's Claims.** Plaintiff asserts that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed

as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

### **III. SETTLEMENT TERMS AND CONDITIONS**

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes, that Defendants are obligated to pay under this Settlement Agreement is Two Million, Five Hundred Thousand Dollars (\$2,500,000.00).
- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted by and on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendants reserve the right to contest any issues relating to class certification, liability and damages.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, and the approval of the Court, the Settlement Administrator will disburse the Gross Settlement Amount as follows:
  - 1. To the Plaintiff, Jacob Blea.** In addition to his respective Individual Settlement Share, and subject to the Court's approval, Plaintiff Jacob Blea will receive up to Ten Thousand Dollars and Zero Cents (\$10,000) as a

Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment and shall hold harmless Defendants, Class Counsel and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and will be distributed to Participating Class Members. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiff seek, request, or demand an increase in the Gross Settlement Amount on that basis or any basis.

2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) or \$875,000.00 of the GSA and a Cost Award not to exceed \$25,000. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Fee and Cost Awards. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and will be distributed to Participating Class Members. In the event that the Court reduces the requested Attorney Fee Award and/or Cost Award, neither Plaintiff nor Class Counsel shall have the right to revoke the Settlement, and it will

remain binding, nor will Plaintiff seek, request, or demand an increase in the Gross Settlement Amount on that basis or any basis.

- 3. To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share payment apportioned as wages. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendants' portion of payroll withholding taxes. The Settlement Administrator will submit Defendants' portion of payroll withholding tax calculation to Defendants for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities. Defendants will pay their portion of employer-side payroll taxes at the same time Defendants fund the entire Gross Settlement Amount, in accordance with the requirements of Section III (I)(8)(a) of this Settlement Agreement.
- 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$20,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and will be distributed to Participating Class Members.
- 5. To Participating Class Members.** The Settlement Administrator will pay each Participating Class Member an Individual Settlement Share from the NSA.

  - a. Individual Settlement Share Calculation.** The Individual Settlement Share is calculated based on each Participating Class Member's pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as a member of the Class during the Class Period, divided by (ii) the total number of weeks worked by all Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount. If a Class Member opts out of the Settlement, his or her pro rata share of the Net Settlement Amount will flow back to the Net Settlement Amount and be distributed to the Participating Class Members on a pro rata basis. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Class Member based on their dates of employment for purposes of this calculation.
  - b. Tax Treatment for Individual Settlement Shares.** Each Participating Class Member's Individual Settlement Share will be

apportioned as follows: 20% wages and 80% interest, penalties, and reimbursements. The portion paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-4 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

**6. To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period.

**a. Individual PAGA Payment Calculation.** The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on pay periods during the PAGA Period as follows: (i) the number of pay periods he or she worked as an Eligible Aggrieved Employee during the PAGA Period, divided by (ii) the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of periods worked by each Eligible Aggrieved Employee based on their dates of employment for purposes of this calculation.

**b. Tax Treatment for Individual PAGA Payments.** Each Eligible Aggrieved Employee's Individual PAGA Payments will be apportioned as 100% penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely

responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments.

**G. Appointment of Settlement Administrator.** The Settlement Administrator shall be responsible for preparing, translating into Spanish, printing, and mailing the Class Notice to the Class Members; creating a static settlement website that will go live on the same date the Notice Packet is first mailed to the Class Members and that will include, among other things, the Complaint, standalone generic copies of the Class Notice and Exclusion Form, all papers filed in connection with the Preliminary Approval Hearing (including all orders filed by the Court), all papers filed in connection with the Final Approval Hearing (including the fee motion and the final approval motion), and, if the Settlement is approved, the Final Approval Order and Judgment; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and re-mailing Class Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; calculating Eligible Aggrieved Employees' Individual PAGA Payment; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing; mailing Individual Settlement Shares to Participating Class Members; mailing Individual PAGA Payments to Eligible Aggrieved Employees; mailing the portion of the PAGA Payment due to the LWDA to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members, Eligible Aggrieved Employees and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the State Controller's Unclaimed Property Fund in the name of the Class Member; providing for the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in CPT Group, Inc. or otherwise have a relationship with CPT Group, Inc. that could create a conflict of interest.

**H. 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 advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. 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 advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor 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.

## **I. Procedure for Approving Settlement.**

### **1. Motion for Preliminary Approval and Conditional Certification.**

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Exclusion Form.
- b. At the Preliminary Approval Hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval Hearing.
- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement with prejudice, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall not operate to terminate or cancel this Settlement Agreement.



- 2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:
- a.** Within five (5) business days after entry of the Preliminary Approval Order, Defendants shall deliver the Class Data to the Settlement Administrator. The Settlement Administrator shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. The Settlement Administrator shall not distribute or use the Class Data or any information contained therein for any purpose other than to administer this Settlement.
  - b.** At the same time Defendants provide the Class Data to the Settlement Administrator, Defendants will also provide the Class Data to Class Counsel. Class Counsel shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. Class Counsel shall not distribute or use the Class Data or any information contained therein for any purpose other than in connection with this Settlement.
  - c.** Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes.
  - d.** Within fourteen (14) calendar days after Defendants' deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail.
  - e.** If a Class Notice is returned because of an incorrect address, within three (3) business days from receipt of the returned Class Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, telephoning the Class Member at his or her last-known telephone number to ask for a current address; tracking all undelivered mail; performing address searches for all

mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are obtained. If the Settlement Administrator is unable to obtain a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail, will have an additional fourteen (14) days to submit an Exclusion Form, or file and serve an objection to the Settlement or dispute the information provided in their Class Notice. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice and shall provide on the envelope the Class Member's new deadline to respond.

- f. Class Members may dispute the information provided in their Class Notice, but must do so in writing by the Response Deadline. Class Members may submit written disputes by faxing or emailing them to the Settlement Administrator by the Response Deadline or mailing them to the Settlement Administrator by regular U.S. mail, postmarked by the Response Deadline. To the extent Class Members dispute the number of workweeks and/or pay periods to which they have been credited or the amount of their Individual Settlement Share and/or Individual PAGA Payment, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks and/or pay periods that should be applied and/or the Individual Settlement Share and/or Individual PAGA Payment to which the Class Member may be entitled. The Settlement Administrator's determinations of workweek/pay period and Individual Settlement Share/Individual PAGA Payment challenges will not be appealable or otherwise challengeable. The Settlement Administrator will mail Class Members notice of the determinations of their challenges within three (3) business days of the Settlement Administrator's determination.
- g. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude

himself or herself from the Settlement and will be bound by the Settlement.

- h.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- i.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. Before the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

### **3. Objections to Settlement.**

- a. Class Notice.** The Class Notice will provide that the Class Members who wish to object to the Settlement may do so by submitting a written objection to the Settlement Administrator by the Response Deadline. Class Members may submit objections by faxing or emailing them to the Settlement Administrator by the Response Deadline or mailing them to the Settlement Administrator by regular U.S. mail, postmarked by the Response Deadline.
- b. Format.** Written objections should: (a) state the objecting Class Member's full name, address, and telephone number; (b) include the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (e) provide true and correct copies of any exhibit(s) the objecting Class Member intends to offer at the Final Approval Hearing. However, an objection will be deemed valid as long as it is submitted or postmarked to the Settlement Administrator by the Response Deadline and provides sufficient information to allow the Settlement Administrator to ascertain that the Class Member objects to the Settlement or to some term(s) of the Settlement.

- c. **Objector Appearances.** Participating Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. The failure to file and serve a written objection does not waive a Participating Class Member's right to appear at and make an oral objection at the Final Approval Hearing. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak, regardless of whether the Class Member has submitted a written objection.

#### 4. Request for Exclusion from the Settlement (“Opt-Out”).

- a. **Class Notice.** The Class Notice will provide that Class Members who wish to exclude themselves from the class action Settlement may do so by submitting a written request for exclusion to the Settlement Administrator by the Response Deadline. Class Members may submit requests for exclusion by faxing or emailing them to the Settlement Administrator by the Response Deadline or mailing them to the Settlement Administrator by regular U.S. mail, postmarked by the Response Deadline. The written request for exclusion should: (a) include the Class Member's name and address, and the last four digits of the Class Member's Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member; and (d) be submitted or postmarked no later than the Response Deadline. However, a request for exclusion will be deemed valid as long as it is submitted or postmarked to the Settlement Administrator by the Response Deadline and provides sufficient information to allow the Settlement Administrator to ascertain the Class Member's identity and that the Class Member wants to opt out of the Settlement.
- b. **No Opt Out From PAGA.** Eligible Aggrieved Employees will not be able to exclude themselves from receiving their portion of the PAGA Payment. The Class Notice will inform Eligible Aggrieved Employees that they cannot opt out of the PAGA portion of the settlement and explain that they will not be permitted to pursue any action under PAGA against the Released Parties for any claim that arose during the PAGA Period and that they will still be entitled to their Individual PAGA Payments, even if they submit a valid and timely request for exclusion thereby electing to opt out of the class portion of the Settlement.
- c. **Validity and Effect.** Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an

Individual Settlement Share. A Class Member who does not complete and submit a timely Exclusion Form will be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

**d. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who submitted valid requests for exclusion, and the number of Class Members who submitted invalid requests for exclusion.

**e. Defendant's Option to Terminate.** If five percent (5%) or more of the Class Members submit requests for exclusion, within ten (10) business days after learning that the number of Class Members who have opted out of the Settlement exceeds the five percent (5%) threshold, as reflected in the Settlement Administrator's weekly report, Defendants may, at their sole option, withdraw from the Settlement, and this Agreement will become null and void. If Defendants exercise their right to withdraw from the Settlement under this provision, Defendants will be responsible for paying all Administration Costs incurred up to the point of Defendants' withdrawal from and termination of the Settlement.

**5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment. Nothing in this provision shall interfere with the ethical duties Class Counsel owe to the Class Members.

**6. Motion for Final Approval.**

**a.** Class Counsel will file unopposed motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement; and (5) PAGA Payment. Class Counsel will also move the Court for an order of

Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members and the PAGA Released Claims of the Eligible Aggrieved Employees. Class Counsel's motion for Final Approval of the Settlement, including Final Approval of the (1) Attorney Fee Award, (2) Cost Award, (3) Administrative Costs, (4) Class Representative Enhancement, and (5) PAGA Payment, shall be filed at least sixteen (16) Court days before the Final Approval Hearing.

- b. If the Court denies Final Approval of the Settlement with prejudice, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
  - c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law. The Final Approval Order and Judgment will be posted on the Settlement Administrator's website.
7. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.

**8. Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendants' Counsel and Class Counsel. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

**a. Funding the Settlement:** No later than fourteen (14) calendar days after the date the Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no plaintiff in intervention at the time the Court grants Final Approval of the Settlement, the date the Court enters judgment granting Final Approval of the Settlement, Defendants shall deposit the Gross Settlement Amount of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00) needed to pay the entire GSA, as well as Defendants' share of employer-side payroll taxes, by wiring the funds to the Settlement Administrator.

**b. Disbursement:**

**1.** Within fourteen (14) calendar days after the Settlement Administrator's receipt of the GSA, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendants shall have no liability for PAGA claims by or on behalf of Eligible Aggrieved Employees during the PAGA Time Period, which are released under this Agreement. The Settlement Administrator will not pay the Attorney Fee Award, Cost Award, and Class Representative Enhancement until after the Settlement Administrator has distributed the Individual Settlement Shares and Individual PAGA Payments to the Class Members and Eligible Aggrieved Employees.

2. Before the Settlement Administrator mails the Individual Settlement Shares and Individual PAGA Payments to the Participating Class Members and Eligible Aggrieved Employees, the Settlement Administrator shall update the Participating Class Members' and Eligible Aggrieved Employees' addresses using the National Change of Address Database. The Settlement Administrator will mail Individual Settlement Shares and Individual PAGA Payments to all Participating Class Members and Eligible Aggrieved Employees, including those for whom Notice Packets were return as undeliverable. With respect to returned checks directed to Participating Class Members and Eligible Aggrieved Employees whose Notice Packets were returned as undeliverable and for whom no new addresses are ascertained, the Settlement Administrator shall take no further steps. The Settlement Administrator shall remail all other returned checks to any forwarding address provided by the U.S.P.S. or, if no forwarding address is provided by the U.S.P.S., shall perform a skip trace and take other reasonable steps to attempt to find a current address for the Class Member and shall mail the returned check to the Class Member's ascertained current address. The Settlement Administrator shall remail checks to ascertained current addresses within seven (7) business days of the return of the check.

c. **QSF**: The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

9. **Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. The void date of each Individual Settlement Share and Individual PAGA Payment check shall be stated on each check. If any checks are returned as undeliverable and without a forwarding address, the Settlement Administrator will conduct a skip trace search to find the most up to date mailing address and re-mail the checks promptly. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a



reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, pay the amount of the unclaimed sums to the State Controller's Unclaimed Property Fund in the name of the Class Member.

**10. Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. Class Counsel shall file the Settlement Administrator's declaration with the Court within ten (10) calendar days of receipt.

**11. Defendants' Legal Fees.** Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

- J. Release of Claims.** As of the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.
- K. PAGA Release.** As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns are hereby voluntarily and knowingly barred from bringing any action for the PAGA Released Claims during the PAGA Period. The release of the PAGA Released Claims is effective regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion. The release does not include claims that as a matter of law cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims for the recovery of workers' compensation benefits.
- L. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to Plaintiff in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), in recognition of his work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for himself and his spouse, heirs, successors, and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever,

arising from the beginning of time through the date the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to her employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's general release of claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

**M. Miscellaneous Terms**

- 1. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class should be certified in the Class Action or could proceed on a representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and Plaintiff's and Defendants' willingness to settle the Class Action will have no bearing on, and will not be admissible in connection with, any litigation, administrative proceeding or other special proceeding (other than solely in connection with this Settlement).
  
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payments, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members or Eligible Aggrieved Employees. The Parties agree that any Class Representative Enhancements, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's, Participating Class Members' or Eligible Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee

pension benefit plan or employee welfare benefit plan sponsored by Defendant.

- 3. Publicity.** Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, attorneys' fees/costs, in any other pleading filed with the Court in conjunction with the Settlement. Class Counsel and Plaintiff agree to decline to respond to any media inquiries concerning the Settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest and approved by the Court.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has 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 rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 13. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement.
- 14. Jurisdiction of the Superior Court, County of Santa Clara.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court in and for the County of Santa Clara for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 15. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted,

and the validity and enforceability of the remaining provisions shall not be affected thereby.

**16. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

**17. Escalator Clause.** The Parties negotiated this Settlement based on the representation that there are approximately 95,703 workweeks during the Class Period. If the actual number of workweeks exceeds 95,703 by more than 10%, the Gross Settlement Amount shall be increased pro rata per additional workweek. Any additional amount to be paid shall be included in the Gross Settlement Amount. The Settlement Administrator will provide Class Counsel with the final workweek count prior to the initial mailing of the Notice Packets.

**18. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 09/06/2022, 2022

**JACOB BLEA**

  
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Dated: 10/11/2022, 2022

**PACIFIC GROSERVICE, INC.**

  
\_\_\_\_\_

By:  
Agent for Pacific Groservice, Inc.

Dated: 10/1/2022, 2022

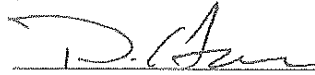
**PITTSBURG WHOLESALE GROCERS, INC.  
D/B/A PITCO FOODS.**



By:  
Agent for Pittsburg Wholesale Grocers, Inc. d/b/a  
Pitco Foods.

Dated: 9/6/, 2022

**JUSTICE LAW CORPORATION**



Douglas Han, Esq.  
*Attorneys for Plaintiff* Jacob Blea, on behalf of  
himself and all others similarly situated

Dated: October 11, 2022

**JACKSON LEWIS, P.C.**



Donald P. Sullivan, Esq.  
Kathleen B. Roney, Esq.  
*Attorneys for Defendants* Pacific Groservice, Inc.  
and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco  
Foods

# **EXHIBIT A**

**NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

*A court authorized this notice. This is not a solicitation.  
 This is not a lawsuit against you, and you are not being sued.  
 However, your legal rights are affected by whether you act or don't act.*

**TO: All hourly-paid or non-exempt employees employed by Pacific Groservice, Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods within the State of California from December 28, 2016 to July 27, 2022.**

The California Superior Court, County of Santa Clara, has granted preliminary approval of a proposed settlement (“Settlement”) of the above-captioned class and representative action (referred to in this Notice as the “Class Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class and Representative Action Settlement (“Notice”) carefully.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS AND REPRESENTATIVE ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

<b>Your Individual Settlement Share:</b>	<b>[\$\$\$\$\$]</b>
<b>Your Number of Weeks Worked as a Class Member:</b>	<b>[#####]</b>

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**1. Why Have I Received This Notice?**

The personnel records of Pacific Groservice, Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods (“Defendants”) indicate that you may be a Class Member and therefore eligible to receive money from a class and representative action lawsuit against Defendants, entitled *Jacob Blea v. Pacific Groservice, Inc. et al.* (“Class Action”). You are a Class Member if you were employed by Defendants as an hourly-paid or non-exempt employee within the State of California at any time during the period from December 28, 2016, to July 27, 2022 (the “Class Period”). You are an Eligible Aggrieved Employee if you were employed by Defendants as an hourly-paid or non-exempt employee within the State of California at any time during the period from August 19, 2019, to July 27, 2022 (the “PAGA Period”).

Defendants strongly deny the allegations set forth in the Class Action, and the Court has not decided whether there is any merit to the allegations. Nevertheless, to avoid the costs of continued litigation, the parties have agreed to settle the lawsuit. A Preliminary Approval Hearing was held on **December 8, 2022**, in the Santa Clara County Superior Court. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court has determined that there is sufficient evidence to suggest that the proposed Settlement may be fair, adequate, and reasonable and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on **[date of Final Approval Hearing]**, 2022 at **[time a.m./p.m.]**, before the Honorable Sunil R. Kulkarni, at the Santa Clara County Superior Court — Downtown Superior Courthouse, located at 191 N. First Street, San Jose California, 95113, Department 1.

**2. What Are My Options?**

The purpose of this Notice is to inform you of the proposed Settlement and your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

***Important Note: Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.***

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OPTIONS	CLASS MEMBERS	ELIGIBLE AGGRIEVED EMPLOYEES
<b>DO NOTHING</b>	If you do nothing and the Court grants final approval of the Settlement, you will become part of the Class Action, and the Settlement Administrator will mail you a check for your Individual Settlement Share, which will be based on the total number of weeks you worked as a Class Member during the Class Period, at your address of record. You will give up your right to pursue the Released Claims as defined in Section No. 9 below, meaning you will be unable to sue the Released Parties, including Defendants, for the Released Claims.	If you do nothing and the Court grants final approval of the Settlement, you will become part of the Class Action, and the Settlement Administrator will mail you a check for your Individual PAGA Payment, which will be based on the total number of pay periods you worked as an Eligible Aggrieved Employee during the PAGA Period, at your address of record. You will give up your right to pursue the PAGA Released Claims as defined in Section No. 9 below, meaning you will be unable to sue the Released Parties, including Defendants, for the PAGA Released Claims.
<b>DISPUTE WORKWEEK/PAY PERIOD CALCULATIONS AND/OR INDIVIDUAL SETTLEMENT SHARES/INDIVIDUAL PAGA PAYMENTS</b>	If you believe the number of workweeks with which you have been credited, and thereby the amount of your Individual Settlement Share, as provided in this Notice, is inaccurate, you may dispute this information. The procedure for disputing this information is described in Section No. 6 below.	If you believe the number of pay periods with which you have been credited, and thereby the amount of your Individual PAGA Payment, as provided in this Notice, is inaccurate, you may dispute this information. The procedure for disputing this information is described in Section No. 6 below.
<b>OBJECT</b>	You may object to the class portion of the proposed Settlement. If you would like to object, you may not opt out of the class portion of the Settlement. The procedure for objecting to the proposed Settlement is described in Section No. 8 below. If you object and the Court approves the proposed Settlement, the Settlement Administrator will mail you your Individual Settlement Share check, and you will give up your right to sue the Released Parties, including Defendants, for the Released Claims as defined in Section No. 9 below.	You do not have the right to object to the PAGA portion of the proposed Settlement. If the Court approves the proposed Settlement, the Settlement Administrator will mail you your Individual PAGA Payment check, and you will give up your right to sue the Released Parties, including Defendants, for the PAGA Released Claims as defined in Section No. 9 below.

<b>REQUEST EXCLUSION (“OPT OUT”)</b>	If you do not want to participate in the class portion of the proposed Settlement, you may request exclusion from, or opt out of, the class portion of the proposed Settlement. If the Court grants final approval of the Settlement, the Settlement Administrator will not mail you an Individual Settlement Share, and you will not give up the right to sue the Released Parties, including Defendants, for any of the Released Claims as defined in Section No. 9 below. The procedure for requesting exclusion from the class portion of the proposed Settlement is described in Section No. 7 below.	You do not have the right to request exclusion from, or opt out of, the PAGA portion of the proposed Settlement. If the Court grants final approval of the Settlement, the Settlement Administrator will mail you your Individual PAGA Payment check, and you will give up the right to sue the Released Parties, including Defendants, for the PAGA Released Claims as defined in Section No. 9 below. Eligible Aggrieved Employees who opt out of the class portion of the proposed Settlement will still be mailed their Individual PAGA Payment checks and will give up the right to sue the Released Parties for the PAGA Released Claims.
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**3. *What Is This Case About?***

Plaintiff Jacob Blea (“Plaintiff”), a former employee of Defendants, commenced this class and representative action lawsuit against Defendants for alleged wage-and-hour violations in the Santa Clara County Superior Court (Case Number 20CV375150).

Plaintiff’s lawsuit against Defendants sought civil penalties, attorneys’ fees and other relief based on alleged violations of the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for underlying violations of the California Labor Code, including: 1) failure to pay overtime; 2) failure to provide meal period premiums; 3) failure to provide rest break premiums; 4) failure to pay minimum wages; 5) failure to timely pay final wages to terminated employees; 6) failure to comply with employee wage statement provisions of the California Labor Code; and 7) violation of the Unfair Competition Law. On May 11, 2022, Plaintiff amended his Complaint to add causes of action alleging class claims for Defendants’ violation of the California Labor Code as alleged in his representative PAGA Complaint.

The Court has not determined whether the claims advanced by Plaintiff have any merit. Nor has it decided whether this case could proceed as a class or representative action. Instead, both sides agreed to resolve the Class Action with no decision or admission of who is right or wrong.

In other words, the Court has not determined that Defendants violated any laws, nor has it decided in favor of Plaintiff or Defendants (the “Parties”); instead, both sides have agreed to resolve the Class Action with no decision or admission of who is right or wrong. By agreeing to resolve the Class Action, the Parties avoid the risks and costs of a trial.

Defendants deny all allegations made by Plaintiff, individually and on behalf of Class Members, in the Class Action and deny liability for any wrongdoing with respect to the alleged facts or causes of action asserted in the Class Action. The Settlement is not an admission by Defendants of any wrongdoing or an indication that any law has been violated.

**4. How Does This Settlement Work?**

In the Class Action, Plaintiff sued on behalf of himself and all other similarly situated employees who were employed by Defendants as hourly-paid or non-exempt employees within the State of California at any time during the Class Period. Plaintiff and other current and former employees comprise a “Class” and are “Class Members.”

The proposed Settlement has a class portion and a representative (PAGA) portion. Pursuant to the class portion of the Settlement, all Class Members who do not exclude themselves from the class portion of the Settlement by requesting to be excluded in the manner set forth in Section No. 8 below (“Participating Class Members”), will be paid Individual Settlement Shares and will release the Released Parties from the Released Claims described in Section No. 9 below. Pursuant to the representative (PAGA) portion of the Settlement, all Eligible Aggrieved Employees will be paid Individual PAGA Payments and will release the Released Parties from the PAGA Released Claims described in Section No. 9 below.

Plaintiff and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

**5. Who Are the Attorneys Representing the Parties?**

Attorneys for Plaintiff and the Class	Attorneys for Defendants
<p align="center"><b>JUSTICE LAW CORPORATION</b>            Douglas Han            Shunt Tatavos-Gharajeh            Phillip D. Song            751 N. Fair Oaks Avenue, Suite 101            Pasadena, California 91103            Telephone: (818) 230-7502            Facsimile: (818) 230-7259</p>	<p align="center"><b>JACKSON LEWIS, P.C.</b>            Donald P. Sullivan            Kathleen B. Roney            50 California Street, 9<sup>th</sup> Floor            San Francisco, California 94111            Telephone: (415) 394-9400            Facsimile: (415) 394-9401</p>

The Court has decided that Justice Law Corporation is qualified to represent the Class Members simultaneously for the purposes of this Settlement.

Class Counsel is working on your behalf. If you want your own attorney, you may hire one at your own cost.

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**6. *How Do I Dispute the Information Included in This Notice?***

Section No. 10 below states the number of workweeks with which you have been credited – meaning the number of workweeks you worked during the Class Period, based on Defendants’ records – and the estimated amount of your Individual Settlement Share based on this number of workweeks. If you are also an Eligible Aggrieved Employee, Section No. 10 below also states the number of pay periods with which you have been credited – meaning the number of pay periods you worked during the PAGA Period, based on Defendants’ records – and the estimated amount of your Individual PAGA Payment. If you believe the number of workweeks and/or pay periods with which you have been credited, and therefore the estimated amount of your Individual Settlement Share and/or Individual PAGA Payment, is inaccurate, you may dispute this information.

If you choose to dispute the information included in this Notice, you must do so in writing by **[Response Deadline]**. You may submit your written dispute to the Settlement Administrator by faxing or emailing your dispute to the Settlement Administrator by **[Response Deadline]**, or by mailing your dispute by regular U.S. mail to the Settlement Administrator, postmarked by **[Response Deadline]**, using the contact information below:

Fax Number: [INSERT FAX NUMBER]

Email Address: [INSERT EMAIL ADDRESS]

Mailing Address: Pacific Groservice, Inc. Settlement Administrator C/O CPT GROUP, INC., [INSERT ADDRESS]

Along with your dispute you must also produce and submit evidence to the Settlement Administrator, showing that the disputed information is inaccurate. If the Settlement Administrator does not receive evidence from you rebutting the disputed information, the number of workweeks and/or pay periods contained in Defendants’ records will be presumed correct, and your challenge will be rejected by the Settlement Administrator. However, if you do submit evidence rebutting the disputed information, the Settlement Administrator will evaluate this evidence and make the final decision as to the number of workweeks and/or pay periods with which you will be credited and the Individual Settlement Share and/or Individual PAGA Payment to which you will be entitled.

The Settlement Administrator’s determinations of workweek/pay period and Individual Settlement Share/Individual PAGA Payment disputes are not appealable or otherwise challengeable. The Settlement Administrator will mail you notice of the determination of your dispute.

Your dispute should state your name and must be submitted to the Settlement Administrator, along with your supporting evidence, by **[Response Deadline]**. You are encouraged to keep copies of any and all evidence you submit to the Settlement Administrator.

If you received a re-mailed Notice, you have an additional 14 days from the original response deadline to dispute the information included in your Notice. If your Notice is a re-mailed Notice, the envelope will indicate whether the Notice has been re-mailed and will state your new deadline to submit a dispute.

**7. *How Do I Object To The Settlement?***

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney. You may object to the Settlement by submitting a written objection to the Settlement

Administrator by **[Response Deadline]**. You may submit your written objection by faxing or emailing your objection to the Settlement Administrator by **[Response Deadline]**, or by mailing your objection by regular U.S. mail to the Settlement Administrator, postmarked no later than **[Response Deadline]**, using the contact information provided below:

Fax Number: [INSERT FAX NUMBER]

Email Address: [INSERT EMAIL ADDRESS]

Mailing Address: Pacific Groservice, Inc. Settlement Administrator C/O CPT GROUP, INC., [INSERT ADDRESS].

If you received a re-mailed Notice, you have an additional 14 days from the original response deadline to submit a written objection. If your Notice is a re-mailed Notice, the envelope will indicate whether the Notice has been re-mailed and will state your new deadline to submit an objection.

If you choose to object in writing, your objection should: (a) state your full name, address, and telephone number; (b) include the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval Hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval Hearing. However, a written objection will be deemed valid as long as it is submitted or postmarked to the Settlement Administrator by **[Response Deadline]** and provides enough information to allow the Settlement Administrator to understand that you object to the Settlement or to some term(s) of the Settlement.

Class Members may appear at the Final Approval Hearing and object, either in person or through the objector’s own counsel, even if they did not submit a written objection. Class Members’ timely and valid written objections to the Settlement will be considered even if the objector does not appear at the Final Approval Hearing. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak, regardless of whether they have made a written objection.

If the Court approves the Settlement over objections, objecting Class Members will be mailed Individual Settlement Shares and will be bound by the terms of the Settlement, meaning the Class Members will be unable to sue the Released Parties for the Released Claims. As stated above, Eligible Aggrieved Employees do not have the right to object to the PAGA portion of the Settlement. Thus, if the Court approves the Settlement, all Eligible Aggrieved Employees will be mailed their Individual PAGA Payments and will be bound by the terms of the Settlement, meaning the Eligible Aggrieved Employees will be unable to sue the Released Parties for the PAGA Released Claims.

You may not submit both a request for exclusion from the Settlement and an objection to the Settlement. In the event a Class Member submits both a valid request for exclusion and a valid objection, the request for exclusion will be deemed invalid, and the objection will remain valid.

<b>8. <i>How Do I Opt Out or Exclude Myself From This Settlement?</i></b>
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If you do not wish to participate in the class portion of the Settlement and do not want to receive an Individual Settlement Share, you can exclude yourself from the class portion of the Settlement (*i.e.*, “opt out”). A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT-OUT’ FROM) CLASS ACTION SETTLEMENT”) (the “Exclusion Form”) which can be used for this purpose has been provided to you along with this Notice; alternatively, you can submit your own written request for exclusion that includes all the same information. If

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Questions? Call the Settlement Administrator toll free at **[phone number]**

you opt out of the Settlement, you will not be bound by the Settlement and, therefore, you will not release the Released Claims, set forth in Section No. 9 below. You may submit your request for exclusion by faxing or emailing your request for exclusion to the Settlement Administrator by **[Response Deadline]**, or by mailing your request for exclusion to the Settlement Administrator by regular U.S. Mail, postmarked no later than **[Response Deadline]**, using the contact information provided below:

Fax Number: [INSERT FAX NUMBER]

Email Address: [INSERT EMAIL ADDRESS]

Mailing Address: Pacific Groservice, Inc. Settlement Administrator C/O CPT GROUP, INC., [INSERT ADDRESS]

If you received a re-mailed Notice, you have an additional 14 days from the original response deadline to submit a request for exclusion. If your Notice is a re-mailed Notice, the envelope will indicate whether the Notice has been re-mailed and will state your new deadline to submit a request for exclusion.

If you choose to exclude yourself from the class portion of the Settlement, your written request for exclusion **must** (a) include your name; (b) be addressed to the Settlement Administrator; (c) be signed by you; and (d) be submitted or postmarked no later than the Response Deadline. You may also include your address and the last four digits of your Social Security number. A request for exclusion will be deemed valid as long as it is submitted to the Settlement Administrator or postmarked by **[Response Deadline]** and provides enough information to allow the Settlement Administrator to identify you and understand that you want to opt out of the Settlement.

The Court will exclude from the Settlement any Class Member who submits a valid and timely request for exclusion as described in the paragraph above. Any Class Member who fails to submit a valid and timely request for exclusion on or before the above-specified deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the Class Action if the Settlement receives final approval from the Court.

Class Members may only opt out of the class portion of the Settlement. Class Members who are also Eligible Aggrieved Employees cannot opt out of the PAGA portion of the Settlement. Therefore, a Class Member who submits a valid and timely request for exclusion will not receive an Individual Settlement Share and will not release the Released Claims, as described in Section No. 9 below. However, if such a Class Member is also an Eligible Aggrieved Employee, the Class Member will still be entitled to and will be mailed his or her Individual PAGA Payment and will still release the PAGA Released Claims, as described in Section No. 9 below.

**9. *How Does This Settlement Affect My Rights? What are the Released Claims and PAGA Released Claims?***

If the Court approves the proposed Settlement, the Court will enter a Final Judgment. All Class Members who do not opt out of the class portion of the Settlement (“Participating Class Members”) and all Eligible Aggrieved Employees will be bound by the Court’s Final Judgment and will fully release and discharge Defendants and their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (“Released Parties”). As of the Effective Final Settlement Date, in exchange for the consideration provided by the Settlement Agreement – specifically, the Individual Settlement Shares and Individual PAGA Payments – Plaintiff and the Participating Class Members will release the Released Parties from the Released Claims covering the Class Period, and Plaintiff and the Eligible Aggrieved Employees

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Questions? Call the Settlement Administrator toll free at **[phone number]**

will release the Released Parties from the PAGA Released Claims covering the PAGA Period. The Effective Final Settlement Date is the date that Defendants fully fund the Gross Settlement Amount of \$2,500,000.00. The Released Claims and PAGA Released Claims are defined below.

**A. Released Claims.**

The released claims means all claims alleged or could have been alleged based on the facts alleged in the operative complaint, including all of the following causes of action: (a) Violation of California Labor Code §§ 510 and 1198 (Unpaid Wages and Overtime); (b) Violation of California Labor Code §§226.7, 512(a) (Unpaid Meal Period Premiums); (c) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (d) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages); (e) Violation of California Labor Code § 203 (Wages and Final Wages Not Timely Paid); (f) Violation of California Labor Code §§ 226, 432, and/or 1198.5 (Non-Compliant Wage Statements, Personnel Records, and Time Records); (g) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (h) Violations of California Business & Professions Code § 17200, *et seq.*; (i) Violation of California Labor Code § 246 (Failure to Pay Sick Pay); (j) Claims for Statutory Penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698 *et seq.* (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. The release does not include claims that as a matter of law cannot be released and does not include claims for retaliation, discrimination, wrongful termination, and individual claims for the recovery of workers’ compensation benefits.

**B. PAGA Released Claims.**

The PAGA Released Claims means all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the operative complaint or in the PAGA Notice that arose during the PAGA Period, which includes, inter alia, alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 246(1), 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802. The period of the PAGA release extends to the limits of the PAGA Period.

As explained above, Eligible Aggrieved Employees do not have the right to opt out of the PAGA portion of the Settlement. Therefore, if the Court approves the Settlement, all Eligible Aggrieved Employees will release the PAGA Released Claims, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion.

Neither the Released Claims nor the PAGA Released Claims include claims that as a matter of law cannot be released or claims for retaliation, discrimination, wrongful termination, and individual claims for the recovery of workers’ compensation benefits.

**10. How Much Can I Expect to Receive From This Settlement?**

Defendants will pay, subject to Court approval, a Gross Settlement Amount of \$2,500,000.00. The Gross Settlement Amount will be used to pay the following amounts, subject to Court approval: (1) a \$10,000 Class Representative Enhancement Payment to Plaintiff; (2) up to \$20,000 in Administration Costs to the Settlement Administrator; (3) a \$875,000.00 Attorney Fee Award to Class Counsel; (4) a \$25,000 Cost Award to Class Counsel; and (5) a \$100,000 PAGA Payment, seventy-five percent (75%) of which (\$75,000) shall be paid to the LWDA, and the remaining twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible



Aggrieved Employees as Individual PAGA Payments. The amount that remains after all payments are made is the Net Settlement Amount, which is currently estimated to be \$1,470,000.00.

**A. How Will My Individual Settlement Share Be Calculated?**

The Settlement Administrator will pay each Participating Class Member an Individual Settlement Share from the Net Settlement Amount. If the Court approves any of the above-referenced payments in smaller amounts, the Net Settlement Amount will be larger. Your Individual Settlement Share will be based on your pro-rata share of the Net Settlement Amount and will be calculated as follows: (i) the number of weeks you worked as a Class Member during the Class Period, (ii) divided by the total number of weeks worked by all Class Members collectively during the Class Period, (iii) which is then multiplied by the Net Settlement Amount. If a Class Member opts out of the Settlement, his or her pro rata share of the Net Settlement Amount will flow back to the Net Settlement Amount and be distributed to the Participating Class Members on a pro rata basis. For purposes of this calculation, the Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Class Member based on their dates of employment.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$\_\_\_\_\_, less taxes. This is based on Defendants' records, which show you worked \_\_\_ workweeks during the Class Period.

Twenty percent (20%) of your Individual Settlement Share will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your Individual Settlement Share will be treated as penalties, interest, and reimbursement and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will mail your Individual Settlement Share check to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

**B. How Will My Individual PAGA Payment Be Calculated?**

The Settlement Administrator will pay each Eligible Aggrieved Employee an Individual PAGA Payment from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees. Your Individual PAGA Payment will be based on your pro-rata share of the portion of the PAGA Payment allocated to the Eligible Aggrieved Employees and will be calculated as follows: (i) the number of pay periods you worked as an Eligible Aggrieved Employee during the PAGA Period, (ii) divided by the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period, (iii) which is then multiplied by the \$25,000 of the PAGA Payment allocated to the Eligible Aggrieved Employees. For purposes of this calculation, the Settlement Administrator will use the Class Data to calculate the number of pay periods worked by each Eligible Aggrieved Employee based on their dates of employment.

Based upon the calculation above, your approximate Individual PAGA Payment is \$\_\_\_\_\_. This is based on Defendants' records, which show you worked \_\_\_ pay periods during the PAGA Period.

One hundred percent (100%) of this payment will be considered penalties, and you will be issued an IRS Form 1099 if your payment exceeds \$600. You are responsible for paying any federal, state, or local taxes owed as a result of this payment.

The Settlement Administrator will mail your Individual PAGA Payment check to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

If no amount is stated for your Individual PAGA Payment, according to Defendants' records, you are not an Eligible Aggrieved Employee eligible for an Individual PAGA Payment because you were not employed by Defendants as an hourly-paid or non-exempt employee within the State of California during the PAGA Period. Therefore, this subsection B does not apply to you.

### **C. When Will My Settlement Payment Be Mailed?**

No later than fourteen (14) calendar days after the date the Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no Plaintiff in intervention at the time the Court grants Final Approval of the Settlement, the date the court enters judgment granting Final Approval of the Settlement, Defendants shall deposit the Gross Settlement Amount of \$2,500,000.00, as well as Defendants' share of employer-side payroll taxes, by wiring the funds to the Settlement Administrator.

Within fourteen (14) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares and Individual PAGA Payments.

It is strongly recommended that upon receipt of your Individual Settlement Share and/or Individual PAGA Payment check(s), you immediately cash your check(s) or cash your check(s) before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, pay the amount of the Individual Settlement Share(s) and/or Individual PAGA Payment(s) to State Controller's Unclaimed Property Fund in the name of the Class Member.

### ***11. How Will the Attorneys for the Class and the Class Representative Be Paid?***

Class Counsel will be paid from the Gross Settlement Amount. Subject to Court approval, Class Counsel shall be paid an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (or \$875,000.00) for attorneys' fees (the "Attorney Fee Award"), and up to \$25,000 for litigation costs (the "Cost Award"). Class Counsel will file a motion for Final Approval of the Settlement, including Final Approval of the Attorney Fee Award and Cost Award, with the Court at least sixteen (16) Court days before the Final Approval Hearing, the details of which are provided in Section No. 13 below. You can obtain a copy of this motion from Class Counsel, free of charge, by contacting Class Counsel using the information provided in Section No. 5 above. You can also obtain a copy of this motion, as well as the other documents on file with the Court in the Class Action, by following the steps laid out in Section No. 14 below.

Defendants have paid their own attorneys' fees and costs.

As set forth in Section No. 10 above, Plaintiff will also be paid a Class Representative Enhancement Payment, subject to Court approval.

The Settlement Administrator will not pay the Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment until after the Settlement Administrator has distributed the Individual Settlement Shares and Individual PAGA Payments to the Class Members and Eligible Aggrieved Employees.

### **12. Final Approval Hearing and Remote Appearance**

The Court will hold a Final Approval Hearing concerning the proposed Settlement on [the date of final approval hearing], 2022 at [time a.m./p.m.], before the Honorable Sunil R. Kulkarni in the Santa Clara County Superior Court – Downtown Superior Courthouse, located at 191 N. First Street, San Jose, California 95113, Department 1. You are not required to appear at this hearing. Any changes to the hearing date will be available on the Settlement Administrator’s website: [INSERT WEBSITE ADDRESS]. If the Court approves the Settlement, the Final Approval Order and Judgment will also be available on the Settlement Administrator’s website: [INSERT WEBSITE ADDRESS]. You may also find more information on the Superior Court of California, County of Santa Clara’s websites: [www.scscourt.org](http://www.scscourt.org) and [www.scefiling.org](http://www.scefiling.org).

Hearings before the judge overseeing this case are being conducted in person. However, remote appearances are still permitted, and are offered with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the final fairness hearing, class members who wish to appear at the final fairness hearing remotely should contact class counsel to arrange an appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member shall be paid by class counsel.

### **13. What if the Settlement Does Not Become Final?**

It is possible that the Court will deny Final Approval of the Settlement with prejudice. It is also possible that the Court’s Final Approval of the Settlement will be reversed or materially modified on appeal. The Parties have agreed that, in either case, the Settlement will become null and void, meaning Defendants will no longer be obligated to pay any money owed under the Settlement Agreement, including the Gross Settlement Amount, which includes the Individual Settlement Shares and Individual PAGA Payments, the Class Members will not release the Released Parties from the Released Claims, and the Eligible Aggrieved Employees will not release the Released Parties from the PAGA Released Claims. Any award by the Court of a smaller amount than requested for the Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment will not constitute a material modification to the Settlement within the meaning of this paragraph.

Defendants also have the option to withdraw from and terminate the Settlement if class participation is too low. If more than 5% of Class Members timely and validly opt out of the Settlement, Defendants have the right, but not the obligation, to terminate the proposed Settlement. If Defendants terminate the Settlement, Defendants will no longer be obligated to pay Individual Settlement Shares and Individual PAGA Payments to the Class Members and Eligible Aggrieved Employees, as applicable, and the Class Members and Eligible Aggrieved Employees will retain, rather than release, their rights to individually pursue the Released Claims and PAGA Released Claims, as applicable.

**14. How Do I Get More Information?**

**IF YOU NEED MORE INFORMATION, HAVE ANY QUESTIONS, OR WOULD LIKE ELECTRONIC COPIES OF DOCUMENTS RELATING TO THE CLASS ACTION OR THE SETTLEMENT**, you may contact the Settlement Administrator at the telephone number listed below, toll-free. Please refer to the “Pacific Groservice, Inc. class action and PAGA settlement.”

You may also visit the Settlement Administrator’s website: [INSERT WEBSITE ADDRESS]. This website will include, among other things, the complaints Plaintiff filed in the Class Action, standalone generic copies of the Notice and Exclusion Form, all papers filed in connection with the Preliminary Approval Hearing (including all orders filed by the Court), all papers filed in connection with the Final Approval Hearing (including the motion for Final Approval of the Settlement, including Final Approval of the Attorney Fee Award and Cost Award), and, if the Settlement is approved, the Final Approval Order and Judgment.

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara’s Electronic Filing and Service Website at <https://portal.scscourt.org/>, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel or the Settlement Administrator.

You may also contact Class Counsel with any questions you may have regarding the Class Action, the proposed Settlement of the Class Action, this Notice, or any other documents or information you have received pertaining to the Class Action and the Settlement, or to obtain copies of papers filed in connection with the Class Action free of charge, including the complaints, all papers filed in connection with the Preliminary Approval Hearing, and all papers filed in connection with the Final Approval Hearing, including the motion for Final Approval of the Settlement, including Final Approval of the Attorney Fee Award and Cost Award. You may contact Class Counsel directly by visiting Justice Law Corporation at 751 North Fair Oaks Avenue, Suite 101, Pasadena, California 91103 during regular business hours, from 9:00 a.m. to 6:00 p.m., or by calling (818) 230-7502. Class Counsel’s contact information is also included above in Section No. 4 of this Notice. Class Counsel will provide you with an electronic copy of the Settlement documents or case documents free of charge.

**PLEASE DO NOT TELEPHONE THE COURT OR COURT’S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.**

# **EXHIBIT B**

**ELECTION NOT TO PARTICIPATE IN (“OPT OUT” FROM) CLASS ACTION SETTLEMENT**

Superior Court of the State of California, County of Santa Clara

*Jacob Blea v. Pacific Groservice, Inc. et al.*

Case No. 20CV375150

**ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS PORTION OF THE SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT SHARE FROM THE CLASS PORTION OF THE SETTLEMENT.**

**This document must be postmarked no later than \_\_\_\_\_, 2022 and sent via U.S. Mail to:**

Pacific Groservice, Inc. Settlement Administrator, C/O CPT Group, Inc.

[Insert Administrator Address]

[City, State ZIP]

**By signing and mailing this form to exclude yourself from the class portion of the settlement, you are agreeing to and confirming the following:**

It is my decision not to participate in the class portion of the settlement in *Blea v. Pacific Groservice, Inc.* I understand that by excluding myself from the class portion of the settlement, I will not release the Released Claims and will not receive an Individual Settlement Share. However, if I am an Eligible Aggrieved Employee and qualify for an Individual PAGA Payment, I will release the PAGA Released Claims and will be mailed my Individual PAGA Payment, regardless of whether I timely and validly exclude myself from the class portion of the settlement.

I confirm that I am and/or was employed by Pacific Groservice, Inc. and/or Pittsburg Wholesale Grocers, Inc., d/b/a Pitco Foods, as an hourly-paid or non-exempt employee within the State of California during the time period from December 28, 2016, to July 27, 2022. I confirm that I have received and reviewed the Notice of Class and Representative Action Settlement in this action. I have decided to be excluded from the class portion of the proposed settlement, and I have decided **not** to participate in the class portion of the proposed settlement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
*(Type or print name and any former name(s) if applicable)*

\_\_\_\_\_  
*(Signature)*