

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Adrian Ochoa-Andrade (“Plaintiff”) and defendant See’s Candies, Inc, (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

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

- 1.1. “Action” collectively means: (1) Plaintiff’s class action lawsuit alleging wage and hour violations against Defendant captioned *Ochoa-Andrade v. See’s Candies, Inc*, Case No. 22-CIV-02481, initiated on June 16, 2022, and pending in Superior Court of the State of California, County of San Mateo; and (2) Plaintiff’s representative action lawsuit alleging wage and hour violations against Defendant captioned *Ochoa-Andrade v. See’s Candies, Inc*, Case No. 22-CIV-03115, initiated on August 1, 2022, and pending in Superior Court of the State of California, County of San Mateo.
- 1.2. “Administrator” means Apex, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendant in California and classified as a non-exempt, non-retail manufacturing employee at any time during the PAGA Period.
- 1.5. “Class” means all individuals who were employed by Defendant in California and classified as a non-exempt, non-retail manufacturing employee at any time during the Class Period, but excluding any individuals who are class members in *Lauralynne Cristobal and Meisha Henry v. See’s Candy, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV07389, except such individuals who worked for Defendant in California after November 21, 2020
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.8. “Class Data” means the following Class Member identifying information in Defendant’s possession: the Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using reasonably available sources, methods and means including, but not limited to, the National Change of Address database and skip traces.
- 1.11. “Class Notice” means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in English with a Spanish and Chinese translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator), including a translation of the Class Notice into Chinese and Spanish.
- 1.13. “Class Period” means the period of time from June 16, 2018, through the earlier of the date on which preliminary approval of the settlement is granted or the date the Workweeks for the Class equal 64,241, unless Defendant elects pursuant to paragraph 9 to pay to extend the release period.
- 1.14. “Class Representative” means Adrian Ochoa-Andrade, who is the named Plaintiff in the Operative Complaint in the Action and proposed class representative.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiff.
- 1.16. “Court” means the Superior Court of California, County of San Mateo.

- 1.17. “Defendant” means See’s Candies, Inc.
- 1.18. “Defense Counsel means Malcom A. Heinicke, Katherine M. Forster, Abraham B. Dyk, and Erica C. Tooch of Munger, Tolles & Olson LLP.
- 1.19. “Effective Date” means the date by when both of the following have occurred:
(a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and,
(b) the Judgment is final as defined in Paragraph 1.20 of this Agreement.
- 1.20. The Judgment is final as of the later of the following occurrences:
(a) the day after the deadline for filing a notice of appeal from the Judgment; or
(b) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.21. “Final Approval Order” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.22. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.23. “Gross Settlement Amount” means \$900,000 which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 10 below. The Gross Settlement Amount includes all of the following: Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is Defendant’s only payment obligation, except that the employer’s share of payroll taxes shall not be paid from the Gross Settlement Amount and shall remain the sole responsibility of Defendant. There will be no reversion to Defendant.
- 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the method described in Paragraph 3.2(e) of this Agreement.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the method described in Paragraph 3.2(d) of this Agreement.
- 1.26. “Judgment” means the Final Approval and Judgment entered by the Court substantially in the form attached hereto as Exhibit C to this Agreement and

incorporated by reference into this Agreement.

- 1.27. "LWDA" means the California Labor and Workforce Development Agency.
- 1.28. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. "Net Settlement Amount" means the Gross Settlement Amount, less the court approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. "Non-Participating Class Member" means a Class Member who submits a valid and timely Request for Exclusion to the Administrator.
- 1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. "PAGA Pay Period" means any Pay Period (Sunday-Saturday) during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.33. "PAGA Period" means the period of time from June 16, 2021, through the end of the Class Period.
- 1.34. "PAGA Notice" means the Plaintiff's May 19, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties (\$20,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.36. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.37. "Plaintiff" means Adrian Ochoa-Andrade, the named plaintiff in the Action.
- 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.39. "Released Class Claims" means all claims that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint, known or unknown, for

any type of relief against the Released Parties that occurred during the Class Period, including claims for: (i) meal and rest break violations or premium payments in lieu thereof; (ii) failure to pay earned wages for all hours worked, including minimum wages or overtime wages; (iii) failure to pay wages timely during employment and upon termination; (iv) failure to pay sick time; (v) failure to reimburse employees for required expenses; (vi) failure to furnish accurate wage statements; (vi) unfair business practices relating to or arising out of any of the foregoing; and (viii) to the extent not covered above, any and all claims reasonably arising out of the Operative Complaint¹ or Plaintiff's PAGA Notice. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and/or claims based on facts occurring outside the Class Period.

1.40. "Released PAGA Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice that occurred during the PAGA Period. The Released PAGA Claims do not include claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, worker's compensation, and/or claims outside of the PAGA Period.

1.41. "Released Parties" means: Defendant, and each of its parents and affiliates (including without limitation Berkshire Hathaway, Inc. and See's Candy Shops, Inc.), subsidiaries, predecessors, successors, divisions, joint ventures, attorneys and assigns, and each of their former and present owners, directors, officers, employees, managers, partners, members, principals, agents, insurers, co-insurers, re-insurers, investors, shareholders, employee benefit plans, employee benefit plan trustees, fiduciaries, and administrators, and personal or legal representatives.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means 60 calendar days after the Administrator mails the Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last postmark date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit an Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline to respond.

¹ For the avoidance of doubt, the Operative Complaint incorporates and contains any and all allegations from any prior complaints in Case Nos. 22-CIV-02481 and 22-CIV-03115.

1.44. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.

1.45. “Workweek” means any week (Sunday-Saturday) during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day, but excluding any weeks worked up until November 21, 2020, by individuals who worked for Defendant in California and are class members in *Lauralynne Cristobal and Meisha Henry v. See’s Candy, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV07389.

2. RECITALS

Plaintiff’s Class Action:

2.1. On June 16, 2022, Plaintiff commenced this Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Mateo (Plaintiff’s Class Action”). Plaintiff’s Complaint asserted claims that Defendant:

- (a) Violated California Business and Professions Code § 17200 et seq.;
- (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, & 1197.1
- (c) Failed to pay overtime wages in violation of California Labor Code § 510, et seq.;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802.
- (g) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and,
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.

2.2. On September 22, 2023, Plaintiff filed a First Amended Class Action Complaint that carved out claims by individuals who worked for Defendant in California and were class members in *Lauralynne Cristobal and Meisha Henry v. See’s Candy, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV07389, whose claims were released through November 21, 2020.

2.3. On October 25, 2022, Defendant responded by filing a general denial and asserting 38 affirmative defenses.

Plaintiff’s PAGA Action:

2.4. On August 1, 2022, Plaintiff filed a separate Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Mateo asserting one cause of action for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

2.5. On November 4, 2022, Defendant responded by filing a general denial and asserting 37 affirmative defenses.

Consolidation/Pleading Amendment

2.6. On September 16, 2022, the Honorable Marie S. Weiner designated Plaintiff's Class Action and Representative Action related pursuant to CRC Rule 3.300.

2.7. As part of this Agreement, the Parties agreed to stipulate to leave for Plaintiff to file a Second Amended Complaint in the first-filed Class Action that adds the claims alleged in the PAGA Action, and thereafter dismiss the separate PAGA Action without prejudice. The Second Amended Complaint in the Class Action is the operative complaint in the Action (the "Operative Complaint").

2.8. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

Mediation and Settlement

2.9. On April 14, 2023, the Parties participated in an all-day mediation presided over by David A. Rotman, Esq., a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, agreed to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

2.10. Prior to mediation, Plaintiff obtained sufficient documents and information to investigate the claims such that Plaintiff's investigation satisfied the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.11. This Agreement represents a compromise and settlement of highly disputed claims. In particular, Defendant denies all of the claims and contentions alleged by Plaintiff. Nonetheless, Defendant has concluded that further conduct of the Action would be

protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. Defendant has also taken into account the uncertainty and risks inherent in any litigation, and particularly class and/or representative litigation. Defendant has therefore determined that it is desirable and beneficial that the Action be settled now in the manner and upon the terms and conditions set forth in this Agreement. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

2.12. This Agreement is made for the sole purpose of attempting to consummate the Settlement. The Parties enter into this Agreement on the conditional basis that the Court enters the Judgment contemplated by this Agreement. In the event that the Judgment does not become Final for any reason, this Agreement shall be deemed null and void ab initio, it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms, and entry of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, except that the documents filed in support of the motion for preliminary approval and/or final approval shall remain part of the public record.

2.13. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement is voided or terminated or does not become Final as set forth in this Agreement, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

2.14. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Subject to the terms and conditions of this Agreement, and except as otherwise provided by Paragraph 10 below, the Gross Settlement Amount that Defendant will pay under this settlement is \$900,000. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order.

- (a) To Plaintiff: A Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member and any Individual PAGA Payment due to Plaintiff under this Agreement). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. Payroll tax withholding and deductions will not be taken from the Representative Service Payment and instead a Form 1099 will be issued the Class Representative with respect to the payment. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. The Class Representative Service Payment shall be the total compensation and consideration for (i) Plaintiff's efforts in the Action; and (ii) his agreement to the released described in Paragraph 6.1 of this Agreement.
- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$300,000, and a Class Counsel Litigation Expenses Payment of not more than \$20,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant and the Released Parties harmless, and indemnifies them, from any dispute or controversy regarding any division or sharing of any of these payments.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$25,000 except for a showing of good cause and as approved by the Court. To the extent the

Administration Expenses Payment is less or the Court approves payment less than \$25,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000 to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.
- i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. 100% of the PAGA Payment is in settlement of claims for penalties, is not be subject to wage withholdings, and shall be reported to each Aggrieved Employee via IRS Form 1099.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks (as defined in Paragraph 1.45) worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- i. Tax Allocation of Individual Class Payments. Subject to approval by the Court, 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported via IRS Form W-2. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported via IRS Form 1099. Each Participating Class Member agrees to hold harmless the Released Parties, Class Counsel, and Defendant's Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Member's failure to pay taxes on any amounts paid pursuant to this Settlement.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class

Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis relative to their share of the settlement proceeds.

4. SETTLEMENT FUNDING

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant has represented that, as of April 18, 2023, the Class consists of 1,469 Class Members who collectively worked a total of 58,401 Workweeks, and 1,289 Aggrieved Employees who worked a total of 46,122 PAGA Pay Periods.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator in the form of an encrypted or password-protected Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to notify Class Counsel promptly if it discovers that the Class Data omitted required Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of the Gross Settlement Amount. If no objection to the settlement is made, Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days of the final approval order. If any objection to the settlement is made but no appeal is filed Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator within 30 days of the running of the appeal period. If an appeal is filed, Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator within 30 days of the date the judgment is final and no longer subject to appeal.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

5.1. Within 14 days after the Effective Date, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment in accordance with this Agreement.

- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the “void date”, which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom the Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the National Change of Address Database. If a Participating Class Member’s or Aggrieved Employee’s check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments will not result in any additional benefit payments (such as 401(k) or bonus or regular rate calculation) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- 6. RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the

Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiff's Individual Release. Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally releases and discharges Released Parties from all claims, transactions, or occurrences between them that occurred or arose anytime from the beginning of time to the date Plaintiff executes this Agreement ("Plaintiff's Individual Released Claims"). This release of Plaintiff's Individual Released Claims releases the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party and includes, but is not limited to, (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and Plaintiff's PAGA Notice and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences after the date Plaintiff signs this Agreement. For the avoidance of doubt, Plaintiff is subject to the class and PAGA releases for the duration of the class period and PAGA period respectively. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete.

(a) Plaintiff's Waiver of Rights Under Civil Code Section 1542. As partial consideration for the Representative Service Payment, Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys,

heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. All Aggrieved Employees and the LWDA are deemed to release the Released Parties from the Released PAGA Claims on behalf of themselves, their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of California.

6.4. Class Counsel Claims. Upon the occurrence of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against the Released Parties arising from or relating to the Action.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree jointly to prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's procedures and instructions.

7.1. Defendant's Responsibilities. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defendant shall aver that it is not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. In this Declaration, Defendant shall also aver as to the number of Class Members and the number of Workweeks for the Class during the Class Period.

7.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval of Class Settlement and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd.

(1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and making every reasonable effort to file the Motion for Preliminary Approval no later than June 27, 2023; obtaining the soonest available and practicable hearing date for the Motion for Preliminary Approval; and appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for providing Defense Counsel a copy of this motion for review and comment at least five business days before it is filed with the Court and delivering the Court's Preliminary Approval Order to the Administrator.
- 7.4. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this agreement Class Counsel and Defense Counsel will work together in good faith to address any concerns raised by the court and propose a revised settlement for the approval of the Court.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected Apex to serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members. After the Court enters the Preliminary Approval Order, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Preliminary Approval Order and showing the Class Member’s Settlement Share) as follows:
- (a) No later than three business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish and Chinese translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - (c) Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - (d) The deadlines for Class Members’ Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
 - (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer by email or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator

will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name and address. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is

re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods, and the Administrator's determination as to the challenges, to Defense Counsel and Class Counsel.

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so postmarked not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website in English, Spanish and Chinese to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and

the Judgment. The Administrator will also maintain and monitor an email address and toll-free telephone and fax numbers to receive Class Member calls, faxes and emails.

- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide, to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7

days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

- 9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE.** Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. In regard hereto, Defendant is providing a declaration as set forth in paragraph 7.1 above. Should the number of workweeks in the Class Period set forth in paragraph 4.1. above increase by more than 10%, should Defendant elect to extend the Class Period, then the Gross Settlement Amount will be increased proportionately. For example, if the number is 11% higher, the Gross Settlement Amount will be increased by 1%. In the event that Defendant elects to increase the Gross Settlement Amount, a proportional amount (2.2%) of any additional payment will be considered a PAGA payment. In the alternative, the Defendant may elect to shorten the Class Period and PAGA Period in order to stay within the 10% threshold.
- 10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. Neither side shall encourage any Class Member to opt out. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, that neither Party will have any further obligation to perform under this Agreement, and the parties hereby waive any argument to the contrary; provided, however, Defendant will remain responsible for paying all Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.
- 11. MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously, and in good faith, meet and confer to resolve any disagreements concerning the Motion for Final Approval.

 - 11.1. Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court

no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns and propose a revised Settlement for the Court's approval. The Court's decision to award less than the amounts requested for the PAGA Payment, a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under California Code of Civil Procedure section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.
- 11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members or the binding effect of the Settlement), and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address any concerns raised by the reviewing court and propose a revised settlement for the approval of the Court not later than 30 calendar days after the conclusion of any appeal of the reviewing court's decision vacating, reversing, or materially modifying the Judgment or, if no such appeal is filed, 30 calendar days after the statutory time to appeal the reviewing court's decision expires. . An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a

material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. The Parties expressly recognize that nothing in this Agreement is intended or should be construed as an admission or concession by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted, or that class certification and/or representative status is appropriate for any purpose other than the Settlement; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Neither this Agreement, nor any resulting Court order approving the settlement shall have any collateral estoppel or other preclusive effect on Defendant, and it shall not in any way establish any liability against Defendant. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). In the event the agreement is voided for this or any other lawful or permissible reason, the parties agree that this Agreement shall have no effect on the Action, and the parties hereby waive any argument to the contrary, and the terms and negotiation of this settlement shall remain subject to California Evidence Code sections 1119 and 1152 and similar rules of other jurisdictions.

13.2. Confidentiality and Limitation of Public Statements. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate

and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to initiate, directly or indirectly, any conversation or other communication before the filing of the Motion for Preliminary Approval any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. Class Counsel shall not publicize the Settlement on its website or in advertising/marketing materials, other than filing documents with the Court. Plaintiff and Class Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or Class Counsel receive an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendant or Plaintiff from making any disclosures required by law. Nothing shall prevent Class Counsel from referring to this Action in a declaration establishing qualification as class counsel in future cases. The Administrator shall post court-filed documents concerning the Settlement, including the Judgment, on its website for viewing by Class Members as set forth in the Class Notice, which documents shall be removed 90 days after the Effective Date. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.4. No Additional Clients. Class counsel further represents that it does not currently represent, or currently have plans to represent, any client with a claim against See's Candies, Inc. or any Released Party. If Defense Counsel discovers, prior to Final Approval, that Class Counsel do currently represent, or currently have plans to represent a client with a claim against See's Candies, Inc. or any Released Party, Defendant may, but is not obligated, to require Class Counsel to withdraw as counsel.

13.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties

relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

- 13.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.8. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.9. Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 13.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.13. 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.

- 13.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to California Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and permanently delete all electronic versions of Class Data received from Defendant, as required by the Parties' Protective Order.
- 13.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.18. Notice to the LWDA. At the required times, Class Counsel will provide appropriate notice to the LWDA of the Settlement, and the Judgment, as required by the Private Attorneys General Act of 2004, Labor Code § 2698, et seq., and Class Counsel shall provide written confirmation to Defendants' Counsel immediately upon doing so.
- 13.19. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com

kyle@bamlawca.com

To Defendant:

Malcom A. Heinicke
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907
Tel: (415) 512-4000
Fax: (415) 512-4077
E-Mail: Malcolm.Heinicke@mto.com

Katherine M. Forster
Abraham B. Dyk
Erica C. Toooh
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
Tel: (213) 683-9188
Fax: (213) 687-3702
E-mail: Katherine.Forster@mto.com
Abraham.Dyk@mto.com
Erica.Toooh@mto.com

13.20. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign, Adobe Sign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

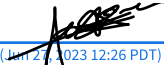
13.21. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. Further, pursuant to California Code of Civil Procedure (“CCP”) section 583.330, the Parties agree upon signing this Agreement to extend the date to bring a case to trial under CCP section 583.310 for a period of not less than one year starting from the date of the signing of the Memorandum of Understanding agreement by all parties until the entry of the final approval order and judgment, or if not entered the date this agreement shall no longer be of any force or effect.

13.22. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Jun 27, 2023



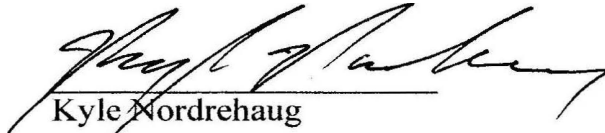
Adrian (Jun 27, 2023 12:26 PDT)

Plaintiff Adrian Ochoa-Andrade

Dated: _____

[name]
For Defendant See's Candies, Inc.

Dated: 6/27/23



Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: _____

Malcom A. Heinicke
Katherine M. Forster
Abraham B. Dyk
Erica C. Tooch
Munger, Tolles & Olson LLP Attorney for Defendant

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Adrian Ochoa-Andrade

Dated: 6/27/2023


DocuSigned by:
Amy Steadman
9108F5D381CA42A...

[name]
For Defendant See's Candies, Inc.

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: 6/27/2023



Malcom A. Heinicke
Katherine M. Forster
Abraham B. Dyk
Erica C. Tooch
Munger, Tolles & Olson LLP Attorney for Defendant

EXHIBIT A

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

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

**(Ochoa-Andrade v. See’s Candies, Inc., Superior Court of the State of California,
County of San Mateo, Case No. 22-CIV-02481)**

**YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.
PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	<p>To receive a cash payment from the Settlement, you do not have to do anything. If you do nothing, you will be mailed a settlement payment and you will release certain claims as detailed in Section 4 below.</p> <p>Your estimated Individual Class Payment is: \$<< ___ >>. Your estimated Individual PAGA Payment is \$<< ___ >>. See the explanation in Section 5 below.</p> <p>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, or if it changes before you receive your settlement payment, you must notify the Administrator as explained in Section 6 below.</p>
Exclude Yourself	<p>To exclude yourself, you must send a written request for exclusion to the Administrator as provided below. If you request exclusion, you will receive no money from the Class Settlement.</p> <p>You cannot opt out of the PAGA portion of the proposed Settlement. You will still receive an Individual PAGA Payment and release the Released PAGA Claims (described below).</p> <p>Instructions are set forth in Section 7 below.</p>
Object to Class Settlement	<p>Write to the Court about why you do not agree with the Settlement, and/or appear at the Final Approval Hearing to make an oral objection. You cannot both exclude yourself and object.</p> <p>Directions are provided in Section 8 below.</p>

See’s Candies, Inc. will not retaliate against you for any actions you take with respect to the proposed Settlement.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned lawsuit pending in the Superior Court of the State of California, in and for the County of San Mateo (the “Court”) has been reached between Plaintiff Adrian Ochoa-Andrade (“Plaintiff”) and Defendant See’s Candies, Inc. (“Defendant”). The Court has granted preliminary approval of the Settlement and ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All individuals who were employed by Defendant in California and classified as a non-exempt, non-retail manufacturing employee at any time during the Class Period, but excluding any individuals who are class members in *Lauralynne Cristobal and Meisha Henry v. See's Candy, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV07389, except such individuals who worked for Defendant in California after November 21, 2020.

The Class Period is from June 16, 2018 through _____, 2023.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this lawsuit about?

On June 16, 2022, Plaintiff commenced this Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Mateo, Case No. 22-CIV-02481, alleging the following class claims against Defendant: (i) unfair competition, (ii) failure to pay minimum wages, (iii) failure to pay overtime wages, (iv) failure to provide required meal periods, (v) failure to provide required rest periods, (vi) failure to provide expense reimbursement, (vii) failure to provide accurate itemized wage statements and (viii) failure to provide wages when due. On September 22, 2023, Plaintiff filed a First Amended Class Action Complaint that carved out claims by individuals who worked for Defendant in California and were class members in *Lauralynne Cristobal and Meisha Henry v. See's Candy, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV07389, whose claims were released through November 21, 2020.

On August 1, 2022, Plaintiff filed a separate Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Mateo. Plaintiff's Complaint asserted a claim for civil penalties pursuant to the Private Attorneys General Act of 2004 (PAGA) for the alleged violations of the Labor Code.

As part of this Settlement, the Parties stipulated to leave for Plaintiff to file a Second Amended Complaint in the first-filed Class Action that adds the claim alleged in the Representative Action, and thereafter dismisses the separate Representative Action without prejudice. The Second Amended Complaint filed in the Class Action on _____, 2023 is referred to as the "Operative Complaint."

Defendant denies and disputes all of the claims asserted against it. Specifically, Defendant contends that Plaintiff and the Class Members were properly compensated for wages under California law; that Class Members properly received all meal and rest periods; that Defendant complied with California wage statement requirements; that Defendant timely paid all wages during employment and upon separation or termination of employment; that Defendant indemnified employees for any necessary business expenses; that Defendant is not liable for any

of the penalties claimed or that could be claimed in the Action; and that the Action cannot be maintained as a class action.

The Court has not decided whether Defendant or Plaintiff is correct. Plaintiff would have had to prove his claims at a trial on a class-wide and representative basis. Defendant denies and disputes all such claims and asserts that it has no liability to Plaintiff or any of the Class Members. To avoid additional expense, inconvenience, and risks of continued litigation, however, the Parties have concluded that it is in their respective best interests and the interests of the Class Members to settle the Action on the terms summarized in this Notice. The Settlement was reached after arms-length non-collusive negotiations between the parties. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable and adequate way to resolve the disputed claims.

Plaintiff and Class Counsel support this Settlement, finding it fair, adequate, reasonable, and in the best interests of the Class Members. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the potential for the Court to deny certification of the class, and the delays and uncertainties associated with litigation.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay a total of Nine Hundred Thousand Dollars (\$900,000) (the “Gross Settlement Amount”) with no reversion to Defendant. The Gross Settlement Amount includes the Individual Class Payments, Individual PAGA Payments, a payment to the Labor and Workforce Development Agency (“LWDA”) for its share of the PAGA Settlement Amount, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses. Any employer-side payroll taxes on the portion of the Individual Class Settlement Payments allocated to wages shall be separately paid by Defendant.

Administrator. The Court has appointed a neutral company, _____ (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice. Within thirty (30) days of the order granting final approval, Defendant will fund the Gross Settlement Amount by depositing the money with the Administrator. Fourteen (14) days after the Effective Date, the Administrator will mail checks for the Individual Class Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees. The “Effective Date” means the date the Judgment is final and is no longer subject to appeal.

The Court has approved _____, to act as the “Administrator.”

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Individual Class Payments are made to Class Members who do not request exclusion (“Participating Class Members”):

- Administration Expenses Payment. Payment to the Administrator, estimated not to exceed \$25,000, for expenses, including, without limitation, expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Individual Class Payments and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys’ fees of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$300,000, and an additional amount to reimburse actual litigation costs incurred by Class Counsel, not to exceed \$20,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class Members on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. Accordingly, Class Counsel will request up to these amounts to be paid from the Gross Settlement Amount, subject to the Court’s final approval.
- Class Representative Service Payment. Class Representative Service Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook. Plaintiff will request this Class Representative Service Payment, but the amount he will ultimately receive is subject to the Court’s final approval.
- PAGA Penalties. A payment of \$20,000 relating to Plaintiff’s claim under PAGA, 75% of which (\$15,000) will be allocated to the LWDA as the LDWA’s share of the settlement of civil penalties paid under the settlement and 25 % (\$5,000) will be distributed to the Aggrieved Employees on a pro rata basis based on their pay periods worked during the PAGA period. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. “PAGA Pay Period” means any Pay Period (Sunday-Saturday) during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period, which is June 16, 2021, through _____.
- Calculation of Payments to Class Members. After all of the court-approved deductions for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be

distributed to Class Members who do not opt out of the settlement (“Participating Class Members”) as Individual Class Payments. The Net Settlement Amount is estimated to be at least \$, based upon the above proposed deductions. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. A “Workweek” means any week (Sunday-Saturday) during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day, but excluding any weeks worked up until November 21, 2020, by individuals who worked for Defendant in California and are class members in *Lauralynne Cristobal and Meisha Henry v. See’s Candy, Inc.*, Superior Court of the State of California, County of Los Angeles, Case No. 19STCV07389. Workweeks shall be based upon Defendant’s payroll records, but Class Members will have the right to challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself by completing a signed Request for Exclusion, you will automatically be mailed a check for your Individual Class Payment along with your Individual PAGA Payment (if any) to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. The administrator will not make tax withholdings on the Individual PAGA Payments. 20% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portion is subject to tax withholding and will be reported on an IRS Form W-2. 80% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of alleged claims for non-wages, expense reimbursement, interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions along with the Individual PAGA Payments are not subject to wage withholdings and will be reported on IRS Form 1099. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment and their Individual PAGA Payment. Neither Class Counsel nor Defendant’s Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique, and you may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering the Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks remitted to the

California Controller's Unclaimed Property Fund in your name.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator of your desire to opt out (see Section 7 for more information). Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against the Defendant.

4. What Do I Release Under the Settlement?

Released Class Claims. Effective on the date when Defendant fully funds the Settlement, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The “Released Class Claims” are all claims that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint, known or unknown, for any type of relief against the Released Parties that occurred during the Class Period, including claims for: (i) meal and rest break violations or premium payments in lieu thereof; (ii) failure to pay earned wages for all hours worked, including minimum wages or overtime wages; (iii) failure to pay wages timely during employment and upon termination; (iv) failure to pay sick time; (v) failure to reimburse employees for required expenses; (vi) failure to furnish accurate wage statements; (vi) unfair business practices relating to or arising out of any of the foregoing; and (viii) to the extent not covered above, any and all claims reasonably arising out of the Operative Complaint or Plaintiff’s PAGA Notice. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, and/or claims based on facts occurring outside the Class Period.

The “Released Parties” are Defendant, and each of its parents and affiliates (including without limitation Berkshire Hathaway, Inc. and See’s Candy Shops, Inc.), subsidiaries, predecessors, successors, divisions, joint ventures, attorneys and assigns, and each of their former and present owners, directors, officers, employees, managers, partners, members, principals, agents, insurers, co-insurers, re-insurers, investors, shareholders, employee benefit plans, employee benefit plan trustees, fiduciaries, and administrators, and personal or legal representatives.

Released PAGA Claims. Effective on the date when Defendant fully funds the Settlement, Aggrieved Employees and the LWDA are deemed to release the Released Parties from the Released PAGA Claims on behalf of themselves, their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of California. “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice that occurred during the PAGA Period. The Released PAGA Claims do not include claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, worker’s compensation, and/or claims outside of the PAGA Period. The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class.

5. How much will my payment be?

Defendant's records reflect that you worked << _____ >> Workweeks for Defendant as Class Member during the Class Period. The Class Period is June 16, 2018, to _____, 2023.

Based on this information, your estimated Individual Class Payment is << _____ >>.

Defendant's records reflect that you worked << _____ >> PAGA Pay Periods during the PAGA Period (June 16, 2023, through _____, 2023). Based on this information your estimated Individual PAGA Payment is << _____ >>.

If you wish to challenge the Workweek information set forth above, then you must submit a written, signed dispute challenging the information, along with any supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [the Response Deadline].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment along with your Individual PAGA Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, or if it changes prior to the time you receive your payment, you must notify the Administrator. It is your responsibility to ensure that the Administrator has your current address on file, or you may not receive important information or a settlement payment. The Administrator is: _____ (800) _____.

The Court will hold a Final Approval Hearing on _____, at _____ to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately 90 days after the hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by the Class portion of the Settlement which means you will retain the right to sue Defendant for the Released Class Claims.** However, Class Members who opt out will still be paid their Individual PAGA Payment and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than _____ [Response Deadline]. A Request for Exclusion is a letter from a Class Member or the Class Member's representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name and address. The Request for Exclusion must state the name and number of the

case, which is *Ochoa-Andrade v. See's Candies, Inc.*, Case No. 22-CIV-02481. The Request for Exclusion must be signed by you. No other person may opt out for a living member of the Class. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

The address for the Administrator is _____, fax _____, email _____.

By filing a timely Request for Exclusion, you will no longer be a Class Member, and will receive no benefits from the Settlement. Any Request for Exclusion Request for Exclusion that is not postmarked by _____ [Response Deadline], or is incomplete or unsigned, will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs, and/or the service award, either in writing or in person. Objections that are in writing must state (a) the case name and number (*Ochoa-Andrade v. See's Candies, Inc.*, in the Superior Court of the State of California, County of San Mateo, Case No. 22-CIV-02481); (b) the objecting person's or his/her/their attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection"; (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing, if any.

All written objections must be sent to the Administrator by fax, email, or mail at _____ postmarked no later than _____ [Response Deadline]. Any Class Member who does not request exclusion may, if the member so desires, enter an appearance through his/her/their own counsel

Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection. Remote appearances at the hearing are allowed. To appear at the hearing, you may appear at the hearing and be heard either in person or using the Court's remote Zoom appearance platform at https://www.sanmateocourt.org/court_divisions/civil/dept2.php. You may contact Class Counsel if you need assistance to appear at the hearing or have questions.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Individual Class Payment. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the San Mateo County Superior Court located at 400 County Center, Redwood City, CA 94063, in

Department 2 and Courtroom 2E before Judge Marie S. Weiner. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely. Check the Court's website for the most current information concerning appearances and procedures at the Court at https://www.sanmateocourt.org/court_divisions/civil/.

10. How do I get more information about the Settlement?

You may call the Administrator at [REDACTED] or write to *Ochoa-Andrade v. See's Candies, Inc.* Administrator, c/o [REDACTED]. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service award, the motion for final approval, or other Settlement documents by visiting the Administrator's website at _____ for *Ochoa-Andrade v. See's Candies, Inc.* You may also contact Class Counsel directly. The contact information for Class Counsel and Counsel for Defendant is as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Malcolm A. Heinicke (SBN 194174)
Munger, Tolles & Olson LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

Katherine M. Forster (SBN 217609)
Abraham B. Dyk (SBN 325499)
Erica C. Tooch (SBN 333077)
Munger, Tolles & Olson LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may also get more details by examining the Court's file on the Internet via the website for the California Superior Court for the County of San Mateo (<https://odyportal-ext.sanmateocourt.org/portal-external>) and entering the Case No. 22-CIV-02481.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such events, the Administrator shall direct all unclaimed funds to be paid to the California Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash the check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

ADRIAN OCHOA-ANDRADE, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

SEE'S CANDIES, INC; a California Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. **22-CIV-02481**

[PROPOSED] PRELIMINARY APPROVAL ORDER

Hearing Date:
Hearing Time:

Judge: Hon. Marie S. Weiner
Dept.:

Complaint Filed: June 16, 2022
Trial Date: Not Set

This matter, having come before the Honorable Marie S. Weiner of the Superior Court of the State of California, in and for the County San Mateo, on _____[DATE], for the motion by Plaintiff Adrian Ochoa-Andrade ("Plaintiff") for preliminary approval of the class settlement with Defendant See's Candies, Inc. ("Defendant"). The Court, having considered the briefs, argument of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

1 **IT IS HEREBY ORDERED:**

2 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement
3 (“Agreement”) attached as Exhibit ___ to the Declaration of Kyle Nordrehaug in Support of
4 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based on the
5 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
6 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
7 and California Rules of Court, rule 3.769.

8 2. This Order incorporates by reference the definitions in the Agreement, and all terms
9 defined therein shall have the same meaning in this Order as set forth in the Agreement.

10 3. The Gross Settlement Amount is Nine Hundred Thousand Dollars (\$900,000). It
11 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate,
12 and reasonable as to all potential Class Members when balanced against the probable outcome of
13 further litigation and the significant risks relating to certification, liability and damages issues. It
14 further appears that investigation and research have been conducted such that counsel for the Parties
15 are able to reasonably evaluate their respective positions. It further appears to the Court that
16 settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay
17 and risks that would be presented by the further prosecution of the Action. It further appears that the
18 Settlement has been reached as the result of serious and non-collusive, arms-length negotiations. The
19 Court therefore preliminarily finds that the Settlement is fair, adequate, and reasonable when
20 balanced against the probable outcome of further litigation and the significant risks relating to
21 certification, liability, and damages issues.

22 4. The Agreement specifies for an attorneys’ fees award not to exceed one-third of the
23 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000, and
24 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed \$10,000.
25 The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service
26 award, until the Final Approval Hearing.

27 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification
28 of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any

1 other proceeding should this Settlement not become final. For settlement purposes only, the Court
2 conditionally certifies the following Class: “all individuals who were employed by Defendant in
3 California and classified as a non-exempt, non-retail manufacturing employee at any time during the
4 Class Period, but excluding any individuals who are class members in *Lauralynne Cristobal and*
5 *Meisha Henry v. See’s Candy, Inc.*, Superior Court of the State of California, County of Los
6 Angeles, Case No. 19STCV07389, except such individuals who worked for Defendant in California
7 after November 21, 2020.” The Class Period is from June 16, 2018, through _____,
8 2023.

9 6. The Court concludes that, for settlement purposes only, the Class meets the
10 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
11 the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
12 (b) common questions of law and fact predominate, and there is a well-defined community of
13 interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the
14 claims of the Plaintiff are typical of the claims of the members of the Class; (d) the Plaintiff can
15 fairly and adequately protect the interests of the members of the Class; (e) a class action is superior
16 to other available methods for the efficient resolution of this controversy; and (f) counsel for the
17 Class is qualified to act as counsel for the Class and the Plaintiff are adequate representatives of the
18 Class.

19 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
20 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
21 Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De
22 Blouw LLP as Class Counsel for the Class.

23 8. The Court hereby approves, as to form and content, the Court Approved Notice of
24 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached to the
25 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
26 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right to
27 be excluded from the Class by submitting a written opt-out request, and of each Class Member’s
28 right and opportunity to object to the Settlement. The Court further finds that the distribution of the

1 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
2 the requirements of due process, is the best notice practicable under the circumstances, and shall
3 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
4 the Class Notice by first class mail, pursuant to the terms set forth in the Agreement.

5 9. The Court hereby appoints _____ as Administrator. No later than 15
6 calendar days after preliminary approval of the Settlement by the Court, Defendant shall provide to
7 the Administrator an electronic spreadsheet with the Class Data. The Administrator will perform
8 address updates and verifications as necessary prior to the mailing of the Class Notice. Using best
9 efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class
10 Data, the Administrator will mail the Class Notice Packets to all Class Members via first-class U.S.
11 Mail. Before mailing Class Notices, the Administrator shall update Class Member addresses using
12 the National Change of Address database.

13 10. The Court hereby preliminarily approves the proposed procedure for exclusion from
14 the Settlement. Any Class Member may individually choose to opt out of and be excluded from the
15 Class as provided in the Class Notice by following the instructions for requesting exclusion from the
16 Class that are set forth in the Class Notice. All requests for exclusion must be postmarked by no
17 later than the Response Deadline, which is sixty (60) calendar days after the date of the mailing of
18 the Class Notice and received by the Administrator. If the Class Notice Packet is re-mailed, the
19 Response Deadline for requests for exclusion will be extended an additional 14 days. Any such
20 person who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
21 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
22 comment thereon. Class Members who have not requested exclusion shall be bound by all
23 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only opt
24 out that particular individual, and any attempt to affect an opt out of a group, class, or subclass of
25 individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of the
26 Settlement, the Aggrieved Employees will be paid their allocation of the PAGA Penalties and will
27 remain bound by the release of the Released PAGA Claims in the Agreement regardless of their
28 request for exclusion.

1 11. Any Class Member who has not opted out (“Participating Class Member”) may
2 appear at the final approval hearing and may object or express the Member's views regarding the
3 Settlement and may present evidence and file briefs or other papers that may be proper and relevant
4 to the issues to be heard and determined by the Court as provided in the Class Notice. Participating
5 Class Members will have until the Response Deadline to submit their written objections to the
6 Administrator in accordance with the instructions in the Class Notice. If the Class Notice Packet is
7 re-mailed, the Response Deadline for written objections will be extended an additional 14 days.
8 Alternatively, Participating Class Members may appear at the Final Approval Hearing to make an
9 oral objection.

10 12. A Final Approval Hearing shall be held before this Court on _____
11 _____ at ____ in Department 2 at the San Mateo County Superior Court to hear both the
12 motion for final approval and the motion for attorneys’ fees, and to determine all necessary matters
13 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
14 and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
15 approved by the Court; whether the Final Approval Order and Judgment should be entered herein;
16 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and
17 reasonable to the Class Members; and to finally approve attorneys’ fees and costs, the service award,
18 and the expenses of the Administrator. All papers in support of the motion for final approval and the
19 motion for attorneys’ fees, costs and service award, both to be heard at the Final Approval Hearing,
20 shall be filed with the Court and served on all counsel no later than sixteen (16) court days before the
21 hearing.

22 13. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
23 shall be construed as a concession or admission by Defendant in any way that the claims asserted
24 have any merit or that this Action was properly brought as a class or representative action, and shall
25 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
26 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or
27 with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is
28 finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or

1 conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed
2 as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse
3 to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or
4 admission by Defendant of any liability, fault, wrongdoing, omission, concession or damage.

5 14. In the event the Settlement does not become effective in accordance with the terms of
6 the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
7 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
8 the Parties shall revert to their respective positions as of before entering into the Agreement, and
9 expressly reserve their respective rights regarding the prosecution and defense of this Action,
10 including all available defenses and affirmative defenses, and arguments that any claim in the Action
11 could not be certified as a class action and/or managed as a representative action. In such an event,
12 the Court's orders regarding the Settlement, including this Order, shall not be used or referred to in
13 litigation for any purpose.

14 15. The Court reserves the right to adjourn or continue the date of the final approval
15 hearing and all dates provided for in the Agreement without further notice to Class Members and
16 retains jurisdiction to consider all further applications arising out of or connected with the proposed
17 Settlement.

18 16. The Action is stayed, and all trial and related pre-trial dates are vacated, subject to
19 further orders of the Court at the Final Approval Hearing.

20 **IT IS SO ORDERED.**

21 Dated: _____

22 _____
23 HON. MARIE S. WEINER
24 JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

ADRIAN OCHOA-ANDRADE, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

SEE'S CANDIES, INC; a California Corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **22-CIV-02481**

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

Hearing Date:
Hearing Time:

Judge: Marie S. Weiner
Dept.: 2

Action Filed: June 16, 2022
Trial Date: Not Set

50718407.1

1 The motions of Plaintiff Adrian Ochoa-Andrade (“Plaintiff”) for an order finally approving
2 the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant See’s Candies,
3 Inc. (“Defendant”) and for an award of attorneys’ fees and costs, service payment, and the fees of
4 the Administrator duly came on for hearing on _____ before the Honorable Marie S.
5 Weiner.

6 **I.**
7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Mateo, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Nine Hundred Thousand
16 Dollars (\$900,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, the significant risks relating to certification, liability, and damages issues, and the
21 assistance of an experienced mediator in the settlement process, among other factors, support the
22 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

24 5. On _____, the Court granted preliminary approval of the Settlement. At
25 this same time, the Court approved conditional certification of the Class for settlement purposes
26 only.

27 **Notice to the Class**

28 50718407.1

1 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
2 release.

3 **Administration Expenses Payment**

4 13. The Administrator shall calculate and administer the payment to be made to the
5 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Penalties,
7 issue any required tax reporting forms, calculate withholdings and perform the other remaining
8 duties set forth in the Agreement. The Administrator has documented \$ _____ in fees and
9 expenses, and this amount is reasonable in light of the work performed by the Administrator.

10 **PAGA Penalties**

11 14. The Agreement provides for PAGA Penalties out of the Gross Settlement Amount
12 of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development Agency
13 ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
14 Agreement pursuant to the PAGA and \$5,000 to be distributed to the Aggrieved Employees,
15 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
16 (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
17 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
18 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
19 Individual PAGA Payment. "PAGA Pay Period" means any Pay Period (Sunday-Saturday) during
20 which an Aggrieved Employee worked for Defendant for at least one day during the PAGA
21 Period, which is June 16, 2021, through [REDACTED]. Pursuant to Labor Code section 2699,
22 subdivision (1)(2), the LWDA was provided notice of the Agreement and these settlement terms
23 and has not indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED as
27 follows:

28 50718407.1

1 1. The certification of the Class for the purposes of settlement is confirmed. The
2 Class is defined as follows:

3 All individuals who were employed by Defendant in California and classified as a
4 non-exempt, non-retail manufacturing employee at any time during the Class
5 Period, but excluding any individuals who are class members in *Lauralynne*
6 *Cristobal and Meisha Henry v. See's Candy, Inc.*, Superior Court of the State of
California, County of Los Angeles, Case No. 19STCV07389, except such
individuals who worked for Defendant in California after November 21, 2020.

7 The Class Period is from June 16, 2018, through _____, 2023.

8 2. All persons who meet the foregoing definition are members of the Class, except for
9 those individuals who filed a valid request for exclusion (“opt out”) from the Class. [INSERT
10 REFERENCE TO IDENTIFY ANY OPT OUTS].

11 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
12 best interest of the Class.

13 4. Class Counsel are awarded attorneys' fees in the amount of \$_____ and
14 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
15 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

16 5. The payment of the Class Representative Service Payment in the amount of \$_____
17 to the Plaintiff is approved.

18 6. The payment of \$_____ to the Administrator for its fees and expenses is
19 approved.

20 7. The PAGA Penalties in the amount of \$_____ are approved and shall be
21 allocated in accordance with the Agreement.

22 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
23 Final Approval Order and Judgment a finding of the validity of any claims in the Action or of any
24 wrongdoing by Defendant, or that this Action is appropriate for class treatment (other than for
25 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
26 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
27 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability

28 50718407.1

1 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
2 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
3 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
4 these restrictions, Defendant may file this Final Approval Order and Judgment, the Agreement, or
5 any other papers and records on file in the Action in this Action or in any other proceeding as
6 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
7 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
8 Released PAGA Claims.

9 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
10 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
11 and Judgment shall be posted on the Administrator’s website as set forth in the Class NoticeIt
12 shall not be necessary to send notice of entry of this Final Approval Order and Judgment to
13 individual Class Members.

14 10. If the Agreement does not become final and effective in accordance with the terms
15 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
16 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
17 revert to their respective positions as of before entering into the Agreement and expressly reserve
18 their respective rights regarding the prosecution and defense of this Action, including all available
19 defenses and affirmative defenses, and arguments that any claim in the Action could not be
20 certified as a class action and/or managed as a representative action.

21

22 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

23 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
24 Plaintiff, and all members of the Class, shall take nothing in the Action.

25 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
26 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any

27

28

50718407.1

1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 3. The Parties are authorized to agree to and to adopt such amendments, modifications
4 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
5 Final Approval Order and Judgment and as approved by the Court.

6 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
7 provided in the Agreement and in this Final Approval Order and Judgment.

8 5. Effective on the date when Defendant fully funds the entire Gross Settlement
9 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
10 Payments, all Participating Class Members, on behalf of themselves and their respective former
11 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
12 release Released Parties from the Released Class Claims. The "Released Class Claims" are all
13 claims that were alleged, or reasonably could have been alleged, based facts stated in the
14 Operative Complaint, known or unknown, for any type of relief against the Released Parties that
15 occurred during the Class Period, including claims for: (i) meal and rest break violations or
16 premium payments in lieu thereof; (ii) failure to pay earned wages for all hours worked, including
17 minimum wages or overtime wages; (iii) failure to pay wages timely during employment and upon
18 termination; (iv) failure to pay sick time; (v) failure to reimburse employees for required expenses;
19 (vi) failure to furnish accurate wage statements; (vi) unfair business practices relating to or arising
20 out of any of the foregoing; and (viii) to the extent not covered above, any and all claims
21 reasonably arising out of the Operative Complaint or Plaintiff's PAGA Notice. Except as
22 expressly set forth in this Agreement, Participating Class Members do not release any other
23 claims, including claims for vested benefits, wrongful termination, violation of the Fair
24 Employment and Housing Act, unemployment insurance, disability, social security, workers'
25 compensation, and/or claims based on facts occurring outside the Class Period.

26 6. Effective on the date when Defendant fully funds the entire Gross Settlement
27 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class

28 50718407.1

1 Payments, Aggrieved Employees and the LWDA are deemed to release the Released Parties from
2 the Released PAGA Claims on behalf of themselves, their respective former and present
3 representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the State of
4 California. “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or
5 reasonably could have been alleged, based on the facts stated in the Operative Complaint and the
6 PAGA Notice that occurred during the PAGA Period. The Released PAGA Claims do not include
7 claims for vested benefits, wrongful termination, discrimination, unemployment insurance,
8 disability, social security, worker’s compensation, and/or claims outside of the PAGA Period. The
9 release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless
10 of whether an Aggrieved Employee submitted a request for an exclusion from the Class.

11 7. Plaintiff and his former and present spouses, representatives, agents, attorneys,
12 heirs, administrators, successors, and assigns generally releases and discharges Released Parties
13 from all claims, transactions, or occurrences between them that occurred or arose anytime from the
14 beginning of time to the date Plaintiff executed the Agreement (“Plaintiff’s Individual Released
15 Claims”). This release of Plaintiff’s Individual Released Claims releases the Released Parties
16 from any claim that Plaintiff could maintain in any action against any Released Party and includes,
17 but is not limited to, (a) all claims that were, or reasonably could have been, alleged, based on the
18 facts contained, in the Operative Complaint and Plaintiff’s PAGA Notice and (b) all PAGA claims
19 that were, or reasonably could have been, alleged based on facts contained in the Operative
20 Complaint and Plaintiff’s PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not
21 extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
22 unemployment benefits, disability benefits, social security benefits, or workers’ compensation
23 benefits that arose at any time, or based on occurrences after the date Plaintiff signed the
24 Agreement. For the avoidance of doubt, Plaintiff is subject to the class and PAGA releases for the
25 duration of the Class Period and PAGA Period respectively. Plaintiff acknowledges that Plaintiff
26 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
27 knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain

50718407.1

28

1 effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery
2 of them. The Parties declared and represented that they intended the Agreement to be complete
3 and not subject to any claim of mistake, and that the releases herein express full and complete
4 releases, and that they intended that the releases herein shall be final and complete.

5 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

HON. MARIE S. WEINER
JUDGE, SUPERIOR COURT OF CALIFORNIA