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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SANTA CLARA**

24 STEVEN R. REGALADO and ENRIQUE
25 MARTIN, individually, and on behalf of all
26 others similarly situated,

27 *Plaintiffs,*

28 vs.

KELLOGG COMPANY, a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV412578

[Honorable Charles F. Adams, Department 7]

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

Complaint Filed: March 16, 2023
Trial Date: Not set

1 This Joint Stipulation of Class and Representative Action Settlement Agreement (“Settlement
2 Agreement” or “Settlement” or “Agreement”) is made by and between Plaintiff Edwin Faulkner
3 (“Plaintiff”) and Defendant Kellanova, f/k/a Kellogg Company (“Defendant”). This Agreement refers
4 to Plaintiff and Defendant collectively as “Parties” and individually as “Party.”

5 **1. DEFINITIONS.**

- 6 1.1. “Action” means *Regalado, et al. v. Kellogg Company*, Superior Court of the State of
7 California, County of Santa Clara, Case Number 23CV412578.
- 8 1.2. “Administrator” means APEX Class Action Administration, the neutral entity the Parties
9 have agreed to appoint to administer the Settlement.
- 10 1.3. “Administration Expenses Payment” means \$10,000.00, the amount the Administrator
11 will be paid from the Gross Settlement Amount to reimburse its reasonable fees and
12 expenses in accordance with its “not to exceed” bid, which will be submitted to the
13 Court in connection with Preliminary Approval of the Settlement.
- 14 1.4. “Aggrieved Employee” means all persons who are employed or have been employed by
15 Defendant in California as hourly non-exempt employees from March 22, 2022, through
16 preliminary approval of the Settlement or sixty (60) days from the date this Agreement
17 is fully executed, whichever is earlier.
- 18 1.5. “Class” means all persons who are employed or have been employed by Defendant in
19 California as hourly non-exempt employees from March 16, 2019, through preliminary
20 approval of the Settlement or sixty (60) days from the date this Agreement is fully
21 executed, whichever is earlier.
- 22 1.6. “Class Counsel” means Moon Law Group, P.C.
- 23 1.7. “Class Counsel Expenses Payment” means \$30,000.00, the amount allocated to Class
24 Counsel for reimbursement of the reasonable expenses incurred to prosecute the Action.
- 25 1.8. “Class Counsel Fees Payment” means one-third of the Gross Settlement Amount, the
26 amount allocated to Class Counsel for reimbursement of the reasonable fees incurred to
27 prosecute the Action.
28

- 1 1.9. “Class Data” means Class Member identifying information in Defendant’s possession,
2 including the Class Member’s name, last-known mailing address, Social Security
3 number, and number of Workweeks and PAGA Pay Periods.
- 4 1.10. “Class Member” means a member of the Class, as either a Participating Class Member
5 or Non-Participating Class Member, including a Non-Participating Class Member who
6 qualifies as an Aggrieved Employee.
- 7 1.11. “Class Member Address Search” means the Administrator’s investigation and search for
8 current Class Member mailing addresses using all reasonably available sources,
9 methods, and means, including, but not limited to, the National Change of Address
10 database, skip traces, and direct contact by the Administrator with Class Members.
- 11 1.12. “Class Notice” means the court-approved Notice of Class and Representative Action
12 Settlement and Final Approval Hearing to be mailed to Class Members in English and
13 Spanish, substantially in the form attached to this Agreement as **Exhibit A** and
14 incorporated by reference into this Agreement.
- 15 1.13. “Class Period” means the period of time from March 16, 2019, through preliminary
16 approval of the Settlement or sixty (60) days from the date this Agreement is fully
17 executed, whichever is earlier.
- 18 1.14. “Class Representative” means Edwin Faulkner, the named Plaintiff in the Operative
19 Complaint.
- 20 1.15. “Class Representative Service Payment” means \$7,500.00, the amount allocated to the
21 Class Representative for his services in furtherance of the Action and for his general
22 release.
- 23 1.16. “Court” means the Superior Court of California, County of Santa Clara.
- 24 1.17. “Defendant” means Kellanova, f/k/a Kellogg Company.
- 25 1.18. “Defense Counsel” means Barnes & Thornburg, LLP.
- 26 1.19. “Effective Date” means the date both of the following have occurred: (a) the Court
27 enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
28 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a)

1 if no Participating Class Member objects to the Settlement, the day the Court enters the
2 Judgment; (b) if one or more Participating Class Members object(s) to the Settlement,
3 the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a
4 timely appeal from the Judgment is filed, the day after the appellate court affirms the
5 Judgment and issues a remittitur.

6 1.20. “Final Approval Hearing” means the Court’s Hearing on Plaintiff’s Motion for Final
7 Approval of the Settlement.

8 1.21. “Final Judgment” means the Judgment entered by the Court upon granting Final
9 Approval of the Settlement.

10 1.22. “Gross Settlement Amount” means \$1,357,500.00, the total amount Defendant agrees to
11 pay under the Settlement, with the exception of its share of payroll taxes for the Wage
12 Portions of any Individual Class Payments, which shall be paid separately, and the terms
13 provided in Paragraph 7 below. The Gross Settlement Amount is non-reversionary and
14 will be used to pay the Administration Expenses Payment, Class Counsel Expenses
15 Payment, Class Counsel Fees Payment, Class Representative Service Payment,
16 Individual Class Payments, Individual PAGA Payments, and LWDA PAGA Payment.

17 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of
18 the Net Settlement Amount calculated according to the number of Workweeks he or she
19 worked during the Class Period.

20 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
21 the PAGA Penalties, allocated pursuant to Labor Code section 2699(i) and calculated
22 according to the number of PAGA Pay Periods he or she worked during the PAGA
23 Period.

24 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency
25 entitled under Labor Code section 2699(i).

26 1.26. “LWDA PAGA Payment” means the LWDA’s 75% share of the PAGA Penalties,
27 allocated pursuant to Labor Code section 2699(i).
28

- 1 1.27. “Net Settlement Amount” means the Gross Settlement Amount less the following
2 payments in the amounts approved by the Court: the Administration Expenses Payment,
3 Class Counsel Expenses Payment, Class Counsel Fees Payment, Class Representative
4 Service Payment, Individual PAGA Payments, and LWDA PAGA Payment. The
5 remainder is to be paid to Participating Class Members as Individual Class Payments.
- 6 1.28. “Non-Participating Class Member” means a Class Member who submits a valid and
7 timely Request for Exclusion from the Settlement.
- 8 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
9 worked for Defendant for at least one day during the PAGA Period.
- 10 1.30. “PAGA Period” means the period of time from March 22, 2022, through preliminary
11 approval of the Settlement or sixty (60) days from the date this Agreement is fully
12 executed, whichever is earlier.
- 13 1.31. “PAGA” means the Private Attorneys General Act, Labor Code sections 2698, *et seq.*
- 14 1.32. “PAGA Notice” means Plaintiff’s February 29, 2024 written notice to Defendant and
15 the LWDA pursuant to Labor Code section 2699.3(a).
- 16 1.33. “PAGA Penalties” means \$100,000.00, the total amount of PAGA civil penalties to be
17 paid from the Gross Settlement Amount in settlement of the Released PAGA claims.
- 18 1.34. “Participating Class Member” means a Class Member who does not submit a valid and
19 timely Request for Exclusion from the Settlement.
- 20 1.35. “Plaintiff” means Edwin Faulkner, the named plaintiff in the Action.
- 21 1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the
22 Settlement.
- 23 1.37. “Released Class Claims” means the claims released as described in Paragraph 5.2.
- 24 1.38. “Released PAGA Claims” means the claims released as described in Paragraph 5.3.
- 25 1.39. “Released Parties” means: Kellanova, f/k/a Kellogg Company, as well as any division
26 thereof, any parent, subsidiary, affiliated entity, or related entity, and any predecessors,
27 successors, and assigns of any of the foregoing, and any current or former officer,
28 employee, director, trustee, agent, shareholder, representative, attorney, insurer, investor,

or employee benefit or welfare program or plan (including administrators, trustees, fiduciaries, and insurers of such program or plan).

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

1.41. "Response Deadline" means the last date on which Class Members may: (a) mail or fax a Request for Exclusion from the Settlement; or (b) mail or fax an Objection to the Settlement. The Response Deadline shall be (60) calendar days after the Administrator mails the Class Notice to the Class Members. However, if the Administrator has to re-mail the Class Notice to a Class Member after having been returned undeliverable to the Administrator, the Response Deadline shall be an additional fourteen (14) calendar days beyond the expiration of the original Response Deadline. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. However, the Administrator shall not have the authority to unilaterally extend the Response Deadline.

1.42. "Workweek" means any week in which a Class Member was engaged in any productive work activity for which they were paid as a non-exempt employee, not including paid time off or leaves of absence, during the Class Period.

2. RECITALS.

2.1. On March 22, 2023, Steven Regalado submitted to the LWDA, and sent via certified mail to Defendant, a notice of California Labor Code ("Labor Code") violations pursuant to Labor Code section 2699.3(a).

2.2. On March 16, 2023, Steven Regalado filed a Class Action Complaint against Defendant, which initiated the Action and alleged seven individual and class causes of action for violation of the Labor Code and one cause of action for violation of the California Business and Professions Code.

2.3. On March 22, 2023, Steven Regalado and Enrique Martin submitted to the LWDA, and sent via certified mail to Defendant, an amended notice of Labor Code violations pursuant to Labor Code section 2699.3(a), which identified Mr. Martin as an additional

1 PAGA representative.

2 2.4. On March 22, 2023, Steven Regalado and Enrique Martin filed a First Amended Class
3 and Representative Action Complaint (“First Amended Complaint”) against Defendant,
4 which named Mr. Martin as an additional class and PAGA representative.

5 2.5. On June 27, 2023, Steven Regalado filed a Request for Dismissal of Class and
6 Individual Allegations Without Prejudice, which requested the Court to dismiss all of his
7 pending allegations and to allow Mr. Martin to pursue his remaining causes of action.
8 On June 29, 2023, the Court granted an Order thereon.

9 2.6. From May 2023 to January 2024, the Parties agreed to engage in private mediation,
10 mutually selected Mark Rudy, Esq. as mediator, and engaged in an informal exchange of
11 data and documents in preparation for mediation.

12 2.7. On February 13, 2024, the Parties participated in an all-day mediation presided over by
13 Mark Rudy, Esq., which resulted in the Settlement.

14 2.8. On or around February 14, 2024, Class Counsel was retained by Plaintiff Edwin
15 Faulkner.

16 2.9. On February 29, 2024, Plaintiff Edwin Faulkner submitted to the LWDA, and sent via
17 certified mail to Defendant, a notice of California Labor Code (“Labor Code”) violations
18 pursuant to Labor Code section 2699.3(a).

19 2.10. On March 27, 2024, Enrique Martin and Plaintiff Edwin Faulkner filed a Second
20 Amended Class and Representative Action Complaint (the “Operative Complaint”) against
21 Defendant, which named Mr. Faulkner as an additional class and PAGA
22 representative and alleged a ninth cause of action for Civil Penalties pursuant to PAGA.

23 2.11. On April 30, 2024, Class Counsel filed a Motion to be Relieved as Enrique Martin’s
24 Counsel.

25 **3. MONETARY TERMS.**

26 3.1. Gross Settlement Amount. The Gross Settlement Amount is \$1,357,500.00, or the total
27 amount Defendant agrees to pay under the Settlement, with the exception of its share of
28 payroll taxes for the Wage Portions of any Individual Class Payments, which shall be

1 paid separately, and the terms provided in Paragraph 7 below. The Gross Settlement
2 Amount shall be funded in accordance with Section 4.2 of this Agreement and shall be
3 dispersed by the Administrator without asking or requiring Participating Class
4 Members or Aggrieved Employees to submit any claim as a condition of payment.
5 None of the Gross Settlement Amount will revert to Defendant.

6 3.2. Payments from the Gross Settlement Amount. The Administrator shall make and
7 deduct the following payments from the Gross Settlement Amount, in the amounts
8 specified by the Court in the Final Approval Order:

9 3.2.1. To Plaintiff: A Class Representative Service Payment to the Class
10 Representative of not more than \$7,500.00, in addition to the Individual Class
11 Payment and Individual PAGA Payment the Class Representative is entitled to
12 receive as a Participating Class Member and Aggrieved Employee. Defendant
13 will not oppose Plaintiff's request for a Class Representative Service Payment
14 that does not exceed this amount. Plaintiff and/or Class Counsel will file a
15 motion for the Class Representative Service Payment no later than sixteen (16)
16 court days prior to the Final Approval Hearing. If the Court approves of a Class
17 Representative Service Payment less than the amount requested, the
18 Administrator will allocate the remainder to the Net Settlement Amount. The
19 Administrator will pay the Class Representative Service Payment using IRS
20 Form 1099. Plaintiff shall be solely and legally responsible for paying any and
21 all applicable taxes on this payment and shall hold Defendant harmless from
22 any claim or liability for taxes, penalties, or interest arising as a result of the
23 payment. Defendant makes no representations as to the tax treatment or legal
24 effect of the payment called for herein, and Plaintiff is not relying on any
25 statement or representation by Defendant or its counsel in this regard.

26 3.2.2. To Class Counsel: A Class Counsel Fees Payment to Class Counsel of not more
27 than one third of the Gross Settlement Amount, or \$452,500.00, and a Class
28 Counsel Expenses Payment of not more than \$30,000.00. Defendant will not

1 oppose Plaintiff's request for a Class Counsel Fees Payment and Class Counsel
2 Expenses Payment that do not exceed these amounts. Plaintiff and/or Class
3 Counsel will file a motion for the Class Counsel Fees Payment and Class
4 Counsel Expenses Payment no later than sixteen (16) court days prior to the
5 Final Approval Hearing. If the Court approves of a Class Counsel Fees Payment
6 and/or Class Counsel Expenses Payment less than the amounts requested, the
7 Administrator will allocate the remainder to the Net Settlement Amount.
8 Released Parties shall have no liability to Class Counsel or any other Plaintiff's
9 Counsel arising from any claim to any portion of any Class Counsel Fee
10 Payment and/or Class Counsel Expenses Payment. The Administrator will pay
11 the Class Counsel Fees Payment and Class Counsel Expenses Payment using
12 one or more IRS 1099 Forms. Class Counsel assumes full responsibility and
13 liability for taxes owed on the Class Counsel Fees Payment and Class Counsel
14 Expenses Payment. Class Counsel holds Defendant harmless, and indemnifies
15 Defendant, from any dispute or controversy regarding any division or sharing of
16 any of these Payments.

17 3.2.3. To the Administrator: An Administration Expenses Payment to the
18 Administrator of not more than \$10,000.00, except for a showing of good cause
19 and as approved by the Court. Plaintiff and/or Class Counsel will file a motion
20 for the Administration Expenses Payment no later than sixteen (16) court days
21 prior to the Final Approval Hearing. If the Court approves of an Administration
22 Expenses Payment less than the amount requested, or if the Administration
23 Expense Payment is less than the amount requested, the Administrator will
24 allocate the remainder to the Net Settlement Amount. To the extent the actual
25 Administration Expenses Payment is greater than \$10,000.00, such excess
26 amount will be taken from the Gross Settlement Amount, subject to the Court's
27 approval.
28

1 3.2.4. To Each Participating Class Member: An Individual Class Payment to each
2 Participating Class Member calculated by (a) dividing the Net Settlement
3 Amount by the total number of Workweeks worked by all Participating Class
4 Members during the Class Period and (b) multiplying the result by each
5 Participating Class Member's Workweeks.

6 3.2.4.1. Tax Allocation of Individual Class Payments. Twenty percent (20%) of
7 each Participating Class Member's Individual Class Payment will be
8 allocated to settlement of claims for wages (the "Wage Portion"). The
9 Wage Portions are subject to tax withholding and will be reported on an
10 IRS W-2 Form. Eighty percent (80%) of each Participating Class
11 Member's Individual Class Payment will be allocated to settlement of
12 claims for interest and penalties (the "Non-Wage Portion"). The Non-
13 Wage Portions are not subject to wage withholdings and will be
14 reported on IRS 1099 Forms. Participating Class Members assume full
15 responsibility and liability for employee taxes owed on their Individual
16 Class Payment.

17 3.2.4.2. Non-Participating Class Members: Non-Participating Class Members
18 will not receive Individual Class Payments. The Administrator will
19 allocate amounts equal to their Individual Class Payments to the Net
20 Settlement Amount for distribution to Participating Class Members on a
21 pro rata basis.

22 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties to the LWDA and
23 Aggrieved Employees of not more than \$100,000.00, with seventy-five percent
24 (75%) (i.e., \$75,000.00) allocated to the LWDA PAGA Payment and twenty-
25 five percent (25%) (i.e., \$25,000.00) allocated to the Individual PAGA
26 Payments. If the Court approves PAGA Penalties less than the amount
27 requested, the Administrator will allocate the remainder to the Net Settlement
28 Amount. The Administrator will report the Individual PAGA Payments on IRS

1 1099 Forms.

2 3.2.5.1. To Each Aggrieved Employee: The Administrator will calculate each
3 Individual PAGA Payment by (a) dividing the amount of the Aggrieved
4 Employees' 25% share of PAGA Penalties by the total number of
5 PAGA Pay Periods worked by all Aggrieved Employees during the
6 PAGA Period and (b) multiplying the result by each Aggrieved
7 Employee's PAGA Pay Periods.

8 3.2.5.1.1 Tax Allocation of Individual PAGA Payments: One hundred
9 percent (100%) of each Individual PAGA Payment will be
10 allocated as penalties. Aggrieved Employees assume full
11 responsibility and liability for any taxes owed on their
12 Individual PAGA Payment.

13 **4. SETTLEMENT FUNDING AND PAYMENTS.**

14 4.1. Class Data. No later than twenty-one (21) calendar days after the Court grants
15 Preliminary Approval of the Settlement, Defendant will simultaneously deliver the
16 Class Data to the Administrator in the form of a Microsoft Excel spreadsheet. To
17 protect Class Members' privacy rights, the Administrator must maintain the Class Data
18 in confidence, use the Class Data only for purposes of the instant Settlement and for no
19 other purpose, and restrict access to the Class Data to Administrator employees who
20 need access to the Class Data to effect and perform under this Agreement. Defendant
21 has a continuing duty to immediately notify Class Counsel if it discovers that the Class
22 Data omitted Class Member identifying information and to provide corrected or
23 updated Class Data as soon as reasonably feasible. Without any extension of the
24 deadline by which Defendant must send the Class Data to the Administrator, the Parties
25 and their counsel will expeditiously use best efforts, in good faith, to reconstruct or
26 otherwise resolve any issues related to missing or omitted Class Data.

27 4.2. Funding of Gross Settlement Amount. No later than twenty-one (21) business days
28 after the Effective Date of the Settlement, Defendant shall fund the entire Gross

1 Settlement Amount and its share of payroll taxes by transmitting such funds to the
2 Administrator. Defendant has no obligation to deposit such funds in a separate account
3 prior to the deadlines set forth herein.

4 4.3. Payments from the Gross Settlement Amount. No later than fourteen (14) calendar days
5 after Defendant funds the entire Gross Settlement Amount, the Administrator shall mail
6 checks for the Administration Expenses Payment, Class Counsel Expenses Payment,
7 Class Counsel Fees Payment, Class Representative Service Payment, Individual Class
8 Payments, Individual PAGA Payments, and LWDA PAGA Payment. Disbursement of
9 the Class Counsel Expenses Payment, Class Counsel Fees Payment, and Class
10 Representative Service Payment shall not precede disbursement of the Individual Class
11 Payments and Individual PAGA Payments.

12 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or
13 Individual PAGA Payments and send them to the Class Members via First
14 Class U.S. Mail, postage prepaid. The face of each check shall prominently
15 state the date when the check will be voided. Each check will be voided 180
16 days after the date of mailing (“void date”). The Administrator will cancel all
17 checks not cashed by the void date. The Administrator will send checks for
18 Individual Class Payments to all Participating Class Members, including those
19 for whom a Class Notice was returned undelivered. The Administrator will send
20 checks for Individual PAGA Payments to all Aggrieved Employees, including
21 Non-Participating Class Members who qualify as Aggrieved Employees, and to
22 those for whom a Class Notice was returned undelivered.

23 4.3.2. The Administrator may send Participating Class Members a single check
24 combining the Individual Class Payment and Individual PAGA Payment.
25 Before mailing any checks, the Settlement Administrator must update the
26 recipient’s mailing addresses using the National Change of Address Database.
27 The Administrator must conduct a Class Member Address Search for all other
28 Class Members whose checks are returned undelivered without a USPS

1 forwarding address.

2 4.3.3. No later than seven (7) calendar days after receiving a returned check, the
3 Administrator must re-mail checks to the USPS forwarding address provided or
4 to an address ascertained through the Class Member Address Search. The
5 Administrator need not take further steps to deliver checks to Class Members
6 whose re-mailed checks are returned as undelivered. The Administrator shall
7 promptly send a replacement check to any Class Member whose original check
8 was lost or misplaced and who requests the replacement prior to the void date.

9 4.3.4. For any Class Member whose Individual Class Payment check or Individual
10 PAGA Payment check is uncashed and cancelled after the void date, or for any
11 Class Member whose envelope is returned and no forwarding address can be
12 located for the Class Member after reasonable efforts have been made,
13 including, but not limited to, skip tracing, the Administrator shall transmit the
14 funds represented by such checks to the California Controller's Unclaimed
15 Property Fund in the name of the Class Member thereby leaving no "unpaid
16 residue" subject to the requirements of California Code of Civil Procedure
17 section 384(b).

18 4.3.5. The payment of Individual Class Payments and Individual PAGA Payments
19 shall not obligate Defendant to confer any additional benefits or make any
20 additional payments to Class Members, such as 401(k) contributions or
21 bonuses, beyond those specified in this Agreement. Rather, it is the Parties'
22 intention that this Settlement Agreement will not affect any rights,
23 contributions, or amounts to which any Class Members may be entitled under
24 any benefit plans.

25 **5. RELEASES OF CLAIMS.** Effective on the date the Court enters Final Judgment and
26 Defendant fully funds the entire Gross Settlement Amount and all employer payroll taxes owed on the
27 Wage Portions of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved
28 Employees, and Class Counsel will release claims against all Released Parties as follows:

1 5.1. Plaintiff’s Release. Plaintiff fully and finally releases the Released Parties from any and
2 all claims, known and unknown, under federal, state and/or local law, statute, ordinance,
3 regulation, common law, or other source of law, against Defendant, including, but not
4 limited to, all claims arising from or related to his employment with Defendant and his
5 compensation while an employee of Defendant, including, but not limited to, claims for
6 wages, restitution, penalties, breach of contract, retaliation, discrimination, harassment,
7 wrongful termination, and defamation. (“Plaintiff’s Released Claims”). Plaintiff’s
8 Released Claims include, but are not limited to, all claims arising from or related to the
9 Action and related Operative Complaint, including, but not limited to, all claims arising
10 under the: (i) California Labor Code, including, but not limited to, Sections 90.5, 201,
11 202, 203, 204, 213, 218.5, 221, 223, 226, 226.3, 226.7, 227.3, 246, 432, 510, 511, 512,
12 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
13 1670.5, 2698 *et seq.*, 2699 *et seq.*, 2699.3, 2800, and 2802; (ii) Wage Orders of the
14 California Industrial Welfare Commission; (iii) California Private Attorneys General Act
15 of 2004; (iv) California Business and Professions Code sections 17200, *et seq.*; (v)
16 California Civil Code, including, but not limited to, Sections 3287, 3336, and 3294; (vi)
17 California Code of Civil Procedure; (vii) California common law of contract; (viii) FLSA,
18 29 U.S.C. sections 201, *et seq.*; (ix) federal common law; and (x) Employee
19 Retirement Income Security Act, 29 U.S.C. sections 1001, *et seq.* (“ERISA”). Plaintiff’s
20 Released Claims include all such claims whether at common law, pursuant to statute,
21 ordinance, or regulation, in equity or otherwise, and whether arising under federal, state,
22 or other applicable law that occurred up to and including the Effective Date. Plaintiff
23 expressly waives and relinquishes the provisions, rights, and benefits of section 1542 of
24 the California Civil Code, which reads:

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

1 5.1.1. Plaintiff's Release excludes the release of claims not permitted by law and is a
2 condition of receiving any portion of his Class Representative Service Payment.

3 5.1.2. Knowledge and Understanding. In accordance with the ADEA, Plaintiff
4 acknowledges that he: (i) Has been, and is hereby, advised to consult with an
5 attorney prior to executing this Agreement and has had the opportunity to do so;
6 (ii) Had the opportunity to take at least twenty-one (21) calendar days after
7 receiving this Agreement to review the Agreement (the "Review Period"); (iii)
8 Has availed himself of all opportunities he deems necessary to make a
9 voluntary, knowing, and fully informed decision; and (iv) Is fully aware of his
10 rights and has carefully read and fully understands all provisions of this
11 Agreement before signing.

12 5.1.3. Revocation Period. In the event Plaintiff executes this Agreement during the
13 Review Period, he will have an additional period of seven (7) calendar days
14 after execution to revoke the Agreement. Any revocation shall be in writing
15 and addressed/delivered to Defense Counsel.

16 5.2. Release by Participating Class Members: All Participating Class Members fully and
17 finally release and discharge the Released Parties of the claims stated in the Operative
18 Complaint or that reasonably could have been stated based upon the facts in the
19 Operative Complaint, including: (i) all claims based on violation of California Labor
20 Code sections 200, 201, 202, 203, 204, 208, 210, 218.5, 218.6, 221, 222, 223, 226, 226.2,
21 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
22 1197.1, 1198, and 1199, California Industrial Commission Wage Orders, Cal. Code
23 Regs., Title. 8, section 11040, et seq., Business and Professions Code sections 17200, et
24 seq., California Code of Civil Procedure section 1021.5; and (ii) all claims for or related
25 to alleged unpaid wages, under federal, state, or municipal law, concerning minimum
26 wages, regular rate of pay, hours worked, overtime or double time wages, regular rate of
27 pay, shift differentials, alternate workweeks, bonus and incentive pay, sick pay, timely
28 payment of wages at separation, wage statements, meal periods and meal period

1 premiums, rest breaks and rest break premiums, unfair competition, unfair business
2 practices, unlawful business practices, and claims for statutory penalties based on the
3 facts or claims alleged in the operative Complaint at any time during the Class Period
4 (collectively, “Released Class Claims”).

5 5.3. Release by Aggrieved Employees: Plaintiff, in his individual capacity and on behalf of
6 the State of California, and all other Aggrieved Employees, shall fully and finally release
7 and discharge the Released Parties of the PAGA claims that Plaintiff alleges, or
8 reasonably could have alleged, against the Released Parties based on the facts stated in
9 the operative Complaint and in Plaintiff’s amended LWDA notice letter, including: (i) all
10 PAGA claims seeking civil penalties premised upon California Labor Code sections 200,
11 201, 202, 203, 204, 208, 210, 218.5, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7,
12 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
13 1198, and 1199et seq., California Industrial Commission Wage Orders; and (ii) all other
14 claims for civil penalties recoverable under the Private Attorneys General Act, California
15 Labor Code sections 2698 et seq., based on the facts or claims alleged in the operative
16 Complaint at any time during the PAGA Period (collectively, “Released PAGA
17 Claims”).

18 5.3.1. The Released PAGA Claims do not release any Aggrieved Employees’ claims
19 for wages or statutory penalties, and the Aggrieved Employees may not opt out
20 of the Released PAGA Claims.

21 **6. SETTLEMENT ADMINISTRATION.**

22 6.1. Selection of Administrator. The Parties have jointly selected APEX Class Action
23 Administration to serve as the Administrator and verified that, as a condition of
24 appointment, APEX Class Action Administration agrees to be bound by this Agreement
25 and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the
26 Administration Expenses Payment. The Parties and their Counsel represent that they
27 have no interest or relationship, financial or otherwise, with the Administrator other than
28 a professional relationship arising out of prior experiences administering settlements.

1 6.2. Employer Identification Number. The Administrator shall have and use its own
2 Employer Identification Number for purposes of calculating payroll tax withholdings and
3 providing reports state and federal tax authorities.

4 6.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
5 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
6 Regulation § 468B-1.

7 6.4. Notice to Class Members.

8 6.4.1. No later than three (3) business days after receipt of the Class Data, the
9 Administrator shall notify Class Counsel that the list has been received and state
10 the number of Class Members, Aggrieved Employees, Workweeks, and PAGA
11 Pay Periods in the Class Data.

12 6.4.2. No later than thirty (30) calendar days after the Court’s Preliminary Approval of
13 the Settlement, the Administrator will send to all Class Members identified in the
14 Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
15 Notice in English and Spanish, substantially in the form attached to this
16 Agreement as **Exhibit A**. The first page of the Class Notice shall prominently
17 estimate the dollar amounts of any Individual Class Payment and/or Individual
18 PAGA Payments payable to the Class Member and/or Aggrieved Employee, and
19 the number of Workweeks and PAGA Pay Periods used to calculate these
20 amounts. Before mailing Class Notices, the Administrator shall update Class
21 Member addresses using the National Change of Address database.

22 6.4.3. No later than three (3) business days after its receipt of any Class Notice returned
23 by the USPS as undelivered, the Administrator shall re-mail the Class Notice
24 using any forwarding address provided by USPS. If USPS does not provide a
25 forwarding address, the Administrator shall conduct a Class Member Address
26 Search and re-mail the Class Notice to the most current address obtained. The
27 Administrator has no obligation to make further attempts to locate or send Class
28 Notice to Class Members whose Class Notice is returned by USPS a second time.

1 The deadlines for Class Members' written objections, Challenges to Workweeks
2 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an
3 additional fourteen (14) calendar days beyond the sixty (60) calendar days
4 otherwise provided in the Class Notice for all Class Members whose notice is re-
5 mailed. The Administrator will inform the Class Member of the extended
6 deadline with the re-mailed Class Notice.

7 6.4.4. If the Administrator, Defendant, Defense Counsel, or Class Counsel is contacted
8 by or otherwise discovers any persons who believe they should have been
9 included in the Class Data and should have received Class Notice, the Parties will
10 expeditiously meet and confer in person or by telephone, and in good faith, in an
11 effort to agree on whether to include them as Class Members. If the Parties agree,
12 such persons will be Class Members entitled to the same rights as other Class
13 Members, and the Administrator will send, via email or overnight delivery, a
14 Class Notice requiring them to exercise options under this Agreement no later
15 than fourteen (14) calendar days after receipt of Class Notice, or the deadline
16 dates in the Class Notice, whichever are later.

17 6.5. Requests for Exclusion (Opt-Outs). Class Members who wish to exclude themselves
18 from the Class Settlement must mail or fax the Administrator a signed written Request
19 for Exclusion no later than sixty (60) calendar days after the Administrator mails the
20 Class Notice (plus an additional fourteen (14) calendar days for Class Members whose
21 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or
22 his/her representative that reasonably communicates the Class Member's election to be
23 excluded from the Settlement and includes the Class Member's name, address, and
24 telephone number. To be valid, a Request for Exclusion must be timely faxed or
25 postmarked by the Response Deadline. The date of the postmark on the return mailing
26 envelope or the fax receipt confirmation will be the exclusive means to determine
27 whether a Request for Exclusion has been timely submitted.
28

1 6.5.1. If a Class Member’s Request for Exclusion is defective as to the requirements
2 listed herein, that Class Member will be given an opportunity to cure the
3 defect(s). The Administrator will mail the Class Member a cure letter within
4 three (3) business days of receiving the defective submission to advise the Class
5 Member that his or her submission is defective and that the defect must be cured
6 to render the Request for Exclusion valid. The Class Member will have until the
7 later of (a) the Response Deadline or (b) fourteen (14) calendar days from the
8 date of the cure letter, whichever date is later, to postmark or fax a revised
9 Request for Exclusion. The Administrator’s determination of authenticity shall be
10 final and not appealable or otherwise susceptible to challenge.

11 6.5.2. Every Class Member who does not submit a timely and valid Request for
12 Exclusion is deemed to be a Participating Class Member under this Agreement,
13 entitled to all benefits and bound by all terms and conditions of the Settlement,
14 including the Participating Class Members’ Release under Paragraph 5.2 of this
15 Agreement, regardless of whether the Participating Class Member actually
16 receives the Class Notice or objects to the Settlement.

17 6.5.3. Every Class Member who submits a valid and timely Request for Exclusion is a
18 Non-Participating Class Member and shall not receive an Individual Class
19 Payment or have the right to object to the class action components of the
20 Settlement. Because future PAGA claims are subject to claim preclusion upon
21 entry of the Judgment, Non-Participating Class Members who are Aggrieved
22 Employees are deemed to release the claims identified in Paragraph 5.3 of this
23 Agreement and are eligible for an Individual PAGA Payment.

24 6.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60)
25 calendar days after the Administrator mails the Class Notice (plus an additional fourteen
26 (14) calendar days for Class Members whose Class Notice is re-mailed) to challenge the
27 number of Workweeks and PAGA Pay Periods allocated to the Class Member and/or
28 Aggrieved Employee in the Class Notice.

1 6.6.1. The Class Member and/or Aggrieved Employee may challenge the allocation by
2 communicating with the Administrator via mail or fax on or before the Response
3 Deadline. The date of the postmark or fax receipt confirmation will be the
4 exclusive means to determine whether a challenge to calculation of Workweeks
5 and/or Pay Periods has been timely submitted. The Administrator must encourage
6 the challenging Class Member to submit supporting documentation. In the
7 absence of any contrary documentation, the Administrator is entitled to presume
8 that the Workweeks contained in the Class Notice are correct so long as they are
9 consistent with the Class Data. The Administrator's determination of each Class
10 Member's allocation of Workweeks and/or Pay Periods shall be final and not
11 appealable or otherwise susceptible to challenge. The Administrator shall
12 promptly provide copies of all challenges to calculation of Workweeks and/or
13 Pay Periods to Defense Counsel and Class Counsel and the Administrator's
14 determination of the challenges. All such challenges are to be resolved not later
15 than fourteen (14) calendar days after the Response Deadline.

16 6.7. Objections to Settlement. Only Participating Class Members may object to the class
17 action components of the Settlement and/or this Agreement, including contesting the
18 fairness of the Settlement and/or amounts requested for the Class Counsel Fees Payment,
19 Class Counsel Expenses Payment and/or Class Representative Service Payment.

20 6.7.1. Participating Class Members may send written objections to the Administrator,
21 by fax or mail. In the alternative, Participating Class Members may appear in
22 Court (or hire an attorney to appear in Court) to present verbal objections at the
23 Final Approval Hearing. A Participating Class Member who elects to send a
24 written objection to the Administrator must do so not later than sixty (60)
25 calendar days after the Administrator's mailing of the Class Notice (plus an
26 additional fourteen (14) calendar days for Class Members whose Class Notice
27 was re-mailed). To be valid, any objection must: (1) contain the objecting Class
28 Member's full name and current address, as well as contact information for any

1 attorney representing the objecting Class Member, if any, for purposes of the
2 objection; (2) include all objections and the factual and legal bases for same; (3)
3 include any and all supporting papers, briefs, written evidence, declarations,
4 and/or other evidence; and (4) be postmarked no later than the Response
5 Deadline.

6 6.7.2. Non-Participating Class Members have no right to object to any of the class
7 action components of the Settlement.

8 6.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
9 performed or observed by the Administrator contained in this Agreement or otherwise.

10 6.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
11 and maintain and use an internet website to post information of interest to Class
12 Members including the date, time and location for the Final Approval Hearing
13 and copies of the Settlement Agreement, Motion for Preliminary Approval, the
14 Preliminary Approval, Class Notice, Motion for Final Approval, Motion for
15 Class Counsel Fees Payment, Class Counsel Expenses Payment, and Class
16 Representative Service Payment, and Final Approval and Judgment. The
17 Administrator will also maintain and monitor an email address and a toll-free
18 telephone number to receive Class Member calls, faxes and emails.

19 6.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
20 promptly review on a rolling basis Requests for Exclusion to ascertain their
21 validity. No later than five (5) days after the expiration of the deadline for
22 submitting Requests for Exclusion, the Administrator shall email a list to Class
23 Counsel and Defense Counsel containing (a) the names and other identifying
24 information of Class Members who have timely submitted valid Requests for
25 Exclusion (“Exclusion List”); (b) the names and other identifying information of
26 Class Members who have submitted invalid Requests for Exclusion; (c) copies of
27 all Requests for Exclusion from Settlement submitted (whether valid or invalid).
28

1 6.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
2 reports to Class Counsel and Defense Counsel that, among other things, tally the
3 number of: Class Notices mailed or re-mailed, Class Notices returned
4 undelivered, Requests for Exclusion (whether valid or invalid) received,
5 objections received, challenges to Workweeks and/or PAGA Pay Periods
6 received and/or resolved, and checks mailed for Individual Class Payments and
7 Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
8 include provide the Administrator’s assessment of the validity of Requests for
9 Exclusion and attach copies of all Requests for Exclusion and objections
10 received.

11 6.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
12 address and make final decisions consistent with the terms of this Agreement on
13 all Class Member challenges over the calculation of Workweeks and/or Pay
14 Periods. The Administrator’s decision shall be final and not appealable or
15 otherwise susceptible to challenge.

16 6.8.5. Administrator’s Declaration. No later than fourteen (14) calendar days before the
17 date by which Plaintiff is required to file the Motion for Final Approval of the
18 Settlement, the Administrator will provide to Class Counsel and Defense Counsel
19 (i) a signed declaration suitable for filing in Court attesting to its due diligence
20 and compliance with all of its obligations under this Agreement, including, but
21 not limited to, its mailing of the Class Notice, the Class Notices returned as
22 undelivered, the re-mailing of Class Notices, attempts to locate Class Members,
23 the total number of Requests for Exclusion from Settlement it received (both
24 valid or invalid), the number of written Objections; and (ii) the Exclusion List.
25 The Administrator will supplement its declaration as needed or requested by the
26 Parties and/or the Court. Class Counsel is responsible for filing the
27 Administrator’s declaration(s) in Court.
28

1 6.8.6. Final Report by Settlement Administrator. No later than fourteen (14) calendar
2 days after the Administrator disburses all funds in the Gross Settlement Amount,
3 the Administrator will provide Class Counsel and Defense Counsel with a final
4 report detailing its disbursements by employee identification number only of all
5 payments made under this Agreement. At least fourteen (14) calendar days
6 before any deadline set by the Court, the Administrator will prepare and submit
7 to Class Counsel a signed declaration suitable for filing in Court attesting to its
8 disbursement of all payments required under this Agreement. Class Counsel is
9 responsible for filing the Administrator's declaration in Court.

10 **7. ESCALATOR CLAUSE**

11 Based on its records, Defendant estimates that, as of the date of this Agreement, there are 356 Class
12 Members and 26,500 total Workweeks from March 16, 2019, to February 13, 2024. If the actual number
13 of total Workweeks from March 16, 2019, to February 13, 2024 exceeds 26,500 by more than ten
14 percent (10%), i.e., exceeds 29,150, Defendant, at its sole discretion, may either: (1) pay the pro rata
15 percentage increase in excess of ten percent (10%) in the Gross Settlement Amount to include the
16 additional Workweeks, e.g., an eleven percent (11%) increase in Workweeks would result in a one
17 percent (1%) increase in the Gross Settlement Amount; or (2) reduce the Class Period to the date that
18 29,150 workweeks are met, but not exceeded.

19 **8. DEFENDANT'S RIGHT TO WITHDRAW.**

20 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten
21 percent (10%) of the total of all Class Members, Defendant may, but is not obligated to, elect to
22 withdraw from the Settlement within fourteen (14) calendar days after expiration of the Response
23 Deadline. If Defendant elects to withdraw from the Settlement, Defendant must notify Class Counsel
24 and the Court of its decision no later than fourteen (14) calendar days after expiration of the Response
25 Deadline, and pay all Settlement Administration Expenses incurred to that date. Further, the Settlement
26 shall be void ab initio, have no force or effect whatsoever, and neither Party will have any further
27 obligation to perform under this Agreement, except as provided in this Paragraph.
28

1 **9. MOTION FOR FINAL APPROVAL.**

2 No later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will
3 file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the
4 PAGA settlement under Labor Code section 2699(l) and a Proposed Final Approval Order and
5 Judgment (collectively “Motion for Final Approval”).

6 9.1. Response to Objections. Each Party retains the right to respond to any Objection raised
7 by a Participating Class Member, including the right to file responsive documents in
8 Court no later than five (5) court days prior to the Final Approval Hearing, or as
9 otherwise ordered or accepted by the Court.

10 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
11 Approval on any material change to the Settlement, including, but not limited to, the
12 scope of release to be granted by Class Members, the Parties will expeditiously work
13 together in good faith to address the Court’s concerns by revising the Agreement as
14 necessary to obtain Final Approval. The Court’s decision to award less than the amounts
15 requested for the Class Representative Service Payment, Class Counsel Fees Payment,
16 Class Counsel Expenses Payment, and/or Administration Expenses Payment shall not
17 constitute a material modification to the Agreement within the meaning of this paragraph.

18 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of the Final
19 Judgment, the Court will retain jurisdiction over the Parties, Action, and Settlement
20 solely for purposes of (i) enforcing the Agreement and/or Judgment, (ii) addressing
21 settlement administration matters, and (iii) addressing such post-Judgment matters as are
22 permitted by law.

23 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
24 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
25 Class Counsel Expenses Payment reflected set forth in the instant Settlement, the Parties,
26 their respective counsel, and all Participating Class Members waive all rights to appeal
27 from the Judgment, including all rights to post-judgment and appellate proceedings, the
28 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and

1 appeals. The waiver of appeal does not include any waiver of the right to oppose such
2 motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to
3 perform under this Agreement will be suspended until such time as the appeal is finally
4 resolved and the Judgment becomes final, except as to matters that do not affect the
5 amount of the Net Settlement Amount.

6 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
7 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
8 material modification of this Agreement (including, but not limited to, the scope of
9 release to be granted by Class Members), this Agreement shall be null and void. The
10 Parties shall nevertheless expeditiously work together in good faith to address the
11 appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing,
12 on a 50-50 basis, any additional administration expenses reasonably incurred after
13 remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the
14 Class Representative Service Payment or any payments to Class Counsel shall not
15 constitute a material modification of the Judgment within the meaning of this paragraph,
16 as long as the Gross Settlement Amount remains unchanged.

17 **10. AMENDED JUDGMENT.**

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

20 **11. ADDITIONAL PROVISIONS.**

21 11.1. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of
22 the Parties' settlement terms.

23 11.2. No Admission of Liability. The Parties enter into this Agreement to resolve the dispute
24 that has arisen between them and to avoid the burden, expense, and risk of continued
25 litigation. In entering into this Agreement, Defendant does not admit, and specifically
26 denies, it has violated any federal, state, or local law; violated any regulations or
27 guidelines promulgated pursuant to any statute or any other applicable laws, regulations
28 or legal requirements; breached any contract; violated or breached any duty; engaged in

1 any misrepresentation or deception; or engaged in any other unlawful conduct with
2 respect to their employees. Neither this Agreement, nor any of its terms or provisions,
3 nor any of the negotiations connected with it, shall be construed as an admission or
4 concession by Defendant of any such violations or failures to comply with any applicable
5 law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
6 Agreement and its terms and provisions shall not be offered or received as evidence in
7 any action or proceeding to establish any liability or admission on the part of Defendant
8 or to establish the existence of any condition constituting a violation of, or a non-
9 compliance with, federal, state, local or other applicable law. If Final Approval does not
10 occur, the Parties agree that this Agreement is void, but remains protected by California
11 Evidence Code Section 1152.

12 11.3. Other Pending Actions: The Parties represent that they are not aware of any other
13 pending matter or action asserting claims that will be extinguished or affected by the
14 Settlement.

15 11.4. Class Certification or Representative Manageability for Other Purposes. The Parties
16 agree to stipulate to class certification only for purposes of the Settlement. If, for any
17 reason, the Settlement is not approved, the stipulation to certification will be void. If, for
18 any reason the Court does not grant Preliminary Approval, Final Approval or enter
19 Judgment, Defendant reserves the right to contest certification of any class for any
20 reason, Defendant reserves all available defenses to the claims in the Action, Plaintiff
21 reserves the right to move for class certification on any grounds available, and Plaintiff
22 reserves the right to contest Defendant's defenses. The Settlement, this Agreement, and
23 the Parties' willingness to settle the Action will have no bearing on, and will not be
24 admissible in connection with any litigation, except for proceedings to enforce or
25 effectuate the Settlement and this Agreement.

26 11.5. No Press Releases/Advertisements. Neither Plaintiff nor Plaintiff's Counsel shall issue
27 any press release or announcement of any kind related in any way to the Settlement.
28 Plaintiff and Class Counsel agree to limit their statements regarding the terms of the

1 Settlement, whether oral, written, or electronic (including the world wide web), to say the
2 Class Action has been resolved and that Plaintiff and Class Counsel are satisfied with the
3 Settlement terms. Nothing in this Section is intended to interfere with Class Counsel's
4 duties and obligations to faithfully discharge their duties as Class Counsel, including but
5 not limited to: (1) as required by law; (2) as required under the terms of the Settlement;
6 and/or (3) as required under counsel's duties and responsibilities as Class Counsel. This
7 Settlement shall not be advertised or mentioned on any source, including Plaintiff's
8 Counsel's personal or firm website.

9 11.6. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
10 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and
11 have arrived at this Settlement after arm's-length negotiations and in the context of
12 adversarial litigation, taking into account all relevant factors, present and potential. The
13 Parties further acknowledge that they are each represented by competent counsel and that
14 they have had an opportunity to consult with their counsel regarding the fairness and
15 reasonableness of this Settlement.

16 11.7. No Solicitation. The Parties separately agree that they and their respective counsel and
17 employees will not solicit any Class Member to opt out of or object to the Settlement, or
18 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
19 Counsel's ability to communicate with Class Members in accordance with Class
20 Counsel's ethical obligations owed to Class Members.

21 11.8. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
22 together with its attached exhibits shall constitute the entire agreement between the
23 Parties relating to the Settlement, superseding any and all oral representations,
24 warranties, covenants, or inducements made to or by any Party.

25 11.9. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
26 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this
28 Agreement to effectuate its terms, and to execute any other documents reasonably

1 required to effectuate the terms of this Agreement including any amendments to this
2 Agreement.

3 11.10. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
4 the Court will first attempt to construe the provision as valid to the fullest extent possible
5 consistent with applicable precedents so as to define all provisions of this Agreement
6 valid and enforceable.

7 11.11. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
8 to exercise a right or remedy by any of the Parties hereto will be considered to imply or
9 constitute a further waiver by such party of the same or any other condition, covenant,
10 right or remedy.

11 11.12. Cooperation. The Parties and their counsel will cooperate with each other and use their
12 best efforts, in good faith, to implement the Settlement by, among other things,
13 modifying the Settlement Agreement, submitting supplemental evidence and
14 supplementing points and authorities as requested by the Court. In the event the Parties
15 are unable to agree upon the form or content of any document necessary to implement
16 the Settlement, or on any modification of the Agreement that may become necessary to
17 implement the Settlement, the Parties will seek the assistance of a mediator and/or the
18 Court for resolution.

19 11.13. No Prior Assignments. The Parties separately represent and warrant that they have not
20 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
21 or encumber to any person or entity and portion of any liability, claim, demand, action,
22 cause of action, or right released and discharged by the Party in this Settlement.

23 11.14. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
24 providing any advice regarding taxes or taxability, nor shall anything in this Settlement
25 be relied upon as such within the meaning of United States Treasury Department
26 Circular 230 (31 CFR Part 10, as amended) or otherwise.

27 11.15. Modification of Agreement. This Agreement, and all parts of it, may be amended,
28 modified, changed, or waived only by an express written instrument signed by all Parties

- 1 or their representatives, and approved by the Court.
- 2 11.16. Agreement Binding on Successors and Assigns. This Agreement will be binding upon,
- 3 and inure to the benefit of, the successors or assigns of each of the Parties.
- 4 11.17. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
- 5 governed by and interpreted according to the internal laws of the State of California,
- 6 without regard to conflict of law principles.
- 7 11.18. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
- 8 this Agreement. This Agreement will not be construed against any Party on the basis that
- 9 the Party was the drafter or participated in the drafting.
- 10 11.19. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
- 11 during Action and in this Agreement relating to the confidentiality of information shall
- 12 survive the execution of this Agreement.
- 13 11.20. Use and Return of Class Data. Information provided to Class Counsel pursuant to
- 14 Evidence Code section 1152, and all copies and summaries of the Class Data provided to
- 15 Class Counsel by Defendant in connection with the mediation, other settlement
- 16 negotiations, or in connection with the Settlement, may be used only with respect to this
- 17 Settlement, and no other purpose, and may not be used in any way that violates any
- 18 existing contractual agreement, statute, or rule of court. No later than ninety (90) days
- 19 after the date when the Court discharges the Administrator’s obligation to provide a
- 20 Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy,
- 21 all paper and electronic versions of Class Data received from Defendant unless, prior to
- 22 the Court’s discharge of the Administrator’s obligation, Defendant makes a written
- 23 request to Class Counsel for the return, rather than the destructions, of Class Data.
- 24 11.21. Headings. The descriptive heading of any section or paragraph of this Agreement is
- 25 inserted for convenience of reference only and does not constitute a part of this
- 26 Agreement.
- 27 11.22. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
- 28 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.

11.23. 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 Plaintiff:
MOON LAW GROUP, P.C.
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

To Defendant:
BARNES & THORNBURG, LLP
Mark Wallin
Michael Witczak
2029 Century Park East, Suite 300
Los Angeles, California 90067
Telephone: (312) 214-4591

11.24. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), 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.

11.25. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiff, and not his representative(s), must personally execute this Agreement. An authorized officer of Defendant must execute this Agreement on behalf of Defendant. This Agreement shall

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become binding and enforceable pursuant to California Code of Civil Procedure section 664.6.

11.26. 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. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Signatures on following page.

Plaintiff & Class Representative:

Dated: 5/21/2024 , 2024

DocuSigned by:
Edwin Faulkner
By: _____
Plaintiff, Edwin Faulkner

Plaintiff's Counsel:

Dated: 05/21 , 2024

MOON LAW GROUP, P.C.

By: _____
[Signature]
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Edwin Faulkner

Defendant:

Dated: May 15 , 2024

On behalf of Defendant, Kellanova, f/k/a Kellogg

Company
DocuSigned by:
Emily Newhouse Dillingham
By: _____
Emily Newhouse Dillingham
Corporate Counsel, Litigation and Regulatory

Defendant's Counsel:

Dated: May 15 , 2024

BARNES & THORNBURG, LLP

By: _____
[Signature]
Mark Wallin
Michael Witczak
Attorneys for Defendant, Kellanova, f/k/a
Kellogg Company