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14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SANTA CRUZ  
17

18 BRYAN MACIAS SILVA, individually, and on  
behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 DRISCOLL'S, INC., a California corporation;  
22 and DOES 1 through 10, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 22CV00147

**JOINT STIPULATION AND  
SETTLEMENT AGREEMENT OF  
CLASS AND PAGA ACTION CLAIMS**

Trial Date: N/A  
Complaint Filed: January 19, 2022

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7 Attorneys for Plaintiff  
BRYAN MACIAS SILVA  
8 On behalf of himself and all others similarly situated

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1 This Joint Stipulation and Settlement Agreement of Class and PAGA Action Claims  
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made and entered into by and  
3 between Plaintiff Bryan Macias Silva (“Plaintiff” or “Class Representative”), on behalf of himself,  
4 all others similarly situated, all alleged aggrieved employees, and the State of California, on the  
5 one hand, and Defendant Driscoll’s, Inc. (“Defendant”), on the other hand, in the lawsuit entitled  
6 *Bryan Macias Silva v. Driscoll’s, Inc.*, Santa Cruz County Superior Court, Case No. 22CV00147.  
7 Plaintiff and Defendant shall be, at all times, collectively referred to as the “Parties.” This  
8 Agreement is intended by the Parties to fully, finally and forever resolve the claims as set forth  
9 herein, based upon and subject to the terms and conditions of this Agreement.

### 10 DEFINITIONS

11 The following definitions are applicable to this Settlement Agreement. Definitions  
12 contained elsewhere in this Settlement Agreement are also effective:

- 13 1. “Action” means *Bryan Macias Silva v. Driscoll’s, Inc.*, Santa Cruz County Superior  
14 Court of California, Case No. 22CV00147, initiated on or about January 19, 2022.
- 15 2. “Aggrieved Employees” means members of the PAGA Settlement Group.
- 16 3. “Attorneys’ Fees and Costs” means the Court-approved attorneys’ fees for Class  
17 Counsel’s litigation and resolution of the Action, and the Court-approved costs incurred and to be  
18 incurred by Class Counsel in the Action. Class Counsel will request attorneys’ fees not to exceed  
19 one-third of the Gross Settlement Amount, or \$500,000.00, and attorneys’ costs not to exceed  
20 \$22,500.00, subject to proof. Attorneys’ Fees and Costs shall be paid from the Gross Settlement  
21 Amount.
- 22 4. “Class Counsel” or “Plaintiff’s Counsel” means Kane Moon, Allen Feghali, and  
23 Jacquelyne VanEmmerik of Moon Law Group, P.C.
- 24 5. “Class List” means a complete list of all Class Members that Defendant will  
25 diligently and in good faith compile from Defendant’s records and provide to the Settlement  
26 Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement.  
27 The Class List will be formatted in Microsoft Excel and will include (i) each Class Member’s full  
28 name, last known home address, social security number, start and end dates of work performed in

1 California as a non-exempt employee of Defendant, (ii) the number of Workweeks each Class  
2 Member worked for Defendant during the Class Settlement Covered Period, (iii) the number of Pay  
3 Periods each Aggrieved Employee worked for Defendant during the PAGA Settlement Covered  
4 Period, and (iv) any other relevant information needed to calculate the Individual Settlement  
5 Payments.

6 6. “Class Member(s)” means members of the Settlement Class.

7 7. “Class Representative” means Plaintiff Bryan Macias Silva in his capacity as a  
8 representative of the Class Members.

9 8. “Class/PAGA Representative Enhancement Payment” means the Court-approved  
10 award to be paid to Plaintiff for his efforts and work in prosecuting the Action on behalf of the  
11 Class Members and for his general release of claims. Plaintiff will request a Class/PAGA  
12 Representative Enhancement Payment not to exceed \$7,500.00. The Class/PAGA Representative  
13 Enhancement Payment shall be paid from the Gross Settlement Amount.

14 9. “Class Settlement Covered Period” means the time period from January 19, 2018,  
15 through the date of Preliminary Approval, or pursuant to the Escalator Clause set out in Paragraph  
16 58.

17 10. “Court” means the Santa Cruz County Superior Court.

18 11. “Defendant” means Driscoll’s, Inc.

19 12. “Effective Date” means the latter of the following events: (i) five (5) calendar days  
20 after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval  
21 and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed,  
22 *i.e.*, 65 days from the date the Court grants Final Approval and enters Judgment; or (ii) if any  
23 appeal, writ, or other appellate proceeding opposing Final Approval has been filed within that  
24 timeframe, five (5) business days after any appeal, writ, or other appellate proceedings opposing  
25 the Settlement has been finally and conclusively dismissed with no right to pursue further remedies  
26 or relief. The Effective Date is a condition of performance of the obligations under this Settlement.

27 13. “Final Approval” means the Court Order granting Final Approval of the Settlement  
28 Agreement.

1           14.   “Final Judgment” or “Judgment” means the Judgment entered by the Court upon  
2 granting Final Approval of the Settlement Agreement.

3           15.   “Gross Settlement Amount” means \$1,500,000.00, the amount to be paid by  
4 Defendant in full satisfaction of all Released Class Claims by Qualified Class Members and all  
5 Released PAGA Claims by the PAGA Settlement Group, which includes all Individual Settlement  
6 Payments to Qualified Class Members and/or Aggrieved Employees, Attorneys’ Fees and Costs to  
7 Class Counsel, the Class/PAGA Representative Enhancement Payment to Plaintiff, the LWDA  
8 Payment to the Labor and Workforce Development Agency (“LWDA”), and Settlement  
9 Administration Costs to the Settlement Administrator. The Gross Settlement Amount has been  
10 agreed to by the Parties based on the aggregation of the agreed-upon settlement value of claims in  
11 the Action. In no event will Defendant be liable for more than the Gross Settlement Amount, unless  
12 Defendant elects to a pro-rata increase pursuant to the Escalator Clause set out in Paragraph 58. In  
13 addition to the Gross Settlement Amount, Defendant shall pay the employer’s portion only of  
14 payroll taxes on all wage allocations. There will be no reversion of the Gross Settlement Amount  
15 to Defendant.

16           16.   “Individual Settlement Payment” means each Qualified Class Member’s and/or  
17 Aggrieved Employee’s share of the Net Class Settlement Amount and/or Net PAGA Settlement  
18 Amount, respectively.

19           17.   “LWDA Letter(s)” or “PAGA Letter(s)” means Plaintiff’s January 11, 2022 and  
20 January 9, 2024 correspondence to the Labor and Workforce Development Agency (“LWDA”)  
21 seeking penalties against Defendant for alleged violations of the California Labor Code (“Labor  
22 Code”) and applicable Wage Orders under the California Private Attorneys General Act of 2004.

23           18.   “LWDA Payment” means \$112,500.00, the LWDA’s seventy-five percent (75%)  
24 share of the PAGA Settlement Amount, allocated pursuant to California Labor Code section 2699(i).

25           19.   “Net Class Settlement Amount” means the Gross Settlement Amount less  
26 Attorneys’ Fees and Costs, the Class/PAGA Representative Enhancement Payment, the PAGA  
27 Settlement Amount, and Settlement Administration Costs. The Net Class Settlement Amount will  
28 be automatically distributed to Qualified Class Members (*i.e.*, Class Members who do not opt-out

1 of the Settlement) according to the number of Workweeks worked during the Class Settlement  
2 Covered Period. There will be no reversion of the Net Class Settlement Amount to Defendant if  
3 any funds cannot be distributed.

4 20. "Net PAGA Settlement Amount" means \$37,500.00, the PAGA Settlement Group's  
5 25% share of the PAGA Settlement Amount, allocated pursuant to California Labor Code section  
6 2699(i). The Net PAGA Settlement Amount will be automatically distributed to the PAGA  
7 Settlement Group, even if they opt out of the class portion of the Settlement, according to the  
8 number of Pay Periods worked during the PAGA Settlement Covered Period.

9 21. "Notice of Objection" means a Class Member's valid and timely written objection  
10 to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the  
11 objector's full name, signature, address, and telephone number, (ii) a written statement of all  
12 grounds for the objection accompanied by any legal support for such objection, and (iii) copies of  
13 any papers, briefs, or other documents upon which the objection is based, if any documents are a  
14 basis of the objection.

15 22. "Notice Packet" or "Class Notice" means the Notice of Class and Representative  
16 Action Settlement, substantially in the format attached as **Exhibit A**.

17 23. "PAGA" means the California Labor Code Private Attorneys General Act of 2004  
18 (Cal. Lab. Code §§ 2698, *et seq.*).

19 24. "PAGA Settlement Amount" means \$150,000.00, the amount allocated to the  
20 resolution of the Released PAGA Claims by the PAGA Settlement Group. The PAGA Settlement  
21 Amount will be allocated seventy-five percent (75%) (i.e., \$112,500.00) to the LWDA and twenty-  
22 five percent (25%) (i.e., \$37,500.00) to the PAGA Settlement Group on a pro rata basis based on  
23 the number of Pay Periods worked by the Aggrieved Employees during the PAGA Settlement  
24 Covered Period.

25 25. "PAGA Settlement Covered Period" means the time period from January 11, 2021,  
26 through the date of Preliminary Approval, or pursuant to the Escalator Clause set out in Paragraph  
27 58.

28 26. "PAGA Settlement Group" means all persons who worked for any Defendant in

1 California as an hourly, non-exempt employee at any time during the PAGA Settlement Covered  
2 Period.

3 27. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either  
4 Plaintiff or Defendant, individually.

5 28. “Pay Period” means any pay period during which an Aggrieved Employee worked  
6 at least one (1) day for Defendant during the PAGA Settlement Covered Period, based on hire dates,  
7 re-hire dates and termination dates according to Defendant’s business records.

8 29. “Plaintiff” or “Class Representative” means Bryan Macias Silva.

9 30. “Preliminary Approval” means the Court Order granting Preliminary Approval of  
10 the Settlement Agreement.

11 31. “Qualified Class Member(s)” means any Class Member who does not timely opt-  
12 out of the Class settlement pursuant to the procedures outlined in this Settlement.

13 32. “Released Class Claims by Qualified Class Members” means (i) all claims alleged  
14 in the Complaint, First Amended Complaint, and/or Second Amended Complaint in the Action; (ii)  
15 all claims alleged in any and all PAGA letters sent to the LWDA by Plaintiff during or prior to the  
16 Action; and (iii) all claims which could have been alleged under the same or similar facts,  
17 allegations, and/or claims alleged in the Action, against Defendant and/or the Released Parties (as  
18 defined below) for work performed during the Class Settlement Covered Period, including but not  
19 limited to the following:

20 (a) Any claims for unpaid wages including minimum, regular, and/or overtime  
21 and/or double time wages (including but not limited to Cal. Labor Code (“Lab. Code”) §§ 510, 558,  
22 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and/or all applicable Wage Orders); failure to  
23 provide meal periods and/or meal period premium payments (including but not limited to Lab.  
24 Code §§ 226.7, 512, and/or all applicable Wage Orders); failure to provide rest and/or recovery  
25 breaks and/or days of rest and/or rest break premium payments (including but not limited to Lab.  
26 Code §§ 226.7, 551-554, and/or all applicable Wage Orders); expense reimbursement (including  
27 but not limited to Lab. Code §§ 2800 and/or 2802); failure to timely pay wages or vacation pay  
28 (including but not limited to Lab. Code §§ 201-204, 210, 227.3); improper sick pay (Lab. Code §§

1 245-249) failure to maintain or furnish accurate employment records (including but not limited to  
2 Lab. Code §§ 1174, 1174.5, 1175, 1198.5, and/or all applicable Wage Orders); failure to provide  
3 accurate wage statements (including but not limited to Lab. Code §§ 226, 226.3); failure to pay  
4 accrued vacation (including but not limited to Lab. Code § 227.3); claims for unfair competition  
5 and/or business practices (Cal. Bus. & Prof. Code § 17200 *et seq.*); all claims based on the foregoing  
6 under the applicable Wage Orders and/or California Code of Regulations; all claims for penalties  
7 including but not limited to, under PAGA (Lab. Code § 2698 *et seq.*) with the LWDA, State of  
8 California, and/or Plaintiff as proxies for the LWDA release); all claims for interest, penalties,  
9 premiums, and/or attorney’s fees in connection with any of the preceding claims (including but not  
10 limited to Lab. Code §§ 210, 212, 216, 218.5, 218.6, 221, 222, 223, 226, 226.3, 1194, 1194.3); Cal.  
11 Civ. Code § 3287(a), California Code of Civil Procedure § 1021.5, and/or all other statutory and/or  
12 regulatory violations alleged in the LWDA letter(s) and/or any Complaint or Amended Complaint  
13 in the Action.

14 (b) Any claims for injunctive relief, declaratory relief, restitution, fraudulent  
15 business practices and/or punitive damages alleged and/or which could have been alleged under the  
16 facts, allegations and/or claims pleaded in the complaints filed as part of the Action; and

17 (c) Any and all other claims under California common law, the California Labor  
18 Code including but not limited to PAGA (Lab. Code § 2698 *et seq.*), the Fair Labor Standards Act  
19 (“FLSA” or 29 U.S.C § 206 *et seq.*), California Industrial Welfare Commission Wage Orders  
20 (“Wage Orders”), and/or the California Business and Professions Code alleged in or that could have  
21 been alleged under the same or similar facts, allegations and/or claims pleaded in the Action. In  
22 addition, to the extent required by law, the cashing of the settlement check by the Qualified Class  
23 Member shall be deemed an opt-in for purposes of releasing the Released Parties from any claims  
24 predicated under the FLSA that could have been alleged under the same or similar facts, allegations  
25 and/or claims pleaded in the Settlement Class. The Settlement Administrator shall include a legend  
26 on the settlement check stating: “By cashing this check, I am opting into the Settlement in *Bryan*  
27 *Macias Silva v. Driscoll’s, Inc.*, Superior Court of Santa Cruz County, Case No. 22CV00147 under  
28



1 the Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released Claims described in  
2 the Settlement Agreement.”

3 33. “Released PAGA Claims by the PAGA Settlement Group” includes (i) all claims  
4 for PAGA civil penalties alleged in the Complaint, First Amended Complaint, and/or Second  
5 Amended Complaint in the Action; (ii) all claims alleged in any and all PAGA letters sent to the  
6 LWDA by Plaintiff during or prior to the Action; and/or (iii) all claims which could have been  
7 alleged under the same or similar facts, allegations and/or claims alleged in the Action, against  
8 Defendant and/or Released Parties (as defined below), including but not limited to: any claims for  
9 unpaid wages including minimum, regular, and/or overtime and/or double time wages (including  
10 but not limited to Cal. Labor Code (“Lab. Code”) §§ 510, 558, 1174, 1194, 1194.2, 1197, 1197.1,  
11 1198, 1199, and/or all applicable Wage Orders); failure to provide meal periods and/or meal period  
12 premium payments (including but not limited to Lab. Code §§ 226.7, 512, and/or all applicable  
13 Wage Orders); failure to provide rest and/or recovery breaks and/or days of rest and/or rest break  
14 premium payments (including but not limited to Lab. Code §§ 226.7, 551-554, and/or all applicable  
15 Wage Orders); expense reimbursement (including but not limited to Lab. Code §§ 2800 and/or  
16 2802); failure to timely pay wages or vacation pay (including but not limited to Lab. Code §§ 201-  
17 204, 210, 227.3); improper sick pay (Lab. Code §§ 245-249) failure to maintain or furnish accurate  
18 employment records (including but not limited to Lab. Code §§ 1174, 1174.5, 1175, 1198.5, and/or  
19 all applicable Wage Orders); failure to provide accurate wage statements (including but not limited  
20 to Lab. Code §§ 226, 226.3); failure to pay accrued vacation (including but not limited to Lab. Code  
21 § 227.3); all claims based on the foregoing under the applicable Wage Orders and/or California  
22 Code of Regulations; all claims for penalties including but not limited to California’s Private  
23 Attorneys General Act and/or PAGA (Lab. Code § 2698 *et seq.* with the LWDA, State of California,  
24 and/or Plaintiff as proxies for the LWDA release); all claims for interest, penalties, premiums,  
25 and/or attorney’s fees in connection with any of the preceding claims (including but not limited to  
26 Lab. Code §§ 200, 210, 212, 216, 218.5, 218.6, 221, 222, 223, 225, 225.5, 226, 226.3, 1194,  
27 1194.3); Cal. Civ. Code § 3287(a), California Code of Civil Procedure § 1021.5, and/or all other  
28 statutory and/or regulatory violations alleged in the LWDA letter(s) and/or any Complaint or

1 Amended Complaint in the Action. These claims shall be collectively referred to as the “Released  
2 PAGA Claims.”

3 34. “Released Parties” means Defendant Driscoll’s, Inc., as well as each and all of its  
4 past and present direct or indirect parents, subsidiaries, predecessors, successors, and affiliated  
5 corporations, entities, divisions, general and limited partners, joint venturers and affiliates, and each  
6 of their respective current and former directors, officers, managers, employees, principals,  
7 members, agents, managing agents, insurers, reinsurers, shareholders (both legal and beneficial),  
8 attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated  
9 companies, and each of their respective executors, predecessors, successors, assigns, trustees and  
10 legal representatives, and any individual or entity which could be jointly liable with Defendant  
11 Driscoll’s, Inc. (collectively, “Released Parties”).

12 35. “Request for Exclusion” means a Class Member’s valid and timely request to be  
13 excluded from the class portion of the Settlement. The Request for Exclusion must: (i) set forth  
14 the name, address, telephone number, and last four digits of the social security number of the Class  
15 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the  
16 Settlement Administrator via mail; (iv) clearly state that the Class Member does not wish to be  
17 included in the Settlement; and (v) be postmarked on or before the Response Deadline.

18 36. “Response Deadline” means the deadline by which Class Members must postmark  
19 to the Settlement Administrator their Requests for Exclusion, Notices of Objection or Workweek  
20 disputes. The Response Deadline will be forty-five (45) calendar days from the initial mailing of  
21 the Notice Packet by the Settlement Administrator, unless the 45<sup>th</sup> calendar day falls on a Sunday  
22 or State holiday, in which case the Response Deadline will be extended to the next day on which  
23 the U.S. Postal Service is open.

24 37. “Settlement” means the disposition of the Action pursuant to this Agreement.

25 38. “Settlement Administration Costs” means the costs payable from the Gross  
26 Settlement Amount to the Settlement Administrator for administering the Settlement, including,  
27 but not limited to, printing, distributing, and tracking documents for the Settlement, tax reporting,  
28 distributing the Gross Settlement Amount, and providing necessary reports and declarations, as

1 requested by the Parties. The Settlement Administration Costs are estimated not to exceed  
 2 \$30,000.00. The Settlement Administration Costs will be paid from the Gross Settlement Amount.

3 39. “Settlement Administrator” or “Administrator” means APEX Class Action  
 4 Administration, the third-party class action settlement administrator agreed to by the Parties and  
 5 approved by the Court for the purposes of administering the Settlement. The Parties each represent  
 6 that they do not have any financial interest in the Settlement Administrator or otherwise have a  
 7 relationship with the Settlement Administrator that could create a conflict of interest.

8 40. “Settlement Class” means all persons who worked for any Defendant in California  
 9 as an hourly, non-exempt employee at any time during the Class Settlement Covered Period. The  
 10 Parties agree that the Settlement Class shall be certified by the Court for settlement purposes only.

11 41. “Workweeks” means the number of weeks that each Class Member worked at least  
 12 one (1) day for Defendant during the Class Settlement Covered Period, based on hire dates, re-hire  
 13 dates and termination dates according to Defendant’s business records.

14 **TERMS OF AGREEMENT**

15 Plaintiff, on behalf of himself, the Settlement Class and the PAGA Settlement Group, and  
 16 Defendant agree as follows:

17 42. Settlement Consideration and Funding of the Gross Settlement Amount. Within 14  
 18 (14) business days of the Effective Date, the Settlement Administrator will provide Defendant with  
 19 the necessary calculations for Defendant’s payment of the employer’s portion of payroll taxes on  
 20 all wage allocations. Within twenty-one (21) business days of the Effective Date, Defendant will  
 21 issue payment in the amount of \$1,500,000.00 to the Settlement Administrator, in addition to  
 22 payment of the employer’s portion of payroll taxes on all wage allocations, which will be deposited  
 23 into a Qualified Settlement Account to be established by the Settlement Administrator. The Gross  
 24 Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) the LWDA Payment;  
 25 (iii) the Class/PAGA Representative Enhancement Payment; (iv) Attorneys’ Fees and Costs; and  
 26 (v) Settlement Administration Costs.

27 43. Attorneys’ Fees and Costs. Class Counsel will file a motion for attorneys’ fees not  
 28 to exceed one-third of the Gross Settlement Amount (projected to be \$500,000.00) and reasonable

1 attorneys' costs associated with their litigation and settlement of the Action not to exceed  
2 \$22,500.00, both of which will be paid from the Gross Settlement Amount. These amounts satisfy  
3 all of the claims for attorneys' fees and costs in the Action. A reduction in these amounts by the  
4 Court is not grounds to void the Settlement. Defendant agrees not to oppose any application or  
5 motion consistent with this paragraph.

6 44. Class/PAGA Representative Enhancement Payment. In exchange for a general and  
7 complete release, and in recognition of Plaintiff's effort and work in prosecuting the Action on  
8 behalf of Class Members, Defendant agrees not to oppose any application or motion for a  
9 Class/PAGA Representative Enhancement Payment not to exceed \$7,500.00. A reduction in this  
10 amount by the Court is not grounds to void the Settlement. The Class/PAGA Representative  
11 Enhancement Payment will be paid from the Gross Settlement Amount and will be in addition to  
12 any Individual Settlement Payment Plaintiff may be entitled to pursuant to the Settlement. Plaintiff  
13 will be solely and legally responsible to pay any and all applicable taxes on the Class/PAGA  
14 Representative Enhancement Payment. The Class/PAGA Representative Enhancement Payment  
15 will be characterized as taxable income and reported on IRS Form 1099.

16 45. Settlement Administration Costs. The Settlement Administrator will be paid for the  
17 reasonable costs of administration of the Settlement and distribution of payments from the Gross  
18 Settlement Amount, which shall not exceed \$30,000.00. These costs, which will be paid from the  
19 Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual  
20 Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets,  
21 calculating and distributing the Gross Settlement Amount, establishing and maintaining a  
22 settlement website in the manner described below and providing necessary reports and declarations.

23 46. PAGA Settlement Amount and Distribution. Subject to Court approval, the amount  
24 of \$150,000.00 from the Gross Settlement Amount will be designated for satisfaction of civil  
25 penalties arising out of the Released PAGA Claims by the PAGA Settlement Group during the  
26 PAGA Settlement Covered Period. Pursuant to PAGA, seventy-five percent (75%) (i.e.,  
27 \$112,500.00) of this sum will be paid to the LWDA and twenty-five percent (25%) (i.e.,  
28 \$37,500.00) will constitute the Net PAGA Settlement Amount and will be paid to the PAGA

1 Settlement Group (regardless of whether they object to or are excluded from the Class portion of  
2 the Settlement) as part of their Individual Settlement Payment as follows:

3 (a) The Settlement Administrator will calculate the total number of Pay  
4 Periods worked by each Aggrieved Employee during the PAGA Settlement Covered Period, and  
5 aggregate total number of Pay Periods worked by the PAGA Settlement Group during the PAGA  
6 Settlement Covered Period.

7 (b) To determine each Aggrieved Employee's share of the Net PAGA  
8 Settlement Amount, the Settlement Administrator will use the following formula: The PAGA Net  
9 Settlement Amount will be divided by the aggregate total number of Pay Periods worked by the  
10 PAGA Settlement Group during the PAGA Settlement Covered Period and then multiplied by each  
11 Aggrieved Employee's Pay Periods during the PAGA Settlement Covered Period.

12 47. Net Class Settlement Amount. The entire Net Class Settlement Amount will be  
13 distributed to Qualified Class Members as set forth below. No portion of the Net Class Settlement  
14 Amount will revert or be retained by Defendant.

15 48. Net Class Settlement Amount Distribution. The Net Class Settlement Amount will  
16 be distributed to each Qualified Class Member as follows:

17 (a) The Settlement Administrator will calculate the total number of Workweeks  
18 worked by each Qualified Class Member during the Class Settlement Covered Period and the  
19 aggregate total number of Workweeks worked by the Settlement Class during the Class Settlement  
20 Covered Period.

21 (b) To determine each Qualified Class Member's share of the Net Class  
22 Settlement Amount, the Settlement Administrator will use the following formula: The Net Class  
23 Settlement Amount will be divided by the aggregate total number of Workweeks worked by the  
24 Settlement Class during the Class Settlement Covered Period, resulting in the "Workweek Value".

25 (c) Each Qualified Class Member's share of the Net Class Settlement Amount  
26 will be calculated by multiplying each Qualified Class Member's total number of Workweeks  
27 during the Class Settlement Covered Period by the Workweek Value. The Individual Settlement  
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1 Payment will be reduced by any required deductions for each Qualified Class Member as  
2 specifically set forth herein, including employee-side tax withholdings or deductions.

3 48.2 The entire Net Class Settlement Amount will be disbursed to Qualified Class  
4 Members as set forth above.

5 49. No Credit Toward Benefit Plans. The Individual Settlement Payments made to  
6 Qualified Class Members under this Settlement, as well as any other payments made pursuant to  
7 this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to  
8 which any Qualified Class Member may be eligible. It is the Parties' intention that this Settlement  
9 will not affect any rights, contributions, or amounts to which any Qualified Class Member may be  
10 entitled under any benefit plans.

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

14 51. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary  
15 Approval, Defendant will provide the Class List to the Settlement Administrator.

16 52. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days after receiving  
17 the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class  
18 Members via regular First-Class U.S. Mail, using the most current, known mailing address  
19 identified in the Class List as updated by the process in Paragraph 54 below.

20 53. Confirmation of Contact Information in the Class Lists. Prior to mailing, the  
21 Settlement Administrator will perform a search based on the National Change of Address Database  
22 for information to update and correct for any known or identifiable address changes. Any Notice  
23 Packets returned to the Settlement Administrator as non-deliverable on or before the Response  
24 Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed  
25 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice  
26 Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt  
27 to determine the correct address using a skip-trace, or other search using the name, address, and/or  
28 social security number of the Class Member involved and will then perform a single re-mailing.

1 Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request,  
2 will have between the later of (i) an additional fifteen (15) calendar days or (ii) the Response  
3 Deadline to submit a Request for Exclusion or a Notice of Objection to the Settlement.

4 54. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice  
5 Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the  
6 Settlement's principal terms; (iii) the definition of the Settlement Class; (iv) the total number of  
7 Workweeks each Class Member worked for Defendant during the Class Settlement Covered Period  
8 and Pay Periods each Aggrieved Employee worked during the PAGA Settlement Covered Period;  
9 (v) each Class Member's estimated Individual Settlement Payment and the formulas for calculating  
10 the Individual Settlement Payments; (vi) the dates which comprise the Class Settlement Covered  
11 Period and PAGA Settlement Covered Period; (vii) instructions on how to submit Requests for  
12 Exclusion, Notices of Objection or Workweek disputes; (viii) the deadlines by which the Class  
13 Member must postmark any Request for Exclusion, Notice of Objection or Workweek dispute; and  
14 (ix) the claims to be released. Qualified Class Members will not need to submit claim forms to  
15 receive their payments.

16 55. Disputed Information on Notice Packets. Class Members will have an opportunity  
17 to dispute the Workweek information provided in their Notice Packets. To the extent Class  
18 Members dispute their employment dates or the number of Workweeks on record, Class Members  
19 may produce evidence to the Settlement Administrator showing that such information is inaccurate.  
20 The Settlement Administrator and the Parties will decide the dispute. Defendant's records will be  
21 presumed correct, but the Settlement Administrator and the Parties will evaluate the evidence  
22 submitted by the Class Member and will make the final decision as to the merits of the dispute.  
23 Should the Parties disagree on a Class Member's employment dates or number of Workweeks on  
24 record, the final decision will be made by a mutually acceptable neutral third-party mediator. All  
25 disputes will be decided within five (5) business days of the Response Deadline.

26 56. Defective Submissions. If a Class Member's Request for Exclusion is defective as  
27 to the requirements listed herein, that Class Member will be given an opportunity to cure the  
28 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)

1 business days of receiving the defective submission to advise the Class Member that his or her  
2 submission is defective and that the defect must be cured to render the Request for Exclusion valid.  
3 The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen(15) calendar  
4 days from the date of the cure letter, which ever date is later, to postmark a revised Request for  
5 Exclusion. If the revised Request for Exclusion is not postmarked within that period, it will be  
6 deemed untimely.

7       57. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the  
8 Class portion of the Settlement Agreement (*i.e.*, to not waive individual claims for relief  
9 encompassed by the Released Class Claims by the Qualified Class Members and not receive a  
10 portion of the Net Class Settlement Amount) must sign and postmark a written Request for  
11 Exclusion to the Settlement Administrator within the Response Deadline. In the case of Requests  
12 for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the  
13 exclusive means to determine whether a Request for Exclusion has been timely submitted. Any  
14 Class Member who requests to be excluded from the class settlement will not be entitled to any  
15 portion of the Net Class Settlement Amount and will not be bound by the terms of the class  
16 settlement or have any right to object, appeal, or comment thereon, although the PAGA settlement  
17 and release provisions applicable to the PAGA Settlement Covered Period will still apply to each  
18 such individual, and each such individual shall be entitled to his or her pro rata share of the Net  
19 PAGA Settlement Amount.

20       58. Class Size. The Gross Settlement Amount was calculated based on the  
21 understanding that as of December 31, 2023, there were approximately 258,925 Workweeks. In  
22 the event the total Workweeks on the final Class List are more than twelve percent (12%) larger as  
23 of the date of Preliminary Approval, at the option of the Defendant, the Defendant shall either  
24 increase the Net Settlement Amount pro rata, with a twelve percent (12%) grace margin, *i.e.*, if the  
25 number of workweeks increases by thirteen percent (13%) as of the date of Preliminary Approval,  
26 the Net Settlement Amount shall increase by one percent (1%), or elect to shorten the date for  
27 determining class membership such that the threshold is not exceeded, *i.e.*, such that there is not an  
28 increase in the number of Workweeks of more than twelve percent (12%).



1           59.    Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class  
2 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely  
3 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the  
4 Released Class Claims by the Qualified Class Members and the Released PAGA Claims by the  
5 PAGA Settlement Group, as well as the Final Judgment..

6           60.    FLSA Opt-In. Class Members who choose to participate in this Settlement by not  
7 opting out and cashing their checks (that will include language to the effect that cashing the check  
8 will release their rights under the FLSA for any claims pled or that could have been pled based on  
9 the factual allegations alleged in the operative Complaint, any Amended Complaint in the Action  
10 or LWDA letters; *e.g.*, “By cashing this check, I am opting into the settlement in *Bryan Macias*  
11 *Silva v. Driscoll’s, Inc.*, Superior Court of Santa Cruz County, Case No. 22CV00147, under the  
12 Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released Claims described in the  
13 Settlement Agreement”), will also be deemed to have opted in for purposes of the FLSA, and their  
14 released claims will include a release of the FLSA claims based on claims alleged, or that could  
15 have been alleged based on the factual allegations pled in the operative Complaint or any Amended  
16 Complaint in the Action.

17           61.    Objection Procedures. To object to the Settlement Agreement, a Class Member  
18 must postmark a valid Notice of Objection to the Settlement Administrator on or before the  
19 Response Deadline. The Notice of Objection must be signed by the Class Member and contain all  
20 information required by this Settlement Agreement. At no time will any of the Parties or their  
21 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the  
22 Settlement Agreement or appeal from the Order and/or Judgment. Class Counsel will not represent  
23 Class Members with respect to any such objections to this Settlement. If a Class Member submits  
24 both a valid Request for Exclusion and a Notice of Objection, the Notice of Objection shall be void  
25 and the Class Member will be deemed to have opted out of membership as a Qualified Class  
26 Member. Class Members will not be barred from appearing at the Final Approval Hearing if they  
27 have not complied with the objection procedures for mailing objections to the Settlement  
28 Administrator.

1           62.    Certification Reports Regarding Individual Settlement Payment Calculations. The  
2 Settlement Administrator will provide Defendant’s counsel and Class Counsel a weekly report that  
3 certifies the number of Class Members who have submitted valid Requests for Exclusion or Notices  
4 of Objection, and whether any Class Member has submitted a challenge to any information  
5 contained in their Notice Packet. Additionally, the Settlement Administrator will provide to  
6 counsel for both Parties any updated reports regarding the administration of the Settlement  
7 Agreement as needed or requested.

8           63.    Distribution Timing of Settlement Payments. Within ten (10) business days of  
9 receiving the Gross Settlement Amount and payment for the employer’s portion of payroll taxes on  
10 all wage allocations, the Settlement Administrator will issue the following payments: (i) Individual  
11 Settlement Payments from the Net Class Settlement Amount to Qualified Class Members, (ii) the  
12 LWDA Payment to the LWDA, (iii) Individual Settlement Payments from the Net PAGA  
13 Settlement Amount to the PAGA Settlement Group, (iv) the Class/PAGA Representative  
14 Enhancement Payment to Plaintiff, and (v) Attorneys’ Fees and Costs to Class Counsel. The  
15 Settlement Administrator will also issue a payment to itself for Court-approved services performed  
16 in connection with the Settlement.

17           64.    Un-cashed Settlement Checks. The Court shall issue a check of the unpaid residue  
18 or unclaimed or abandoned Class Members’ funds to either a neutral *cy pres* beneficiary, CASA of  
19 Santa Cruz County [<https://casaofsantacruz.org/>], OR, in the event the Court in which approval is  
20 sought does not approve a *cy pres*, the uncashed funds shall be distributed to the Controller of the  
21 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code  
22 section 1500 *et seq.* for the benefit of those Class Members who did not opt out of the Settlement  
23 but did not cash their settlement checks until such time that they claim their property and who will  
24 remain bound by the Settlement. In the event the latter course of action is selected, the Parties  
25 agree that this disposition results in no “unpaid residue” under California Civil Procedure Code §  
26 384, as the entire Net Settlement Amount will be paid out to Qualified Class Members who do not  
27 opt out, whether or not they cash their settlement share checks.

28           65.    Certification of Completion. Upon completion of administration of the Settlement,

1 the Settlement Administrator will provide a written declaration under oath to certify such  
2 completion to the Court and counsel for all Parties. The Settlement Administrator will be solely  
3 responsible for preparation of the declaration, and the Settlement Administrator's failure to comply  
4 with this requirement will not affect the Settlement's validity.

5 66. Treatment of Individual Settlement Payments. The Net Class Settlement Amount  
6 shall be allocated as: (i) 1/3 as wages for which IRS Forms W-2 will be issued, and (ii) 2/3 as  
7 penalties and interest reported as such to each applicable Qualified Class Member on an IRS Form  
8 W-2 and IRS Form 1099 MISC as applicable. Each PAGA Settlement Group member's PAGA  
9 payment will be 100% allocated as non-wages (for alleged interest and penalties) for which IRS  
10 Forms 1099-MISC will be issued.

11 67. Administration of Taxes by the Settlement Administrator. The Settlement  
12 Administrator will be responsible for issuing to Plaintiff, Qualified Class Members, PAGA  
13 Settlement Group members, and Class Counsel any W-2, 1099, or other tax forms as may be  
14 required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator  
15 will also be responsible for forwarding all payroll taxes and penalties to the appropriate  
16 government authorities.

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

21 69. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
22 the "acknowledging party" and each Party to this Agreement other than the acknowledging party,  
23 an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written  
24 communication or disclosure between or among the Parties or their attorneys and other advisers, is  
25 or was intended to be, nor will any such communication or disclosure constitute or be construed or  
26 be relied upon as tax advice within the meaning of the United States Treasury Department circular  
27 230 (31 CFR part 10, as amended), (2) the acknowledging party (a) has relied exclusively upon his,  
28 her, or its own, independent legal and tax counsel for advice (including tax advice) in connection

1 with this agreement, (b) has not entered into this Agreement based upon the recommendation of  
2 any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
3 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty  
4 that may be imposed on the acknowledging party, and (3) no attorney or advisor to any other party  
5 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax  
6 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
7 acknowledging party of the tax treatment or tax structure of any transaction, including any  
8 transaction contemplated by this Agreement.

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

13       71. Nullification of Settlement Agreement. In the event that: (i) the Court does not  
14 finally approve the Settlement as provided herein, or (ii) the Settlement does not become final for  
15 any other reason, then this Settlement, and any documents generated to bring it into effect, will be  
16 null and void. Any order or judgment entered by the Court in furtherance of this Settlement  
17 Agreement will likewise be treated as void from the beginning. Furthermore, in the event that four  
18 percent (4%) or more of the Class Members opt-out of the Settlement, or Class Members who  
19 represent more than four percent (4%) of the aggregate Workweeks opt-out of the Settlement, then  
20 Defendant has in its sole discretion the option to nullify the Settlement which shall thereafter be  
21 null and void. The amount of the Gross Settlement Amount is deemed a material term and  
22 Defendant may revoke the agreement if the Court insists on a change that increases the obligation  
23 of Defendant to pay an amount in excess of the Gross Settlement Amount. In the event that  
24 Defendant exercises its right to nullify the Settlement, Defendant shall be responsible for any and  
25 all costs incurred by the Settlement Administrator to date. Changes requested by the Court to the  
26 allocation of funds between PAGA and the remaining class claims, or changes in the amount of  
27 Attorneys' Fees and Costs or Class/PAGA Representative Enhancement Payment to Plaintiff, or  
28 changes to the procedures accompanying the administration of the Settlement will not form the

1 basis for any Party in the Action to revoke this Settlement if the Gross Settlement Amount is not  
2 increased in any way.

3 72. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to  
4 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order  
5 for: (i) conditional certification of the Settlement Class for settlement purposes only; (ii)  
6 Preliminary Approval of this Settlement Agreement; and (iii) setting a date for a Final  
7 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the  
8 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the  
9 Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth  
10 the terms of this Settlement, and will include the proposed Notice Packet, which will include both  
11 the proposed Notice of Class and Representative Action Settlement, attached as **Exhibit A**. Class  
12 Counsel will be responsible for drafting all documents necessary to obtain Preliminary Approval,  
13 but Defendant shall be provided five (5) business days to review the drafts prior to filing.

14 73. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the  
15 deadlines to postmark Requests for Exclusion or Notices of Objection to the Settlement Agreement,  
16 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted  
17 to determine the Final Approval of the Settlement Agreement along with the amounts properly  
18 payable for: (i) Attorneys' Fees and Costs; (ii) the Class/PAGA Representative Enhancement  
19 Payment; (iii) Individual Settlement Payments; (iv) the LWDA Payment; and (v) all Settlement  
20 Administration Costs. Class Counsel will be responsible for drafting all documents necessary to  
21 obtain Final Approval. Class Counsel will also be responsible for drafting the Attorneys' Fees and  
22 Costs application to be heard at the Final Approval Hearing, but Defendant's counsel shall be  
23 provided five (5) business days to review the drafts prior to filing.

24 74. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by  
25 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the  
26 Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing  
27 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms  
28 of the Settlement; (ii) Settlement administration matters; and (iii) such post-Judgment matters as

1 may be appropriate under court rules or as set forth in this Settlement Agreement.

2       75. Release by Plaintiff. Upon the Effective Date, and subject to Defendant's full  
3 payment of the Gross Settlement Amount, in addition to the claims being released by all Qualified  
4 Class Members and the PAGA Settlement Group, Plaintiff will release and forever discharge the  
5 Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and  
6 unknown, asserted and not asserted, which Plaintiff has or may have against the Released Parties  
7 as of the date of Plaintiff's execution of this Settlement Agreement, including Plaintiff's individual  
8 PAGA claims. To the extent the foregoing release is a release to which Section 1542 of the  
9 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly  
10 waives any and all rights and benefits conferred by the provisions of Section 1542 of the California  
11 Civil Code or similar provisions of applicable law which are as follows:

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

16       76. Release by Qualified Class Members. Upon the Effective Date, and subject to  
17 Defendant's full payment of the Gross Settlement Amount, Qualified Class Members shall release  
18 the Released Parties from all Released Class Claims by Qualified Class Members.

19       77. Release by PAGA Settlement Group. In light of the binding nature of a PAGA  
20 judgment on non-party employees pursuant to *Arias v. Superior Court of San Joaquin County*  
21 (*Dairy*), 46 Cal.4th 969 (2009), and *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 at  
22 \*3 (C.D. Cal. Jan. 31, 2011), subject to the occurrence of the Effective Date and Defendant's full  
23 payment of the Gross Settlement Amount, all PAGA Settlement Group members, including those  
24 who exclude themselves from the Class, shall release the Released Parties from the Released PAGA  
25 Claims by the PAGA Settlement Group.

26       78. Release by Plaintiff, State of California, LWDA and PAGA Members. Upon the  
27 complete funding of the Gross Settlement Amount and all applicable employer-side payroll taxes,  
28 Plaintiff, the LWDA, the State of California through Plaintiff as its agent and/or proxy, any another

1 representative, proxy, or agent thereof, including but not limited to any and all PAGA Settlement  
2 Group members, shall fully and finally release and discharge the Released Parties from the  
3 Released PAGA Claims by the PAGA Settlement Group that arose during the PAGA Settlement  
4 Covered Period. The Parties intend for this PAGA settlement to have claim preclusion, issue  
5 preclusion, or otherwise bar a representative action to the broadest extent possible by law if an  
6 Aggrieved Employee were to bring a subsequent claim on behalf of the LWDA based on the same  
7 factual predicate as the Action and covering the same time.

8 79. Exhibits Incorporated by Reference. The terms of this Settlement Agreement  
9 include the terms set forth in any attached exhibits, which are incorporated by this reference as  
10 though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the  
11 Settlement.

12 80. Entire Agreement. This Settlement Agreement and any attached exhibits constitute  
13 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral  
14 agreements may be deemed binding on the Parties, and no Party is relying on any representation  
15 not contained in this Agreement.

16 81. Amendment or Modification. No amendment, change, or modification to this  
17 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their  
18 counsel.

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

1           83.    Binding on Successors and Assigns. This Settlement Agreement will be binding  
2 upon and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
3 defined.

4           84.    California Law Governs. All substantive terms of this Settlement Agreement and  
5 exhibits hereto will be governed by and interpreted according to the laws of the State of California.

6           85.    Execution and Counterparts. This Settlement Agreement is subject only to the  
7 execution of all Parties. However, the Settlement Agreement may be executed in one or more  
8 counterparts. All executed counterparts and each of them, including electronic (*e.g.*, DocuSign),  
9 facsimile, and scanned copies of the signature page, will be deemed to be one and the same  
10 instrument.

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

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

22           88.    Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to  
23 class certification for purposes of this Settlement only; except, however, that Plaintiff or Class  
24 Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request  
25 from the Court, and either Party may file an appeal or cross-appeal as to any court order that  
26 materially alters the Settlement Agreement's terms.

27           89.    Class Action Certification for Settlement Purposes Only. The Parties agree to  
28 stipulate to class action certification for purposes of the Settlement only. If, for any reason, the



1 Settlement is not approved, the stipulation to certification will be void. The Parties further agree  
2 that certification for purposes of the Settlement is not an admission that class action certification is  
3 proper under the standards applied to contested certification motions and that this Settlement  
4 Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class  
5 action should be certified, or (ii) Defendant is liable to Plaintiff or any Class Member or any other  
6 person or entity, other than according to the Settlement's terms.

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

21 91. Injunction Against Duplicative Claims. Upon Preliminary Approval of the  
22 Settlement Agreement, all Class Members shall be enjoined from filing, joining, or becoming a  
23 party, member or representative in any actions, claims, complaints, or proceedings in any state or  
24 federal court on an individual, representative, collective or class action basis, or with the California  
25 Department of Industrial Relations' Division of Labor Standards Enforcement ("DLSE") or the  
26 United States Department of Labor ("DOL") against the Released Parties, or from initiating any  
27 other proceedings regarding any of the Released Class Claims by Qualified Class Members.

28 92. No Public Comment. Following the filing of the Motion for Preliminary Approval,

1 the Parties understand and agree that there may be media coverage of the Settlement not initiated  
2 by Plaintiff or Defendant, directly or indirectly, as a result of the public filings. Notwithstanding  
3 the foregoing, Plaintiff, Defendant, and their respective counsel agree that no Party shall issue any  
4 press release to the news media, nor shall any Party disclose any information regarding this  
5 Settlement in their marketing materials or firm websites, nor shall any Party communicate in any  
6 way with news media concerning the settlement of the Class Action. This provision shall not apply  
7 to or limit the public filing of motions or other case materials in the Class Action or to the LWDA  
8 related to seeking and obtaining Court approval of the proposed Settlement Agreement, the  
9 Attorneys' Fees and Costs , the Class/PAGA Representative Enhancement Payment, and the other  
10 relief set forth in this Settlement Agreement. This provision shall not prohibit Class Counsel from  
11 listing this Action by name in support of motions for appointments as class counsel, certification,  
12 attorneys' fees and costs, or the like.

13       93.    Confidentiality. The Parties and their counsel agree to keep the terms of the  
14 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Nothing in  
15 this Settlement Agreement shall limit Defendant's ability to fulfill disclosure obligations  
16 reasonably required by law or in furtherance of business purposes, including the fulfillment of  
17 obligations stated in this Settlement Agreement, or to limit Class Counsel's communications with  
18 the Class Members in furtherance of approval of this Settlement.

19       94.    Encouragement of Class Members. The Parties to this Agreement and the counsel  
20 representing such Parties shall not, directly or indirectly, through any person, encourage or solicit  
21 any Class Member to exclude himself or herself from this Settlement (opt out) or to object to it.  
22 However, Class Counsel and Defendant may respond to inquiries from Class Members. Class  
23 Counsel and Defendant's counsel represent, through their signatures below, that they have not taken  
24 any action prior to signing this Agreement that would encourage any Class Member to exclude  
25 himself or herself from this Settlement, or to object to it. Class Counsel represents and warrants  
26 that at the time of signing this Agreement, it has no clients or prospective clients who are potential  
27 plaintiffs with potential or actual causes of action against Defendant.

28       95.    Captions. The captions and section numbers in this Agreement are inserted for the

1 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the  
2 provisions of this Agreement.

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

7 97. Enforcement of Actions. In the event that one or more of the Parties institutes any  
8 legal action or other proceeding against any other Party or Parties to enforce the provisions of this  
9 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or  
10 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees  
11 and costs, including expert witness fees incurred in connection with any enforcement actions.

12 98. Mutual Preparation. The Parties have had an opportunity to negotiate the terms and  
13 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be  
14 construed more strictly against one party than another merely by virtue of the fact that it may have  
15 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length  
16 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement  
17 Agreement.

18 99. Representation by Counsel. The Parties acknowledge that they have been  
19 represented by counsel throughout all negotiations that preceded the execution of this Settlement  
20 Agreement, and that this Settlement Agreement has been executed with the consent and advice of  
21 counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the  
22 Settlement Agreement.

23 100. All Terms Subject to Final Court Approval. All amounts and procedures described  
24 in this Settlement Agreement will be subject to final Court approval.

25 101. Cooperation and Execution of Necessary Documents. All Parties will cooperate in  
26 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of  
27 this Settlement Agreement.  
28

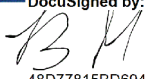
1           102. Submission of Settlement Agreement to LWDA. The Settlement Agreement shall  
2 be submitted by Plaintiff to the LWDA within the time limits as prescribed by law.

3           103. Pending Discovery. The Parties will mutually stipulate and agree to withdraw all  
4 pending discovery without prejudice to reserve the same in the event the Parties' Settlement  
5 Agreement is not granted Final Approval.

6           104. Destruction of Confidential Information. Within thirty (30) calendar days of the  
7 distribution of all funds and Defendant's explicit request therefor, counsel for Plaintiff shall confirm  
8 in writing that all of Defendant's confidential documents and information have been returned or  
9 destroyed, including any employee roster and any and all time and/or payroll information that was  
10 exchanged informally related to the Class Members.

11           105. Binding Agreement. The Parties warrant that they understand and have full  
12 authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement  
13 will be fully enforceable and binding on all Parties and agree that it will be admissible and subject  
14 to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality  
15 provisions that might apply under federal or state law.

16 Dated: 8/5/2024

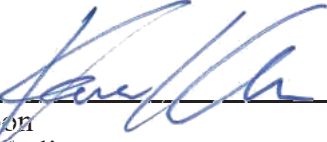
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18 Plaintiff Bryan Macias Silva

19 DRISCOLL'S, INC.

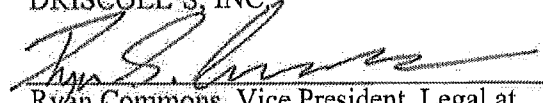
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22 **AGREED AS TO FORM:**

23 Dated: 8/5/2024

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26 Kane Moon  
27 Allen Feghali  
28 Jacquelyne VanEmmerik  
MOON LAW GROUP, P.C.  
Attorneys for Plaintiff Bryan Macias Silva

1 Dated: August 29, 2024

DRISCOLL'S, INC



Ryan Commons, Vice President, Legal at  
Driscoll's, Inc.

4 **AGREED AS TO FORM:**

9 Dated: August 29, 2024



Constance E. Norton  
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