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22 NISSIN INTERNATIONAL TRANSPORT U.S.A., INC.

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **FOR THE COUNTY OF SAN BERNARDINO**

25 DANIEL ORTEGA, individually and on
26 behalf of others similarly situated, and as an
27 Aggrieved Employee and Private Attorney
28 General,

Plaintiff,

vs.

NISSIN INTERNATIONAL TRANSPORT
U.S.A., INC., a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVSB2114549

*Assigned for all purposes to: Hon. David
Cohn, Dept. S-26*

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

Complaint Filed: May 20, 2021
Trial: None Set

1 Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information
2 required by the Settlement Administrator in order to effectuate the terms of the Settlement.

3 6. "Class Members" or "Settlement Class" means all current and former employees
4 of Defendant who worked for Defendant in California in a non-exempt position at any time during
5 the Class Period that have not already signed a Separation Agreement and General Release with
6 Defendant.

7 7. "Class Notice" means the Notice of Proposed Class Action Settlement in a form
8 substantially similar to the form attached hereto as Exhibit A, in both English and Spanish, that
9 will be mailed to Class Members' last known addresses and which will provide Class Members
10 with information regarding the Action and information regarding the settlement of the Action.

11 8. "Class Period" means the period between May 20, 2017 and October 31, 2021 or
12 the date of Preliminary Approval, whichever date occurs earlier.

13 9. "Class Representative" means Plaintiff Daniel Ortega in his capacity as
14 representative of the Participating Class Members.

15 10. "Class Representative Enhancement Award" means the amount that the Court
16 authorizes to be paid to Plaintiff Daniel Ortega, in addition to his Individual Settlement Payment,
17 in recognition of the efforts and risks he has taken in assisting with the prosecution of the Action
18 and in exchange for the General Release of his claims as provided herein.

19 11. "Court" means the Superior Court of the State of California for the County of San
20 Bernardino.

21 12. "Defendant" means Nissin International Transport U.S.A., Inc.

22 13. "Effective Date" means: the later of: (a) if any timely objections are filed and not
23 subsequently withdrawn, the 60th day after the Court enters an order granting final approval of the
24 Joint Stipulation of Class Action and PAGA Settlement; (b) if any timely appeals are filed, the
25 date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of
26 the Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn, the date
27
28

1 upon which the Court enters an order granting final approval of the Joint Stipulation of Class
2 Action and PAGA Settlement.

3 14. "Final Approval" means the Court entering an order granting final approval of
4 the Settlement Agreement.

5 15. "Gross Settlement Amount" means the sum of Five Hundred Seventy-Five
6 Thousand Dollars (\$575,000.00). The Gross Settlement is inclusive of all payments to Class
7 Members, Class Counsel Fees and Costs, the Class Representative Enhancement Award, the
8 Settlement Administrator Costs, and the PAGA Payment. Subject to a potential increase in the
9 number of workweeks, as set forth below in paragraph 37, plus the employer-side payroll taxes,
10 the Gross Settlement Amount is the maximum amount Defendant will be required to pay under
11 this Settlement Agreement. The Gross Settlement Amount is non-reversionary; no portion of the
12 Gross Settlement Amount will return to Defendant.

13 16. "Individual Settlement Payment" means the amount payable from the Net
14 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
15 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement
16 Payments shall be paid by a settlement check made payable to Participating Class Members and/or
17 PAGA Members.

18 17. "Net Settlement Amount" means the funds available for payments to the
19 Settlement Class, which shall be the amount remaining after the following amounts are deducted
20 from the Gross Settlement Amount: (1) Class Counsel's fees, (2) Class Counsel's costs, (3)
21 Settlement Administration Costs, (4) Class Representative Enhancement Award to Plaintiff, and
22 (5) PAGA Payment to the California Labor and Workforce Development Agency ("LWDA") and
23 PAGA Members.

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

26 19. "PAGA Payment" means the amount that the Parties have agreed to allocate in
27 order to settle claims arising under PAGA. The Parties have agreed that Forty Thousand Dollars
28 (\$40,000.00) of the Gross Settlement Amount will be allocated to the resolution of Plaintiff's

1 PAGA claims. Seventy-five percent (75%) of the PAGA Payment (i.e., \$30,000.00) will be paid
2 to the LWDA in accordance with Labor Code §§ 2698 *et seq.* The remaining twenty-five percent
3 (25%) of the PAGA Payment (i.e., \$10,000.00), will be distributed to PAGA Members. PAGA
4 Members will receive payment from the employee portion of the PAGA Payment regardless of
5 their decision to participate in the Settlement if the PAGA Payment is approved by the Court.

6 20. "PAGA Period" means the period from May 20, 2020, through October 31, 2021
7 or the date of Preliminary Approval, whichever date occurs earlier.

8 21. "PAGA Members" means all current and former employees of Defendant who
9 worked for Defendant in California in a non-exempt position at any time during the PAGA Period.

10 22. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean
11 either Plaintiff or Defendant, individually.

12 23. "Participating Class Members" means all Class Members who do not submit a
13 valid and timely Request for Exclusion.

14 24. "Plaintiff" means Daniel Ortega.

15 25. "Preliminary Approval" means the Court order granting preliminary approval of
16 the Settlement Agreement.

17 26. "Objection" means a Class Member's valid and timely written objection to the
18 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector's full name,
19 address, telephone number, last four digits of the employee's social security number or employee
20 ID number and (b) a written statement of all grounds for the objection accompanied by legal
21 support, if any, for such objection.

22 27. "Released Class Claims" means any and all claims, causes of action, damages,
23 wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees,
24 costs, and any other form of relief or remedy in law, equity, or whatever kind of nature, arising
25 from the claims pled in the Action and any claims based on facts alleged in the operative
26 complaint, including, all claims for unpaid overtime, meal period violations, rest break violations,
27 unpaid minimum wage, failure to pay all wages during and at termination of employment, failure
28 to provide accurate wage statements, failure to maintain accurate records, failure to reimburse

1 necessary business expenses, and unlawful business practices under the California Labor Code
2 and/or the California Business and Professions Code, including all claims for restitution or
3 equitable relief, liquidated damages, penalties of any nature whatsoever, attorneys' fees and costs,
4 asserted or that might have been asserted by any Class Member against the Released Parties based
5 on the facts or claims alleged in the Action during the Class Period. "Released Class Claims" also
6 includes claims meeting the above definition(s) under any and all applicable statutes, including
7 without limitation California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512,
8 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; the California Unfair
9 Competition Act, and in particular, California Business and Professions Code §§ 17200 *et seq.*

10 28. "Released PAGA Claims" means all claims under PAGA, for civil penalties based
11 on the facts alleged in this Action or which could have been alleged based on those facts, including
12 civil penalties under PAGA for violations of the provisions of the applicable IWC Wage Orders
13 and the Labor Code.

14 29. "Released Parties" means Defendant Nissin International Transport U.S.A., Inc.
15 as named by Plaintiff in the operative complaint, and its current and former officers, directors,
16 employees, and agents, and the successors and assigns, of all such entities and individuals.

17 30. "Request for Exclusion" means a valid and timely written statement submitted by
18 a Class Member requesting to be excluded from the Action. To be effective, the Request for
19 Exclusion must contain (a) the Class Member's name, address, telephone number, and the last
20 four digits of the Class Member's Social Security number and/or the Employee ID number and
21 (b) a clear statement requesting to be excluded from the settlement of the class claims similar to
22 the following: "I wish to exclude myself from the class settlement reached in the matter of *Ortega*
23 *v. Nissin International Transport U.S.A., Inc.* I understand that by excluding myself, I will not
24 receive money from the class portion of the settlement." To be effective, the Request for
25 Exclusion must be post-marked by the Response Deadline and received by the Settlement
26 Administrator.

27 31. "Response Deadline" means the date sixty (60) days after the Settlement
28 Administrator mails the Class Notice to Class Members and the last date on which Class Members

1 may submit Requests for Exclusion, Objections, or workweek disputes. In the event the 60th day
2 falls on a Sunday or Federal holiday, the Response Deadline will be extended to the next day on
3 which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion or
4 Objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a
5 Class Notice by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal
6 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
7 Postal Service is open. The Response Deadline may also be extended by express agreement
8 between Class Counsel and Defendant's counsel. Under no circumstances, however, will the
9 Settlement Administrator have the authority to unilaterally extend the deadline for Class Members
10 to submit a Request for Exclusion or Objection to the settlement.

11 32. "Settlement" means the disposition of the Action pursuant to this Agreement.

12 33. "Settlement Administrator" means ILYM Group, Inc. The Parties each represent
13 that they do not have any financial interest in the Settlement Administrator or otherwise have a
14 relationship with the Settlement Administrator that could create a conflict of interest.

15 34. "Settlement Administration Costs" means the costs payable from the Gross
16 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
17 but not limited to, printing, distributing, and tracking documents for this Settlement,
18 calculating/confirming the Class Members' Workweeks from the information contained in the
19 Class List, calculating each Participating Class Member's Individual Settlement Payment, tax
20 reporting, distributing the Gross Settlement Amount, providing necessary reports and
21 declarations, and other duties and responsibilities set forth herein to process this Settlement, and
22 as requested by the Parties or the Court. Settlement Administration Costs shall not exceed Seven
23 Thousand Five Hundred Dollars (\$7,500.00).

24 35. "Workweek" means any calendar week (i.e. a week beginning with Sunday and
25 ending with Saturday) in which a Class Member or PAGA Member worked for Defendant at least
26 one day.

27 **TERMS OF AGREEMENT**

1 36. Settlement Consideration. Defendant shall fully fund the Gross Settlement
2 Amount following Final Approval by the Court and the occurrence of the Effective Date. The
3 following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement
4 Payments, the Class Representative Enhancement Award, Class Counsel's Fees and Costs, the
5 PAGA Payment, and the Settlement Administration Costs, as specified in this Agreement. Except
6 for any employer-side payroll taxes due on the Individual Settlement Payments, or as a result of
7 an increase in the number of workweeks as set forth below, Defendant shall not be required to
8 pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary;
9 no portion of the Gross Settlement Amount will revert to Defendant. Defendant's share of any
10 employer-side payroll taxes will be paid separately from and in addition to the Gross Settlement
11 Amount.

12 37. Potential Increase to the Gross Settlement Amount. Defendant has represented
13 there are an estimated 10,687 Workweeks during the Class Period. Should the actual number of
14 Workweeks increase by more than ten percent (10%) (i.e. increase by more than 1,068
15 Workweeks), the Gross Settlement Amount shall increase on a pro-rata basis equal to the
16 percentage increase in the number of Workweeks worked by the Class Members above 10% (for
17 example, if the number of Workweeks increases by 11%, the Gross Settlement Amount will
18 increase by 1%).

19 38. Funding of the Gross Settlement Amount. Within fourteen (14) calendar days after
20 the Effective Date of the Settlement, Defendant will deposit the Gross Settlement Amount, and
21 all applicable employer-side payroll taxes, into a Qualified Settlement Fund ("QSF") to be
22 established by the Settlement Administrator. Defendant shall provide all information necessary
23 for the Settlement Administrator to calculate necessary payroll taxes including its official name,
24 8 digit state unemployment insurance tax ID number, and other information requested by the
25 Settlement Administrator, no later than fourteen (14) calendar days of the Effective Date.

26 39. Distribution of the Gross Settlement Amount. Within seven (7) calendar days of
27 the funding of the Settlement, the Settlement Administrator will issue payments for: (a) Individual
28 Settlement Payments; (b) the PAGA Payment to the LWDA; (c) the Class Representative

1 Enhancement Award; (d) Class Counsel's Fees and Costs and (e) Settlement Administration
2 Costs.

3 40. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
4 application or motion by Class Counsel for attorneys' fees of up to one-third (33.33%) of the
5 Gross Settlement Amount (\$191,647.00) plus the reimbursement of costs and expenses associated
6 with Class Counsel's litigation and settlement of the Action, in an amount not to exceed Thirty-
7 Five Thousand Dollars (\$35,000.00), both of which will be paid from the Gross Settlement
8 Amount. Any portion of the requested fees or costs that is not awarded by the Court to Class
9 Counsel shall be reallocated to the Net Settlement Amount and distributed to Participating Class
10 Members as provided in this Agreement.

11 41. Class Representative Enhancement Award. Defendant agrees not to oppose or
12 object to any application or motion by Plaintiff for a Class Representative Enhancement Award
13 of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Daniel Ortega. The Class
14 Representative Enhancement Award is in exchange for the General Release of Plaintiff's
15 individual claims, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action.
16 Any adjustments made by the Court to the requested Class Representative Enhancement Award
17 shall not be deemed a material modification of this Agreement. In the event that the Court reduces
18 or does not approve the requested Class Representative Enhancement Award, the Settlement
19 Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the
20 Settlement Agreement for that reason, it shall remain binding, and any portion of the requested
21 Class Representative Enhancement Award that is not awarded by the Court to the Class
22 Representative shall be reallocated to the Net Settlement Amount and distributed to Participating
23 Class Members as provided in this Agreement.

24 42. Settlement Administration Costs. The Settlement Administrator will be paid for
25 the reasonable costs of administration of the Settlement and distribution of payments from the
26 Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs
27 shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00).
28

1 43. PAGA Payment. Forty Thousand Dollars (\$40,000.00) of the Gross Settlement
2 Amount shall be allocated for settlement of claims for civil penalties under PAGA. The
3 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or Thirty
4 Thousand Dollars (\$30,000.00), to the LWDA. The remaining twenty-five percent (25%) of the
5 PAGA Payment, or Ten Thousand Dollars (\$10,000.00), will be distributed to PAGA Members
6 on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member
7 during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment
8 regardless of their decision to opt-out of the class settlement.

9 44. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount
10 will be used to satisfy the class portion of Participating Class Members' Individual Settlement
11 Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount
12 is as follows:

13	Gross Settlement Amount	\$	575,000.00
14	Class Representative Enhancement Award:	\$	7,500.00
15	Class Counsel's Fees:	\$	191,647.00
16	Class Counsel's Costs:	\$	35,000.00
17	PAGA Payment:	\$	40,000.00
18	Settlement Administration Costs:	\$	7,500.00
19	Estimated Net Settlement Amount:	\$	293,353.00

20 45. Individual Settlement Payment Calculations. Individual Settlement Payments will
21 be paid from the Net Settlement Amount and the 25% portion of the PAGA Payment for PAGA
22 Members and shall be paid pursuant to the formulas set forth herein:

23 a) Calculation of Class Portion of Individual Settlement Payments. The
24 Settlement Administrator will calculate the total Workweeks for all Participating Class Members
25 by adding the number of workweeks worked by each Participating Class Member during the Class
26 Period. The amount that each Participating Class Member will be eligible to receive will be
27 calculated by dividing each Participating Class Member's individual Workweeks by the total
28

1 Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net
2 Settlement Amount.

3 b) Calculation of PAGA Portion of Individual Settlement Payments. The
4 Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding
5 the number of Workweeks worked by each PAGA Member during the PAGA Period. The amount
6 that each PAGA Member will receive will be calculated by dividing each participating PAGA
7 Member's individual Workweeks during the PAGA Period by the total Workweeks of all PAGA
8 Members during the PAGA Period, and multiplying the resulting fraction by the 25% share of the
9 PAGA Payment designated for distribution to PAGA Members. PAGA Members shall receive
10 this portion of their Individual Settlement Payment regardless of whether they file a Request for
11 Exclusion to "opt out" of the Settlement of the class claims.

12 c) Allocation of Individual Settlement Payments. All Individual Settlement
13 Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement
14 Payment will be allocated as wages, eighty percent (80%) shall be allocated as expense
15 reimbursement, penalties, and interest. The portion of the Individual Settlement Payment
16 allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The
17 remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement
18 Administrator.

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

27 46. Settlement Administration Process. The Parties agree to cooperate in the administration
28

1 of the Settlement and to make all reasonable efforts to control and minimize the costs and
2 expenses incurred in administration of the Settlement. The Settlement Administrator will
3 provide the following services:

- 4 46(a) Establish and maintain a Qualified Settlement Fund.
- 5 46(b) Calculate the Individual Settlement Payment each Participating Class
6 Member is eligible to receive and the portion of the PAGA Payment
7 each PAGA Member shall receive.
- 8 46(c) Translate the Class Notice from English to Spanish.
- 9 46(d) Print and mail the Class Notice in English and Spanish.
- 10 46(e) Perform address searches as detailed herein, including conduct
11 additional address searches and skip traces for mailed Class Notices
12 that are returned as undeliverable.
- 13 46(f) Process Requests for Exclusion, Objections, calculate Participating
14 Class Members' Individual Settlement Payment, and field inquiries or
15 disputes from Class Members.
- 16 46(g) Print and issue Settlement Payment Checks, prepare any IRS W2 and
17 1099 Tax Forms and any other filings required by any governmental
18 taxing authority.
- 19 46(h) Provide declarations and/or other information to this Court as requested
20 by the Parties and/or the Court.
- 21 46(i) Provide weekly status reports to counsel for the Parties.
- 22 46(j) Posting a notice of final judgment, after entry of the judgment, online
23 at the Settlement Administrator's website for a period of sixty (60) days
24 pursuant to California Rule of Court 3.769.

25 47. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
26 Approval, Defendant will provide the Class List to the Settlement Administrator. This is a
27 material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to
28 void the Agreement, provided however, that Plaintiff shall not exercise the right to void the

1 Agreement until Plaintiff provides written notice to Defendant of its failure to timely provide the
2 Class List to the Settlement Administrator and Defendant fails to provide the Class List within
3 five (5) business days of receipt of such notice.

4 48. Class Notice by First-Class U.S. Mail. Within seven (7) calendar days after
5 receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice
6 to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
7 addresses identified in the Class List. The Parties may not vary from the form of the Class Notice
8 approved by the Court.

9 49. Confirmation of Contact Information in the Class List. Prior to mailing, the
10 Settlement Administrator will perform a search based on the National Change of Address
11 Database for information to update and correct for any known or identifiable address changes.
12 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the
13 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
14 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
15 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
16 promptly attempt to determine the correct address using a skip-trace, or other search using the
17 name, address and/or Social Security number of the Class Member involved, and will then
18 perform a single re-mailing. If any Class Notice sent to a Class Member by the Settlement
19 Administrator is returned as undeliverable to a current employee, then Defendant shall make all
20 reasonable efforts to obtain the current address from the Class Member and provide the same
21 within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members
22 who receive a re-mailed Class Notice, whether by skip-trace or by request, will have between the
23 later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a
24 Request for Exclusion, or an Objection to the Settlement.

25 50. Class Notice. All Class Members will be mailed a Class Notice. Each Class Notice
26 will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's
27 principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class
28 Member worked for Defendant during the Class Period and PAGA Period (if applicable); (e) each

1 Class Member's estimated Individual Settlement Payment and the formula for calculating
2 Individual Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period;
3 (g) the deadlines by which the Class Member must postmark Requests for Exclusion, Objections
4 to the Settlement, or workweek disputes; (h) the claims to be released, as set forth herein; and (j)
5 the date for the final approval hearing.

6 51. Disputed Information on Class Notice. Class Members will have an opportunity
7 to dispute the information provided in their Class Notice. To the extent Class Members dispute
8 the number of Workweeks with which they have been credited or the amount of their Individual
9 Settlement Payment, Class Members may produce evidence to the Settlement Administrator
10 showing that such information is inaccurate. Absent evidence rebutting Defendant's records,
11 Defendant's records will be presumed determinative. However, if a Class Member produces
12 evidence contrary to Defendant's records by the Response Deadline, the Settlement Administrator
13 shall notify Class Counsel and Defendant's counsel to discuss and resolve the dispute, including
14 providing all available relevant information to all counsel. The Parties will resolve all disputes
15 jointly, which shall be final and binding on any Class Member disputes, and shall thereafter
16 instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties
17 cannot reach an agreement, disputes shall be referred to the Settlement Administrator for a
18 determination and if the dispute remains unresolved after that, the dispute shall be submitted to
19 the Court for final determination. All such disputes are to be resolved or submitted to the Court
20 no later than fourteen (14) calendar days after the Response Deadline.

21 52. Defective Requests for Exclusion. If a Class Member's Request for Exclusion is
22 defective as to the requirements listed herein, that Class Member will be given an opportunity to
23 cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within
24 three (3) business days of receiving the defective submission to advise the Class Member that his
25 or her submission is defective and that the defect must be cured to render the Request for
26 Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b)
27 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
28 revised Request for Exclusion. If a Class Member responds to a cure letter by filing another

1 defective Request for Exclusion, then the Settlement Administrator will have no further obligation
2 to give notice of a need to cure. If the revised Request for Exclusion is not postmarked within that
3 period, it will be deemed untimely. Any dispute regarding the validity of a Request for Exclusion
4 falls solely within the discretion of the Settlement Administrator unless both Parties stipulate
5 otherwise.

6 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
7 Action must sign and postmark a written Request for Exclusion to the Settlement Administrator
8 by the Response Deadline. The Request for Exclusion must include (a) the Class Member's name,
9 address, telephone number, and the last four digits of the Class Member's Social Security number
10 and/or the Employee ID number and (b) a clear statement requesting to be excluded from the
11 settlement of the class claims similar to the following: "I wish to exclude myself from the class
12 settlement reached in the matter of *Ortega v. Nissin International Transport U.S.A., Inc.* I understand
13 that by excluding myself, I will not receive money from the class portion of the settlement." The
14 date of the postmark on the return mailing envelope will be the exclusive means to determine
15 whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be
16 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and
17 Defendant's Counsel the Requests for Exclusion that were timely submitted. All Class Members
18 who do not submit a valid and timely Request for Exclusion will be bound by all terms of the
19 Settlement Agreement if the Settlement is granted Final Approval.

20 54. Defendant's Right to Rescind. If ten percent (10%) or more of the Class Members
21 (rounded to the next whole number) elect not to participate in the Settlement, Defendant may, at
22 its election, rescind the Settlement Agreement and all actions taken in furtherance of it will be
23 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising
24 this right and must make clear its intent to rescind the Agreement within ten (10) calendar days
25 of the Settlement Administrator notifying the Parties of the total number of valid Requests for
26 Exclusion, which the Settlement Administrator will do within seven (7) calendar days after the
27 Response Deadline. If Defendant exercises its right to rescind the Agreement, Defendant shall be
28 responsible for all Settlement Administration Costs incurred to the date of rescission.

1 55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
2 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
3 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
4 Class Claims, as well as any Judgment that may be entered by the Court if it grants Final Approval
5 of the Settlement. Class Members who submit a timely and valid Request for Exclusion shall not
6 be bound by the Settlement Agreement, including the release, or such Judgment that may be
7 entered by the Court. The names of Class Members who have submitted a valid and timely
8 Request for Exclusion shall be disclosed to the Counsel for Plaintiff and Defendant and noted in
9 the proposed Judgment submitted to the Court.

10 56. Objection Procedures. To object to the Settlement, a Participating Class Member
11 must postmark a valid Objection to the Settlement Administrator on or before the Response
12 Deadline. The Objection must be signed by the Participating Class Member and contain all
13 information required by this Settlement Agreement including the Class Member's full name,
14 address, telephone number, the last four digits of their social security number and/or Employee
15 ID number, and the specific reason including any legal grounds for the Participating Class
16 Member's objection. The postmark date will be deemed the exclusive means for determining that
17 the Objection is timely. A Class Member cannot submit both an Objection and a Request for
18 Exclusion. If a Class Member submits an Objection and a Request for Exclusion, the Objection
19 shall control and the Request for Exclusion will be deemed invalid. Any dispute regarding the
20 validity of an Objection falls solely within the discretion of the Settlement Administrator unless
21 both Parties stipulate otherwise. Participating Class Members who fail to object in the manner
22 specified above will be foreclosed from making a written objection, but shall still have a right to
23 appear at the Final Approval Hearing in order to have their objections heard by the Court. At no
24 time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating
25 Class Members to submit written Objections to the Settlement, appear at the Final Approval
26 Hearing to objection, or appeal from or move to vacate the Final Approval Order and Judgment.
27 Class Counsel will not represent any Participating Class Members with respect to any objections
28 to this Settlement.

1 57. Certification Reports Regarding Individual Settlement Payment Calculations. The
2 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report
3 which certifies: (a) the number of Class Members who have submitted Requests for Exclusion
4 and Objections; (b) the number of re-mailed and/or undeliverable Class Notices; and (c) whether
5 any Class Member has submitted a dispute or challenge to any information contained in the Class
6 Notice. Additionally, the Settlement Administrator will provide to counsel for all Parties any
7 updated reports regarding the administration of the Settlement Agreement as needed or requested.
8 The Settlement Administrator will provide a declaration to Class Counsel in advance of the
9 hearing on Final Approval of the Settlement which Class Counsel shall be responsible for
10 reviewing and approving.

11 58. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator
12 to Participating Class Members and PAGA Members will be negotiable for at least one hundred
13 eighty (180) calendar days. If a Participating Class Member and/or PAGA Member does not cash
14 his or her settlement check within 180 days, the uncashed funds, subject to Court approval, shall
15 be distributed to the Controller of the State of California to be held pursuant to the Unclaimed
16 Property Law, California Civil Code § 1500, *et. seq.* for the benefit of those Participating Class
17 Members and/or PAGA Members who did not cash their checks until such time that they claim
18 their property. The Parties agree that this disposition results in no "unpaid residue" under
19 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to
20 Participating Class Members and PAGA Members, whether or not they all cash their settlement
21 checks. Therefore, Defendant will not be required to pay any interest on such amounts. The
22 Individual Settlement Payments provided to Participating Class Members and to PAGA Members
23 shall prominently state the expiration date or a statement that the settlement check will expire in
24 one hundred eighty (180) days, or alternatively, such a statement may be made in a letter
25 accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will
26 not be reissued, except for good cause and as mutually agreed by the Parties in writing. The parties
27 agree no unclaimed funds will result from the settlement process detailed in this Agreement.

28 59. Administration of Taxes by the Settlement Administrator. The Settlement

1 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
2 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
3 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
4 all payroll taxes and penalties to the appropriate government authorities.

5 60. Tax Liability. Defendant makes no representation as to the tax treatment or legal
6 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
7 not relying on any statement, representation, or calculation by Defendant or by the Settlement
8 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
9 except for Defendant's payment of the employer's portion of any payroll taxes, they will be solely
10 responsible for the payment of any taxes and penalties assessed on the payments described herein.
11 Defendant's share of any employer-side payroll taxes and other required employer withholdings
12 due on the Individual Settlement Payments, including, but not limited to, Defendant's FICA and
13 FUTA contributions, shall be paid separate and apart from the Gross Settlement Amount.

14 61. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
15 section, the "acknowledging party" and each Party to this Agreement other than the
16 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
17 Agreement, and no written communication or disclosure between or among the Parties or their
18 attorneys and other advisers, is or was intended to be, nor shall any such communication or
19 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
20 States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging
21 party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
22 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
23 Agreement based upon the recommendation of any other Party or any attorney or advisor to any
24 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
25 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
26 party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects
27 the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
28 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or

1 tax structure of any transaction, including any transaction contemplated by this Agreement.

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

6 63. Release by Participating Class Members. Upon the funding of the Gross Settlement
7 Amount and all applicable employer-side payroll taxes by Defendant, Participating Class
8 Members shall fully release and discharge the Released Parties from any and all Released Class
9 Claims that arose during the Class Period. This release shall be binding on all Participating Class
10 Members.

11 64. Release by the LWDA and the State of California: Upon the funding of the Gross
12 Settlement Amount and all applicable employer-side payroll taxes by Defendant, the LWDA and
13 the State of California, through Plaintiff as its agent and/or proxy shall release the Released Parties
14 from the Released PAGA Claims that arose during the PAGA Period. The Parties intend that the
15 Released Parties can assert this Settlement Agreement as a defense to any future claims for
16 penalties brought by the LWDA or any claims brought under PAGA on behalf of the LWDA. The
17 Parties intend this PAGA settlement to have claim preclusion, issue preclusion, or otherwise bar
18 a representative action if an aggrieved employee were to bring a subsequent claim on behalf of
19 the LWDA based on the same factual predicate as this action and covering the same time period.

20 65. Release of Additional Claims & Rights by Plaintiff. Upon the funding of the Gross
21 Settlement Amount, Plaintiff will agree to the additional following General Release: In
22 consideration of Defendant's promises and agreements as set forth herein, Plaintiff, for himself
23 and his heirs, successors and assigns, hereby waives, releases, acquits, and forever discharges the
24 Released Parties from all claims, demands, rights, liabilities, damages, losses, obligations, and
25 causes of action of every nature and description whatsoever, known or unknown, asserted or that
26 might have been asserted, whether in tort, contract, or for violation of any state or federal statute,
27 rule or regulation arising out of, relating to, or in connection with any act or omission by or on
28 the part of any of the Released Party committed or ommitted prior to the execution thereof.

1 Specifically, Plaintiff will expressly waive and relinquish, to the fullest extent permitted by law,
2 the provisions, rights and benefits afforded of section 1542 of the California Civil Code, or any
3 other provision under federal or state law, which provides:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
9 DEBTOR OR RELEASED PARTY.

10 Plaintiff warrants that he has read this Settlement Agreement, including this waiver of
11 California Civil Code § 1542, and that Plaintiff has consulted with or had the opportunity to
12 consult with counsel of Plaintiff's choosing about this Settlement and specifically about the
13 waiver of § 1542, and that Plaintiff understands this Settlement and the § 1542 waiver, and so
14 Plaintiff freely and knowingly enters into this Settlement. Plaintiff further acknowledges that
15 Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or
16 believes to be true regarding the matters released or described in this Settlement, and even so
17 Plaintiff agrees that the releases and agreements contained in this Settlement shall remain
18 effective in all respects notwithstanding any later discovery of any different or additional facts.
19 This release specifically excludes claims for unemployment insurance, disability, social security,
20 and workers' compensation (with the exception of claims arising pursuant to California Labor
21 Code sections 132(a) and 4553).

22 66. Neutral Employment Reference. Defendant agrees that it will adopt a neutral
23 reporting policy regarding any future employment references related to Plaintiff. In the event that
24 any potential or future employers of Plaintiff request a reference regarding Defendant's
25 employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment and job
26 titles during employment. Defendant shall not refer to the Action or this Settlement.

27 67. Nullification of Settlement Agreement. In the event that: (a) the Court does not
28 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any

1 material term of this Settlement Agreement (not including Class Counsel Fees and Costs and/or
2 Class Representative Enhancement Payment); or (c) the Settlement does not become final as
3 written and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
4 documents generated to bring it into effect, will be null and void, all amounts deposited into the
5 QSF will be returned to Defendant, and the Parties shall be returned to their previous respective
6 positions. Any order or judgment entered by the Court in furtherance of this Settlement
7 Agreement will likewise be treated as void from the beginning. Pursuant to California Evidence
8 Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding
9 to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the
10 Parties agree that this Settlement Agreement is void, and remains protected by California
11 Evidence Code § 1152. Should the Court fail to approve this Settlement Agreement for any
12 reason, the Parties agree that they will meet and confer and, if need be, return to and attend
13 mediation with a mutually agreed mediator in an effort to reach a settlement that may be approved
14 by the Court.

15 68. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
16 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
17 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
18 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for
19 a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for
20 the Class Notice to be sent to all Class Members as specified herein. In conjunction with the
21 Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of
22 the Settlement, and will include the proposed Class Notice attached as Exhibit A. Defendant shall
23 either file a notice of non-opposition that states it joins in Plaintiff's Motion for Preliminary
24 Approval or not file any response to Plaintiff's unopposed Motion for Preliminary Approval. This
25 is a material term of the Settlement Agreement and any opposition by Defendant will be grounds
26 for Plaintiff to withdraw from the Settlement Agreement. Any failure by the Court to fully and
27 completely approve the material terms of the Agreement as to the Action, or the entry of any
28 Order by another Court with regard to any of the Action which has the effect of preventing the

1 full and complete approval of the material terms of this Settlement Agreement as written and
2 agreed to by the Parties, will result in this Settlement Agreement and the Memorandum of
3 Understanding entered into by the Parties, and all obligations under this Settlement Agreement
4 and the Memorandum of Understanding being nullified and voided. However, Class Counsel
5 Attorneys' Fees and Costs and Class Representative Enhancement Award are not material terms
6 of this Agreement and any modification by the Court or another Court to such terms to shall not
7 affect the enforceability of the Settlement Agreement and shall not render it or the Memorandum
8 of Understanding entered into by the parties null and void.

9 69. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of the
10 Class Notice process, including the expiration of the deadlines to postmark Requests for
11 Exclusion or Objections to the Settlement Agreement, a Final Approval/Settlement Fairness Hearing
12 will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts
13 properly payable for: (a) Individual Settlement Payments; (b) the PAGA Payment to the LWDA; (c) Class
14 Counsel's Attorneys' Fees and Costs; (d) the Class Representative Enhancement Award; and (e) the
15 Settlement Administration Costs. Any failure by the Court to fully and completely approve the
16 material terms of the Settlement Agreement as to all of the Action, or the entry of any Order by
17 another Court with regard to any of the Action which has the effect of modifying material terms
18 of this Agreement or preventing the full and complete approval of the Settlement Agreement as
19 written and agreed to by the Parties, will result in this Agreement and all obligations under this
20 Agreement being null and void. However, Class Counsel Attorneys' Fees and Costs and Class
21 Representative Enhancement Award are not material terms of this Agreement and any
22 modification by the Court or another Court to such terms to shall not affect the enforceability of
23 the Settlement Agreement and shall not render it or the parties' Memorandum of Understanding
24 null and void. Defendant agrees it shall not oppose the granting of the Motion for Final Approval,
25 provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.
26

27 70. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
28 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the

1 Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing
2 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms
3 of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as
4 may be appropriate under court rules or as set forth in this Settlement.

5 71. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
6 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
7 forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

8 72. Entire Agreement. This Settlement Agreement and any attached Exhibits
9 constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or
10 oral agreements may be deemed binding on the Parties.

11 73. Amendment or Modification. This Settlement Agreement may be amended or
12 modified only by a written instrument signed by counsel for all Parties or their successors-in-
13 interest.

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

24 75. Binding on Successors and Assigns. This Settlement Agreement will be binding
25 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
26 defined.

27 76. California Law Governs. All terms of this Settlement Agreement hereto will be
28 governed by and interpreted according to the laws of the State of California.

1 77. Execution and Counterparts. This Settlement Agreement is subject only to the
2 execution of all Parties. However, the Settlement Agreement may be executed in one or more
3 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
4 of the signature page, will be deemed to be one and the same instrument provided that counsel
5 for the Parties will exchange among themselves original signed counterparts.

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

13 79. Invalidity of Any Provision. Before declaring any provision of this Agreement
14 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
15 consistent with applicable precedents so as to define all provisions of this Agreement valid and
16 enforceable.

17 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
18 class certification for purposes of this Settlement only; except, however, that either Party may
19 appeal any court order that materially alters the Settlement Agreement's terms.

20 81. Class Action Certification for Settlement Purposes Only. The Parties agree to
21 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
22 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
23 that certification for purposes of the Settlement is not an admission that class action certification
24 is proper under the standards applied to contested certification motions and that this Agreement
25 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
26 should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than
27 according to the Settlement's terms.

28 82. Non-Admission of Liability. The Parties enter into this Agreement to resolve the

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

14 83. Captions. The captions and section numbers in this Agreement are inserted for the
15 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
16 provisions of this Agreement.

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

21 85. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
22 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
23 strictly against one Party than another merely by virtue of the fact that it may have been prepared
24 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
25 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

26 86. Representation By Counsel. The Parties acknowledge that they have been
27 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
28 and that this Agreement has been executed with the consent and advice of counsel and reviewed

1 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
2 Agreement.

3 87. All Terms Subject to Final Court Approval. All amounts and procedures described
4 in this Settlement Agreement herein will be subject to final Court approval.

5 88. Cooperation and Execution of Necessary Documents. The Parties agree to
6 cooperate to promote participation in the Settlement, and in seeking court approval of the
7 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
8 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
9 settlement agreement waivers, Pick Up Stix agreements or arbitration agreements from any Class
10 Member prior to the funding of the Gross Settlement Amount concerning claims released via this
11 Agreement, or enter into any arbitration agreement with any Class Member that covers the claims
12 released via this Agreement during the Settlement approval process prior to the funding of the
13 Gross Settlement Amount and that the Parties will work in good faith to reach an agreement
14 approved by the Court.

15 89. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
16 with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant
17 to California Code of Civil Procedure § 664.6. The Court shall retain continuing jurisdiction over
18 this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate
19 the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this
20 Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the
21 prevailing party in any motion or action taken and based on an alleged violation of any material
22 term of the Settlement Agreement.

23 90. Voluntary Agreement. The Parties acknowledge that they have entered into this
24 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
25 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
26 statements made by the other Parties other than those contained in this Settlement Agreement.
27 Each of the Parties hereto expressly waives any right she/it might ever have to claim that this
28 Settlement Agreement was in any way induced by fraud.

1 91. Confidentiality. The Parties and their counsel agree to keep the terms of the
2 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff,
3 and Class Counsel agree that they will not issue any press releases, initiate any contact with the
4 press, respond to any press inquiry or have any communication with the press about the Action
5 and/or the fact, amount or terms of the Settlement. In addition, Plaintiff and Class Counsel agree
6 that they will not engage in any advertising or distribute any marketing materials relating to the
7 Settlement, including but not limited to any postings on any websites maintained by Class
8 Counsel; provided, however, that Class Counsel may state that it has settled a class action claim
9 against a company so long as neither Defendant, nor the Plaintiff are identified. In addition, Class
10 Counsel may list the case name, number, and a brief description of the claims in their declarations
11 in support of qualifications as class counsel in future filings. Notwithstanding anything in this
12 provision, Class Counsel can discuss the Settlement with Plaintiff and with Class Members and
13 can include it in all necessary Court and ancillary documents supporting the resolution of this
14 Action. Nothing in this paragraph is intended to interfere with Class Counsel's duties and
15 obligations to faithfully discharge their duties as Class Counsel, including but not limited to,
16 communicating with Class Members regarding the settlement.

17 92. Binding Agreement. The Parties warrant that they understand and have full
18 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
19 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
20 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
21 provisions that otherwise might apply under federal or state law.

22
23 APPROVED AS TO FORM AND CONTENT:

24 Dated: _____

PLAINTIFF

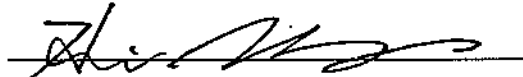
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26 By: _____

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Dated: 3/16/2022

**DEFENDANT NISSIN INTERNATIONAL
TRANSPORT U.S.A., INC.**

By: 

Name: Hiromi Matsumoto

Title: CEO

APPROVED AS TO FORM ONLY:

Dated: _____

PROTECTION LAW GROUP, LLP

By: _____

Heather Davis, Esq.
Amir Nayebdadash, Esq.
Attorneys for Plaintiff
DANIEL ORTEGA

Dated: March 16, 2022

**ATKINSON, ANDELSON, LOYA, RUDD &
ROMO**

By: 

Ronald W. Novotny, Esq.
Attorneys for Defendant
NISSIN INTERNATIONAL
TRANSPORT U.S.A., INC.


1 limited to, communicating with Class Members regarding the settlement.

2 92. Binding Agreement. The Parties warrant that they understand and have full
3 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
4 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
5 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
6 provisions that otherwise might apply under federal or state law.

7
8 APPROVED AS TO FORM AND CONTENT:

9 Dated: 3/16/2022

PLAINTIFF

10 By: 
11 DocuSigned by:
12 CF1021ED3FD7457...
13 Daniel Ortega

14 Dated: _____

**DEFENDANT NISSIN INTERNATIONAL
TRANSPORT U.S.A., INC.**

15 By: _____


16 Name: _____

17 Title: _____

18
19 APPROVED AS TO FORM ONLY:

20 Dated: 3/17/2022

PROTECTION LAW GROUP, LLP

21 By: 

22 Heather Davis, Esq.
23 Amir Nayebdadash, Esq.
24 *Attorneys for Plaintiff*
25 DANIEL ORTEGA
26