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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA**

JOSE ARMANDO FERNANDEZ SANCHEZ,
individually, and on behalf of all others similarly
situated,

Plaintiff,

v.

TRI-IEST DAIRY, a business entity, form
unknown; and DOES 1 through 10, inclusive,

Defendants.

Case No.: MCV082629

CLASS ACTION

[Hon. James E. Oakley, Dept. 45]

STIPULATION OF SETTLEMENT

Complaint filed: November 22, 2019
Trial date: Not set

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1 This Stipulation of Settlement is made by and between the Named Plaintiff, JOSE
2 ARMANDO FERNANDEZ SANCHEZ (“Plaintiff”), on his own behalf and on behalf of all
3 members of the Settlement Class, as defined below, on the one hand, and Defendant TRI-IEST
4 DAIRY (“Tri-Iest” or “Defendant”) on the other hand (collectively the “Parties”), in the lawsuit
5 entitled *Jose Armando Fernandez Sanchez v. Tri-Iest Dairy*, filed in Madera County Superior
6 Court, Case No. MCV082629. This Stipulation of Settlement resolves all claims that were
7 asserted or could have been asserted against Defendants pertaining to the claims in the
8 Litigation.

9 **I. DEFINITIONS**

10 **A. Administrative Costs.** All administrative costs of settlement, including cost of
11 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by
12 the Settlement Administrator in connection with the execution of its duties under this Stipulation of
13 Settlement.

14 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
15 synonymously herein to mean this Stipulation of Settlement.

16 **C. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE LAW
17 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement
18 Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

19 **D. Court.** The term “Court” as used herein means the Superior Court of the State of
20 California for the County of Madera.

21 **E. Final.** The term “Final” means: (1) the date of final affirmation of the Final Approval
22 Order from any appeal, the expiration of the time for, or the denial of, a petition to review the Final
23 Approval Order, or if review is granted, the date of final affirmation of the Final Approval Order
24 following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final
25 Approval Order or the final dismissal of any proceeding to review the Final Approval Order,
26 provided that the Final Approval Order is affirmed and/or not reversed in any part; or (3) if no appeal
27 is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final
28 Approval Order, as determined under Rule 8.104(a)(3) of the California Rules of Court.

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1 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval
2 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and
3 Approval Hearing in accordance with the terms herein, approving this Agreement.

4 **G. Defendant.** The term “Defendant” as used herein means Tri-Iest Dairy.

5 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
6 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
7 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
8 as for unemployment insurance.

9 **I. Litigation.** The term “Litigation” as used herein means the action filed in Madera
10 County Superior Court, Case No. MCV082629.

11 **J. Named Plaintiff.** The term “Named Plaintiff” as used herein means Jose Armando
12 Fernandez Sanchez.

13 **K. Net Settlement Fund.** The term “Net Settlement Amount” or “Net Settlement Fund”
14 as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
15 Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant to
16 California’s Private Attorney General Act (“PAGA”) (the “PAGA Settlement”), and as provided in
17 Sections VIII, XIII, XIV, XV, and XVI, respectively.

18 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
19 payments made to the Settlement Class as part of the Settlement, including wages, penalties and
20 interest.

21 **M. PAGA Period.** The term “PAGA Period” means the time period from November 22,
22 2018 through November 10, 2020, or the date when the Court grants preliminary approval of the
23 settlement, whichever is earlier.

24 **N. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
25 the Litigation.

26 **O. Settlement Administrator.** The term “Settlement Administrator” as used herein
27 means ILYM Group, Inc., which will be responsible for the administration of the Settlement Amount,
28 as defined below, and all related matters.

1 **P. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
2 used synonymously herein to mean this Stipulation of Settlement.

3 **Q. Settlement Amount.** The terms “Settlement Amount” as used herein means the sum
4 of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), which shall be paid by
5 Defendant, and from which all Net Settlement Payments, Court-approved attorneys’ fees and
6 Litigation costs pursuant to Section XIII, Administrative Costs pursuant to Section VIII,
7 enhancement to Named Plaintiff pursuant to Section XIV, statutory penalties, interest, and PAGA
8 settlement pursuant to Section XVI shall be paid, except as provided herein.

9 **R. Settlement Class.** For settlement purposes only, the Parties agree to the certification
10 of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

11 All persons who worked for Defendant in California as an hourly-paid or
12 non-exempt employee during the Settlement Period (together, collectively
13 referred to as the "Class Members").

14 The Settlement Class or “Class Members” shall also include all “Aggrieved
15 Employees,” as defined in Plaintiff’s First Amended Complaint, during the
16 PAGA Period.

17 **S. Settlement Period.** The term “Settlement Period” as used herein means the
18 period from November 22, 2015 through November 10, 2020, or the date when the Court grants
19 preliminary approval of the settlement, whichever is earlier.

20 **II. BACKGROUND**

21 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all
22 others similarly situated, that Defendants violated California state wage and hour laws, the California
23 *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of Defendant’s
24 California wage and hour policies and practices. Specifically, Plaintiff alleges that Defendant failed
25 to pay its employees overtime pay, failed to provide meal breaks (including first and second meal
26 breaks), and failed to authorize and permit legally compliant rest breaks each day based on the hours
27 worked by each employee. Plaintiff further alleged that the aforementioned resulted in the
28 employees receiving inaccurate wage statements, and the underpayment of wages to employees upon

1 termination and/or resignation.

2 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,
3 such as a sample of class member timekeeping and payroll records, Defendant's policies and
4 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of
5 wage statements, and providing all wages at separation, as well as information regarding the number
6 of putative class members and the mix of current versus former employees, the wage rates in effect,
7 and the amount of meal and rest period premium wages paid to class members.

8 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
9 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.
10 The Parties participated in a full day of mediation before the Honorable Howard R. Broadman (Ret.),
11 a well-respected wage and hour class action mediator, that resulted in a tentative settlement of the
12 Litigation, subject to the approval of the Court, and finalization of a formal Stipulation of Settlement.
13 The Parties have engaged in extensive negotiations about the terms and conditions of the Settlement
14 at the mediation and subsequent thereto. The Parties have now formalized the Settlement Agreement
15 for submission to the Court for preliminary and Final Approval.

16 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
17 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
18 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation
19 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of
20 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be
21 received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement,
22 that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
23 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf and
24 on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set
25 forth herein.

26 **D.** Defendant has concluded that, because of the substantial expense of defending against
27 the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience
28 involved, and the concomitant disruption to their business operations, it is in Defendant's best

1 interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims
2 asserted against it in the Litigation. However, Defendant nevertheless desires to settle the Litigation
3 for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the
4 purpose of putting to rest the controversies engendered by the Litigation.

5 E. This Agreement is intended to and does effectuate the full, final and complete
6 settlement of all allegations and claims that were asserted, or could have been asserted, in the
7 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

8 **III. JURISDICTION**

9 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
10 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
11 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
12 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
13 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action
14 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
15 the terms set forth herein.

16 **IV. STIPULATION OF CLASS CERTIFICATION**

17 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
18 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the
19 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
20 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
21 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
22 the issue of whether a class should be certified in a non-settlement context in the Litigation.
23 Defendants expressly reserve the right to oppose class certification and/or proactively move to deny
24 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

25 **V. MOTION FOR PRELIMINARY APPROVAL**

26 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
27 Settlement including the Notice of Proposed Class Action Settlement, and Workweek Dispute Form,
28 which are attached hereto as **Exhibits “A”** and **“B,”** respectively, and including certification of the

1 Settlement Class for settlement purposes only.

2 The date that the Court grants Preliminary Approval of this Agreement will be the
3 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
4 will provide Defendant’s counsel the opportunity to review it and provide input before it is filed. On
5 the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion
6 for Preliminary Approval to the Labor & Workforce Development Agency in compliance with Labor
7 Code § 2698 *et seq.*, the Private Attorneys General Act.

8 **VI. STATEMENT OF NO ADMISSION**

9 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon any
10 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
11 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
12 made against them in the Litigation.

13 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
14 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
15 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
16 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
17 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
18 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
19 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
20 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
21 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
22 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
23 executive order, or any obligation or duty at law or in equity, or for any other purpose.
24 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
25 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
26 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

27 **C.** None of the documents produced or created by Named Plaintiff or the Settlement
28 Class in connection with the claims procedures or claims settlement procedures constitute, and they

1 are not intended to constitute, an admission by Defendant of any violation of any federal, state, or
2 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
3 in equity.

4 **D.** The Parties agree that class certification pursuant to California *Code of Civil*
5 *Procedure* section 382 under the terms of this Agreement is for settlement purposes only. Nothing
6 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
7 should be certified or given collective treatment in the Litigation or in any other action or proceeding.
8 Further, neither this Agreement nor the Court’s actions with regard to this Agreement will be
9 admissible in any court or other tribunal regarding the propriety of class certification or collective
10 treatment. In the event that this Agreement is not approved by the Court or any appellate court, is
11 terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived,
12 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendants will
13 not be deemed to have waived, limited, or affected in any way any of their objections or defenses in
14 the Litigation.

15 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

16 Upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in
17 Section I(E) above) and all payments are made by Defendant pursuant to this Agreement, Named
18 Plaintiff and all members of the Settlement Class, except those that make a valid and timely request
19 to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise
20 never to assert in any forum any and all wage-related claims that were alleged in the Litigation or
21 which could have been alleged in the Litigation based on the facts asserted in the Litigation arising
22 during the Settlement Period against Defendant, and its divisions, affiliates, predecessors,
23 successors, shareholders, officers, directors, employees, agents, trustees, representatives,
24 administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint
25 employers, insurers, and related corporations, including the following claims: 1) all claims, under
26 any legal theory of liability, for the failure to pay overtime wages owed pursuant to California Labor
27 Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute under
28 any theory of liability; 2) all claims, under any legal theory of liability, for failure to provide meal

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1 periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 3) all
2 claims, under any legal theory of liability, for the failure to provide rest periods pursuant to California
3 Labor Code § 226.7 and the IWC Wage Orders; 4) all claims, under any legal theory of liability, for
4 the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code
5 § 226.7(b); 5) all claims, under any legal theory of liability, for violation of Business & Professions
6 Code §§ 17200, *et seq.*; 6) all claims, under any legal theory of liability, for penalties pursuant to
7 PAGA (Labor Code §§ 2698 *et seq.*); 7) all claims, under any legal theory of liability, for any
8 penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly
9 owed to Class Members pursuant to California Labor Code §§ 201-203; 8) all claims, under any
10 legal theory of liability, for any penalties of any kind arising from an alleged wage statement
11 violations pursuant to California Labor Code §§ 226 and 1174.5; and 9) all claims, under any legal
12 theory of liability, for any penalties or any another amounts that could be potentially owed to Class
13 Members arising out of and/or related to the allegations in the Lawsuit arising during the Settlement
14 Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1.

15 **VIII. SETTLEMENT ADMINISTRATOR**

16 Named Plaintiff and Defendant, through their respective counsel, have selected ILYM Group,
17 Inc. as the Settlement Administrator to administer the Settlement, which includes but is not limited
18 to distributing and responding to inquiries about the Notice of Proposed Class Action Settlement and
19 Workweek Dispute Form, determining the validity of any disputes and opt-outs, and calculating all
20 amounts to be paid from the Net Settlement Amount. Charges and expenses of the Settlement
21 Administrator, estimated to be no more \$10,000.00, will be paid from the Settlement Amount. Any
22 charges and expenses of the Settlement Administrator greater than the allocated \$10,000.00 will
23 come from the Settlement Amount. If the actual Settlement Administrator fees are less than the
24 Parties' estimation, the difference between the actual and estimated Settlement Administrator fees
25 will revert to the participating Settlement Class members. The Parties agree that this Agreement
26 may be provided to the Settlement Administrator to effectuate its implementation of the settlement
27 procedures herein.

28 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

1 **A. Notice.**

2 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared a
3 Notice of Class Action and Proposed Settlement (the “Notice”) and a Workweek Dispute Form,
4 which in substance will be provided to the members of the Settlement Class as follows:

5 As soon as practicable following Preliminary Approval of the Settlement, but no later than
6 thirty (30) calendar days after the Court’s Preliminary Approval order, Defendant will provide to the
7 Settlement Administrator the following information about each Settlement Class member (“Class
8 List”): (1) name; (2) last known home address; (3) number of workweeks as a class member during
9 the Settlement Period or the dates of employment for each Settlement Class member; and (4) Social
10 Security number. Defendant further agrees to consult with the Settlement Administrator prior to the
11 production date to ensure that the format will be acceptable to the Settlement Administrator.
12 Plaintiff’s Counsel shall also receive a redacted Class List that shall only disclose an identification
13 number attributed to each class member and the number of workweeks each class member worked
14 during the Settlement Period.

15 The Settlement Administrator shall run all the addresses provided through the United States
16 Postal Service NCOA database (which provides updated addresses for any individual who has moved
17 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
18 current address information, and shall mail the Notice and Workweek Dispute Form to the members
19 of the Settlement Class via first-class regular U.S. Mail using the most current mailing address
20 information available, within ten (10) calendar days of the receipt of the Class List from Defendant.
21 The Notice shall provide the members of the Settlement Class forty-five (45) days’ notice of all
22 applicable dates and deadlines.

23 The Notice will also include information regarding the nature of the Litigation; a summary
24 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has
25 preliminarily approved the Settlement; the nature and scope of the claims being released; the
26 procedure and time period for objecting to the Settlement, the date and location of the Final Approval
27 hearing; information regarding the opt-out procedure; Defendant’s calculation of the number of
28 Eligible Workweeks that each Settlement Class member has worked as an employee in California at

1 any time during the Settlement Period, and the estimated potential recovery for the proposed
2 Settlement Class Member. The Notice shall enclose the Workweek Dispute Form for Settlement
3 Class members.

4 For each Settlement Class member the Workweek Dispute Form will identify the number of
5 Eligible Workweeks that s/he was employed and inform the employee of his or her right to dispute
6 this number by completing and returning the form within forty-five (45) days of the postmark date
7 of the Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net
8 Settlement Payments is not conditional on the submission of the Workweek Dispute Form. Absent
9 the receipt of a Workweek Dispute Form the number of workweeks identified in the Workweek
10 Dispute Form shall be deemed accurate. The settlement of any disputes concerning the number of
11 Eligible Workweeks is discussed in Section X, below.

12 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
13 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator
14 is successful in locating a new address, it will re-mail the Notice to the Settlement Class member.
15 Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-
16 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto.

17 Should any member of the Settlement Class timely submit a Workweek Dispute Form with
18 a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the
19 Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency
20 notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen
21 (14) days from the mailing of the deficiency notice to postmark a written response to cure all
22 deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or
23 timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree
24 to allow the dispute.

25 No later than twenty-five (25) days before the Final Approval Hearing, the Settlement
26 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to
27 the completion of the Notice process, including the number of attempts to obtain valid mailing
28 addresses for and re-sending of any returned Notices, as well as the number of valid Workweek

1 Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

2 **B. Objections.**

3 In order for any Settlement Class member to object to this Settlement, or any term of it, the
4 person making the objection must not submit a request for exclusion (i.e., must not opt out). To
5 object to the Settlement in writing, a Class Member may send the objection to the Settlement
6 Administrator. A Settlement Class member making an objection may appear at the Final Approval
7 Hearing with or without submitting any written objection. The Settlement Class member may appear
8 personally or through an attorney, at his or her own expense, at the Final Approval hearing to present
9 his or her objection directly to the Court. However, any attorney who will represent an individual
10 objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel
11 and Defendant's Counsel no later than forty-five (45) days after the Notice of Proposed Class Action
12 Settlement was initially mailed to the Settlement Class members. If a Settlement Class member
13 objects to the Settlement, the Settlement Class member will remain a member of the Settlement Class
14 and if the Court approves this Agreement, the Settlement Class member will be bound by the terms
15 of the Settlement and Final Approval Order in the same way and to the same extent as a Settlement
16 Class member who does not object. The date of mailing of the Notice to the objecting Settlement
17 Class member shall be conclusively determined according to the records of the Settlement
18 Administrator. The Court retains final authority with respect to the consideration and admissibility
19 of any Settlement Class member objections. Any Settlement Class member who submits an
20 objection may also participate in the settlement.

21 Named Plaintiff hereby endorses the Settlement as fair, reasonable and adequate and in the
22 best interests of the Settlement Class.

23 **C. Opportunity to be Excluded and Defendants' Opt-Out Threshold.**

24 In order for any Settlement Class member to validly exclude himself or herself from the
25 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion ("Request
26 to be Excluded") must be signed by the Settlement Class member or his or her authorized
27 representative and must be sent to the Settlement Administrator, postmarked by no later than forty-
28 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement

1 Class members. The Notice shall contain instructions on how to opt out.

2 The date of the initial mailing of the Notice, and the date the signed Request to be Excluded
3 was postmarked, shall be conclusively determined according to the records of the Settlement
4 Administrator. Any Settlement Class member who timely and validly submits a Request to be
5 Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net
6 Settlement Payments, will not be bound by the terms and conditions of the Settlement, and will not
7 have any right to object, appeal, or comment thereon.

8 Any member of the Settlement Class who does not timely file and mail a Request to be
9 Excluded from the Settlement Class will be deemed included in the Settlement Class in accordance
10 with this Settlement.

11 In the event that ten percent (10%) or more of the Class Members exercise their right to
12 exclude themselves and opt out of the Settlement and Settlement Agreement, Defendant retains the
13 exclusive right, but not the obligation, to withdraw from and terminate the Settlement and the
14 Settlement Agreement and return all parties back to their same position before the Settlement was
15 reached and the Settlement Agreement was entered into. In the event that Defendant exercises such
16 rights under this paragraph, the Plaintiff and Defendant shall resume the Litigation through and until
17 there is a final settlement of the Litigation. Defendant must notify Class Counsel and the Court of
18 such a decision to withdraw and terminate the Settlement no later than five (5) days prior to the date
19 of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact
20 that the Parties agreed to the Settlement for any reason, and Defendant shall pay all administration
21 expenses incurred through the date of its termination of the Settlement.

22 **D. Cooperation**

23 The Parties and their respective counsel agree not to encourage members of the Settlement
24 Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the
25 Settlement, directly or indirectly, through any means. However, if a Settlement Class member
26 contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement
27 Class member's options.

28 **X. DISPUTES PROCEDURE**

1 Named Plaintiff and Defendant have agreed upon the following payment formula to resolve
2 all disputes submitted by Settlement Class members during the Settlement Period.

3 The Settlement Administrator will calculate the total number of workweeks for all Class
4 Members who were employed by any Defendant during the Settlement Class Period ("Total
5 Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by
6 dividing the Net Settlement Fund by the total number of Workweeks available to the Class Members
7 who do not opt out in accordance with Section IX(C) above during the Settlement Class Period
8 ("Workweek Point Value").

9 An "Individual Settlement Payment" for each Class Member will then be determined by
10 multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks")
11 by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required
12 legal deductions, for each participating Class Member.

13 If a member of the Settlement Class does not dispute the number of Eligible Workweeks set
14 forth in the Workweek Dispute Form, such person need not take further action to participate in the
15 Settlement. If the member of the Settlement Class disputes the number of Eligible Workweeks set
16 forth in the Workweek Dispute Form, such person must follow the directions in the Workweek
17 Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible
18 Workweeks that such person believes in good faith is correct, and stating that the member of the
19 Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's
20 personnel file and leave management records to determine such information, and attaching any
21 relevant documentation in support thereof. The member of the Settlement Class must mail the signed
22 and completed statement no later than forty-five (45) days after the date of the mailing of the
23 Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice and
24 Workweek Dispute Form will govern the Net Settlement Payment to the member of the Settlement
25 Class.

26 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
27 Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates
28 the Settlement Class member was employed and the pertinent leave(s) taken, which records

1 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

2 After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator
3 shall compute the number of Eligible Workweeks to be used in computing the Settlement Class
4 member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the
5 dates a Settlement Class member claims he or she worked during the Settlement Period and the dates
6 indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck
7 stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the
8 paycheck stub(s) will control. The Settlement Administrator's decision as to the total number of
9 Eligible Workweeks shall be final and non-appealable. The Settlement Administrator shall send
10 written notice of the decision on any such claim to the Settlement Class member, to Class Counsel,
11 and counsel for Defendant within ten (10) calendar days of receipt of the dispute.

12 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

13 **A. Distribution Formula.**

14 Members of the Settlement Class not opting out will receive a lump sum payment as good
15 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,
16 in an amount determined by the Settlement Administrator in accordance with the provisions of this
17 Agreement.

18 The lump sum payment to each member of the Settlement Class not excluding him/herself
19 will be determined in accordance with the procedure set forth in Section X.

20 **B. Funding of Settlement.**

21 No earlier than August 10, 2021, and only after the Court grants Final Approval of the
22 Settlement and a determination of the pro-rata share of the settlement amount to which each member
23 of the Settlement Class is entitled, Defendant will deposit the Settlement Amount and the Employer
24 Taxes into an interest-bearing trust account for the benefit of the participating Settlement Class
25 members and Class Counsel, through the Settlement Administrator. At no time prior to Final
26 Approval of the Settlement shall Defendant be required to escrow any portion of the Settlement
27 Amount.

28 **C. Time for Distribution.**

1 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
2 Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved
3 enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within
4 twenty-one (21) calendar days following the date of Final Approval. At no time will Defendant be
5 required to escrow any portion of the Settlement Amount.

6 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
7 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
8 search and, if another address is identified, shall mail the check to the newly identified address. Any
9 settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed
10 unpaid residue pursuant Code of Civil Procedure section 384(a). In accordance with Code of Civil
11 Procedure section 384, the parties shall follow the procedure set for in (1) – (5) below in regard to
12 unpaid residue:

- 13 (1) Unpaid residue (uncashed or returned checks) will be paid, *with interest*, to Legal Aid at
14 Work, 180 Montgomery Street, Suite 600, San Francisco, CA 94104;
- 15 (2) The attorneys for the parties shall file, with the Motion for Final Approval, a stand-alone
16 Stipulation to Amend Judgment and Proposed Stipulated Amended Judgment (Section
17 384) memorializing the parties' agreement to amend the judgment to adopt the
18 administrator's determination of amount of unpaid residue, plus interest at the legal rate
19 of 10% from the date of entry of the initial judgment, to be paid to the *cy pres*;
- 20 (3) The parties shall attach to the Stipulation a [Proposed] Stipulated Amended Judgment
21 form with a signature line for the court and blanks for the amount of residue plus interest
22 to be added to the judgment and the total amount of the amended judgment;
- 23 (4) Along with the Final Report, the administrator shall file, with the court, a photocopy of
24 the attorneys' Stipulation to Amend Judgment along with a [Proposed] Stipulated
25 Amended Judgment form with the amount of residue plus interest to be added to the
26 judgment and the total amount of the judgment, plus interest, filled in;
- 27 (5) The court signs and enters the Stipulated Amended Judgment.

28 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

1 The amounts paid under this Agreement do not represent a modification of any previously
2 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by
3 Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or
4 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant,
5 policies or bonus programs. Any payments made under the terms of this Settlement shall not be
6 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other
7 form of compensation for the purposes of Defendant's benefit plan, policy or bonus program.
8 Defendant retains the right to modify the language of their benefit plans, policies and bonus programs
9 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for
10 "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by
11 applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or
12 any other purpose, and that additional contributions or benefits are not required by this Settlement.

13 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

14 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not
15 seek or receive an amount in excess of \$100,000.00, which represents 33 1/3% of the Settlement
16 Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the
17 Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class
18 Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$15,000.00, which
19 represents all past and future Litigation costs and expenses necessary to prosecute, settle and
20 administer the Litigation and this Settlement. Any attorneys' fees or Litigation costs awarded to
21 Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement
22 Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these
23 amounts include, without limitation, all time and expenses expended by Class Counsel in defending
24 the Settlement and securing preliminary and Final Approval (including any appeals therein). There
25 will be no additional charge of any kind to either the members of the Settlement Class or request for
26 additional consideration from Defendant for such work. This amount shall include all attorneys'
27 fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under
28 any legal theory whatsoever. Within twenty-one (21) calendar days following the date the settlement

1 is funded pursuant to Section XI(B), the Settlement Administrator shall disburse payment from the
2 Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to
3 Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation
4 costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or
5 portions shall revert into the Net Settlement Amount to be distributed between the participating
6 Settlement Class Members on a pro-rata basis.

7 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

8 Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not
9 seek or receive an amount in excess of \$7,500.00 for his participation in and assistance with the
10 Litigation (*i.e.*, Named Plaintiff's class representative enhancement/service award). Any
11 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be
12 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount,
13 and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than
14 \$7,500.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net
15 Settlement Amount to be distributed between the participating Settlement Class Members on a pro-
16 rata basis.

17 **XV. TAXATION AND ALLOCATION**

18 The Parties agree that all employment taxes and other legally required withholdings will be
19 withheld from payments to the members of the Settlement Class and Named Plaintiff based on the
20 Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.

21 In Defendant's sole discretion, to which Named Plaintiff and Class Counsel do not object,
22 the amount of federal income tax withholding will be based upon a flat withholding rate for
23 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
24 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
25 withholding codes or regulations.

26 For withholding tax characterization purposes and payment of taxes, the Net Settlement
27 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- 28 (1) 10% as wages; and

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1 (2) 90% as penalties and interest.

2 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the
3 Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement, by the Settlement
4 Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
5 changed after the date of this Agreement, the processes set forth in this Section may be modified in
6 a manner to bring Defendant into compliance with any such changes.

7 Finally, any and all Employer Taxes which Defendant normally would be responsible for
8 paying based on the Net Settlement Payments made to the individual Class Members will be paid by
9 Defendant in addition to and not as a deduction from the Settlement Amount based on the stipulated
10 Net Settlement Allocation.

11 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

12 In order to implement the terms of this Settlement and to settle claims alleged under the
13 Private Attorneys’ General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to
14 allocate \$10,000.00 from the Settlement Amount as penalties authorized by the California Labor
15 Code Private Attorneys General Act of 2004 (PAGA). Seventy-five percent (75%) of this amount
16 will be paid to the Labor and Workforce Development Agency and 25% of this amount will be
17 distributed to the participating Class Members, through the Settlement Administrator and at no
18 additional cost to Defendant. Within twenty-one (21) calendar days following the date the settlement
19 is funded pursuant to Section XI(B), the Settlement Administrator shall disburse the PAGA
20 Settlement to the California Labor and Workforce Development Agency (“LWDA”) and will provide
21 notice to the LWDA of the fact that the settlement has been approved by the court along with a copy
22 of the settlement agreement and the court order confirming the approval of the settlement through
23 the appropriate LWDA/DIR website.

24 **XVII. COURT APPROVAL**

25 This Agreement and the Settlement is contingent upon Final Approval by the Court and the
26 entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably
27 necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent
28 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other

1 in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.
2 Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of
3 the Settlement or assist or encourage any person or entity to file any such objection.

4 In the event it becomes impossible to secure approval of the Settlement, the Parties shall be
5 restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for
6 Preliminary Approval.

7 **XVIII. MISCELLANEOUS PROVISIONS**

8 **A. Stay of Litigation.**

9 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation pending
10 Final Approval of the Settlement by the Court.

11 **B. Interpretation of the Agreement.**

12 This Agreement constitutes the entire agreement between Named Plaintiff and Defendant.
13 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
14 other written or oral representations or terms, and no such extrinsic oral or written representations or
15 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree
16 that this Agreement is to be construed according to its terms and may not be varied or contradicted
17 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
18 of California, both in its procedural and substantive aspects, without regard to its conflict of law
19 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
20 be resolved solely and exclusively in the Superior Court of the State of California for the County of
21 Madera, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court
22 over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf of the
23 Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement and
24 had available to them the advice and assistance of independent counsel. As such, neither Named
25 Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against
26 the other.

27 The terms and conditions of this Agreement constitute the exclusive and final understanding
28 and expression of all agreements between Named Plaintiff and Defendant with respect to the

1 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the
2 original signatories and approved by the Court.

3 **C. Further Cooperation.**

4 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
5 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
6 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
7 possible.

8 **D. Confidentiality of Documents.**

9 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
10 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
11 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
12 documents are ordered to be disclosed by the Court or by a subpoena.

13 **E. Counterparts.**

14 The Agreement may be executed in one or more actual or non-original counterparts, all of
15 which will be considered one and the same instrument and all of which will be considered duplicate
16 originals.

17 **F. Authority.**

18 Each individual signing below warrants that he or she has the authority to execute this
19 Agreement on behalf of the party for whom or which that individual signs.

20 **G. No Third-Party Beneficiaries.**

21 Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries of
22 this Agreement, but there are no third-party beneficiaries.

23 **H. Modification.**

24 This Agreement may not be changed, altered, or modified, except in a writing signed by the
25 Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates
26 contained in this Agreement may be modified by agreement of the Parties in writing without Court
27 approval if the Parties agree and cause exists for such modification. This Agreement may not be
28 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

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1 In addition to the above, this Agreement may be modified based on the final size of the
2 Settlement Class. Defendants' best estimate of the Settlement Class size is 130 persons as of the
3 date of the August 10, 2020 mediation. If, as of the end of the Settlement Period, the actual
4 Settlement Class size is more than 10% of this estimate (i.e., 130 or more Class Members), the
5 Settlement Amount shall be increased by the average gross payout to individual Class Members
6 based on 130 Class Members. For example, if the average payout based on 130 Class Members is
7 \$2,307.69 per Class Members and there are 13 additional Class Members (143 total Class Members),
8 Defendant will increase the Settlement Amount by \$30,000.00.

9 **I. Deadlines Falling on Weekends or Holidays.**

10 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
11 legal holiday, that deadline shall be continued until the following business day.

12 **J. Severability.**

13 In the event that any one or more of the provisions contained in this Agreement shall for any
14 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
15 unenforceability shall in no way affect any other provision if Defendant's Counsel and Class
16 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if
17 such invalid, illegal, or unenforceable provision had never been included in this Agreement.

18 APPROVED AS TO FORM AND CONTENT:

19 Date: 11/24/2020, 2020

JOSE ARMANDO FERNANDEZ SANCHEZ,
on behalf of himself and all others similarly
situated

20
21 By: 
22 JOSE ARMANDO FERNANDEZ
23 SANCHEZ, Plaintiff

24 Date: 11-24, 2020

TRI-IEST DAIRY

25 By: 
26 Name: Danny Iest
27 Title: Owner
28 For TRI-IEST DAIRY

APPROVED AS TO FORM:

Date: November 24, 2020

WILSHIRE LAW FIRM


By:


JUSTIN F. MARQUEZ
Attorneys for Plaintiff

Date: 11-24, 2020

RAIMONDO & ASSOCIATES, a Law Corporation

By:


Anthony Raimondo
James D. Miller
Attorneys for Defendant

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