

EXHIBIT 1

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AGUSTIN BENITEZ, CARLOS MORALES,
and STEVEN VILLARREAL, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

WESTERN MILLING, LLC, KRUSE
INVESTMENT COMPANY, INC., and
PERFECTION PET FOODS, LLC

Defendants.

Case No. 1:18-cv-01484-DAD-SKO
CLASS AND COLLECTIVE ACTION
**CLASS ACTION SETTLEMENT
AGREEMENT AND STIPULATION**

Complaint Filed: October 25, 2018

This Class Action Settlement Agreement And Stipulation ("Agreement") is entered into by and between Named Claimants/Plaintiffs Steven Villarreal, Agustin Benitez, and Carlos Morales (collectively referred to as "Named Plaintiffs" or "Plaintiffs"), on behalf of themselves and on behalf of the Participating Class Members (as defined below), and Respondent Perfection Pet Foods, LLC ("PPF"), and Defendants Western Milling, LLC ("Western Milling") and Kruse Investment Company, Inc. ("Kruse") (PPF, Western Milling,

and Kruse are collectively referred to as "Defendants"). Named Plaintiffs, PPF, Western Milling, and Kruse are collectively referred to as "Parties".

NOW THEREFORE, in consideration of the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth below, the Named Plaintiffs, on behalf of themselves and on behalf of the Participating Class Members, and Defendants agree that the Actions (as defined below) shall be, and are finally, forever, and fully compromised, released, resolved, discharged, and settled on the following terms and conditions:

A. BACKGROUND TO SETTLEMENT

1. On November 2, 2016, Named Plaintiffs filed a Rule 23 class action against PPF in the U.S. District Court, Eastern District of California on behalf of all current and former non-exempt hourly employees who worked at least one shift of more than five hours at any of PPF's Visalia, California pet food plants and/or warehouse, at any time during the period four years prior to the filing of that action until resolution of that action. The Complaint alleged: (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) failure to provide accurate itemized wage statements; (4) failure to timely pay final wages at termination; (5) violations of the California Business and Professions Code; and (6) Villarreal only brought individual claims for interference of rights under FMLA.

2. On January 10, 2017, Named Plaintiffs subsequently filed a First Amended Complaint against PPF, adding a cause of action for (7) penalties under the Private Attorneys General Act ("PAGA").

3. On February 7, 2017, PPF filed a motion to compel Named Plaintiffs to arbitrate the claims on an individual basis, which the Federal Court ultimately granted on or about May 1, 2017.

4. During May 2017, Named Plaintiffs commenced a Class and Collective arbitration of the Claims against PPF with arbitration provider JAMS, styled *Steven Villarreal, Agustin Benitez, and Carlos Morales, on behalf of themselves and all others*

1 similarly situated, *Claimants, v. Perfection Pet Foods, LLC, Respondent*. The parties first
2 selected Michael J. Loeb, Esq. of JAMS as arbitrator, but Mr. Loeb declined to serve as
3 arbitrator. Thereafter, the parties selected the Hon. Steven Brick (Ret.) as arbitrator, but
4 Judge Brick sadly passed away in June 2017. Plaintiffs and PPF then agreed to a
5 mediation with Lynn Frank, Esq. before selecting another arbitrator.

6 5. The mediation with Ms. Frank was held on January 9, 2018, but was
7 unsuccessful. In advance of and during that mediation, PPF provided informal discovery
8 regarding the dates worked and hourly rates paid to the Class Members (defined below),
9 and Plaintiffs discovered information that caused them to believe that Western Milling and
10 Kruse were joint employers and/or alter egos of PPF, and then sought to bring Western
11 Milling and Kruse into the Arbitration and informed PPF of their intention to do so.

12 6. The settlement negotiations between Named Plaintiffs and PPF continued for
13 some time following the unsuccessful mediation, and when those parties reached an
14 impasse, they agreed upon a new Arbitrator, Hon. Robert Freedman (Ret.), and
15 commenced the Arbitration.

16 7. On September 6, 2018, Named Plaintiffs filed their Statement of Claims in the
17 Arbitration and named as Respondents PPF, Western Milling, and Kruse.

18 8. On September 26, 2018, Western Milling and Kruse submitted an "Objection
19 and Opposition" to being named as Respondents in the Arbitration, arguing that no
20 agreement to arbitrate existed between Western Milling and the Named Plaintiffs and Kruse
21 and the Named Plaintiffs, and that Western Milling and Kruse were not the joint employer or
22 alter ego of PPF. The Arbitrator noted that the Parties had reached an agreement that
23 Plaintiffs would not proceed against Western Milling and Kruse in the Arbitration and
24 instead would proceed by way of a separate court action, and accordingly concluded that
25 the Western Milling and Kruse would not be deemed parties respondent at that time.

26 9. Thereafter, on October 25, 2018, Named Plaintiffs then filed a parallel action
27 in the United States District Court for the Eastern District of California against Western
28 Milling and Kruse asserting the same claims, except PAGA, as those asserted in the

Arbitration in the case styled *Benitez, et al. v. Western Milling LLC, et al.* E.D.Cal. Case No. 1:18-cv-01484-DAD-SKO (the “Federal Action” as defined below).

10. On December 6, 2018, Western Milling and Kruse filed a motion to dismiss the Federal Action. As of January 29, 2019, the motion to dismiss was fully briefed, but in February 2019, the parties in both Actions agreed to stay all proceedings and attempt mediation to reach a global resolution of all Claims (defined below).

11. During July 2018 and continuing into 2019, PPF engaged in an individual settlement program and throughout the relevant time period PPF had a practice of providing severance benefits to certain employees whose employment ended in exchange for those individuals executing severance agreements with general releases of all claims. At various time periods, employees of PPF also signed arbitration agreements which contained class action waiver language. As a result of the settlement and severance benefit programs, PPF obtained 194 Individual Releases from Class Members and paid those Class Members a total of \$315,400.00 in exchange for those releases.

12. Named Plaintiffs disputed the validity of the Individual Releases obtained through the individual settlement program and had this Agreement not been reached at mediation (as discussed below), intended to file a Motion to Invalidate the Releases in the near term in the Arbitration.

13. The Parties agreed to mediate the case with the assistance of mediator Paul Grossman, Esq. of Paul Hastings. In preparation for the mediation, PPF and Plaintiffs agreed to a *Belaire West* notice process, and to update the data and information exchanged prior to the first mediation.

14. Throughout the pendency of the Arbitration and the Federal Action (collectively the “Actions” as defined below), the Parties engaged in an extensive pre-certification, voluntary exchange of information, including but not limited to PPF and Plaintiffs exchanging documents and voluminous personnel and payroll data. The Parties additionally each conducted independent investigations and fact-finding.

15. Defendants deny that they engaged in any misconduct in connection with their wage-and-hour practices, and further deny that they have any liability or engaged in wrongdoing of any kind associated with the claims alleged in the Actions as to the Named Plaintiffs or any Class Member. Defendants contend that they have complied at all times with both federal and state wage-and-hour laws and applicable Industrial Welfare Commission Wage Orders, and all other laws regulating the employer-employee relationship, in connection with the employment of the Named Plaintiffs and the Class Members. Western Milling and Kruse deny that they are or were joint employers of Named Plaintiffs and the Class Members, and deny that they are or were the alter ego of PPF.

16. On May 16, 2019, Defendants, Defendants' Counsel (defined below), the Named Plaintiffs, and Class Counsel (defined below), on behalf of the Named Plaintiffs and the putative class, participated in a mediation before Mr. Grossman, a highly-respected neutral mediator in Los Angeles, California, who specializes in wage and hour mediations, in an attempt to mediate and resolve all Claims related to the Actions. With Mediator Grossman's assistance, the Parties agreed, subject to approval by the Federal Court, to a Settlement (defined below) of the Actions. The Parties further agreed to enter into this Agreement (defined below) to memorialize their settlement of the Actions.

17. PPF provided Class Counsel with extensive data regarding the Class Members, primarily before the Settlement. Class Counsel carefully investigated the facts relating to the Actions. Class Counsel is of the opinion that the Settlement documented by this Agreement is fair, reasonable, and adequate, and in the best interest of the Class Members in light of all known facts and circumstances (based on all of the information obtained during the course of informal and formal discovery), including but not limited to the risk of significant delay, defenses asserted to the merits and any class action treatment of the Actions, uncertainties in the law, defenses that Western Milling and Kruse are not joint employers or alter egos of PPF, and the numerous potential appellate issues. While Defendants specifically deny all liability in the Actions, Defendants have agreed to enter

into this Settlement to avoid the cost and business disruption associated with further defending the Actions.

18. On or about September 17, 2019, the parties stipulated to Plaintiff adding PPF and Plaintiff's PAGA claims to the Federal Action. As PPF has been added to the Federal Action, upon execution of this Class Action Settlement Agreement, Defendants will dismiss the Arbitration, with prejudice, as the Parties have agreed that all remaining issues will be resolved by way of the Federal Court Action.

B. DEFINITIONS

1. "Actions" refers to the Arbitration and Federal Action collectively.

2. "Agreement" means this Class Action Settlement Agreement and Stipulation.

3. "And/or" means both "and" and "or" and shall be interpreted broad by both conjunctively and disjunctively, and applied both together and separately.

4. "Arbitration" means the civil action that originally commenced on November 2, 2016 against PPF in the U.S. District Court of California, Eastern District of California, Case No. 1:16-cv-01661-LJO-EPG, entitled *Steven Villarreal, Agustin Benitez, and Carlos Morales, Plaintiffs, v. Perfection Pet Foods, LLC, Defendant*, which was compelled to arbitration and is currently styled JAMS Ref. # 1100087703, *Steven Villarreal, Agustin Benitez, and Carlos Morales, on behalf of themselves and all others similarly situated, Claimants, v. Perfection Pet Foods, LLC, Respondent*.

5. "Claims" means any and all charges, claims, causes of action, actions, lawsuits, demands, complaints, liabilities, obligations, guarantees, requests for reimbursement, fines, promises, agreements, controversies, damages, liquidated damages, equitable relief, rights, offsets, liens, attorneys' fees, costs, expenses, losses, debts, interest, penalties, and fines of any kind, whether known or unknown, suspected or unsuspected.

6. "Class" means the class to be conditionally certified for settlement purposes only as all current and former non-exempt hourly employees of PPF who worked at least

one shift of more than five hours at any of PPF's Visalia, California pet food plants and/or warehouse, at any time during the Class Period.

7. "Class Counsel" means Richard A. Hoyer, Esq. and Ryan L. Hicks, Esq. of Hoyer & Hicks, and Walter Haines, Esq. of United Employees Law Group, P.C., and all other attorneys at such firms, and any other attorney or law firm added to or duly substituted in place of them or any of them in the Actions.

8. "Class Counsel's Fees and Expenses" means the amount awarded to Class Counsel by the Federal Court to compensate them for their fees in prosecuting the Actions, not to exceed \$216,666.67 plus reasonable costs actually incurred, as determined by the Federal Court.

9. "Class Members" means all individuals within the definition of the Class.

10. "Class Notice" means the Notice of Class and Collective Action Settlement in a form substantially similar to the notice attached as Exhibit A hereto, which is to be presented to and approved by the Federal Court.

11. "Class Period" means the period beginning on November 2, 2012 and ending on the date the Federal Court files its Preliminary Approval Order.

12. "Class Representative(s)" means Named Plaintiffs Steven Villarreal, Agustin Benitez, and Carlos Morales.

13. "Class Representative Payment(s)" means the incentive awards made to Agustin Benitez and Carlos Morales in their capacities as Class Representatives and as consideration for the general release of claims described in this Agreement, not to exceed \$10,000 as determined by the Federal Court, and the incentive award made to Steven Villarreal in his capacity as Class Representative and as consideration for his release of individual FMLA Interference claims and the general release of claims described in this Agreement, not to exceed \$20,000 (\$10,000 for the release of his FMLA claim and \$10,000 for the general release of claims and an incentive award) as determined by the Federal Court.

14. “Defendants” means Respondent Perfection Pet Foods, LLC, and Defendants Western Milling, LLC and Kruse Investment Company, Inc. as alleged in the Actions.

15. “Defendants’ Counsel” means Mark D. Kruthers of Dowling Aaron Inc. for PPF, and Ian B. Wieland and Howard A. Sagaser of Sagaser, Watkins & Wieland, PC for Western Milling and Kruse, respectively, and any other attorney or law firm added or duly substituted in place of them in the Actions, respectively.

16. “Effective Date” of this Agreement means the date defined in Paragraph F(7).

17. “Employee Payroll Taxes” means the employee’s portion of all applicable tax withholdings including, but not limited to, FICA, FUTA, unemployment insurance taxes, California Employment Training Tax, Medicare and State Disability taxes, and other employment related taxes, and withholding of federal, state, and local income taxes.

18. “Employer Payroll Taxes” means the employer’s share of payroll taxes applicable to the portion of the Settlement Payments allocated to wages.

19. “Enforcement Order” means the order of the Federal Court enforcing the Final Approval Order and Final Judgment.

20. “Federal Action” refers to the civil action that originally commenced on October 25, 2018 against Defendants Western Milling, LLC and Kruse Investment Company, Inc. in the U.S. District Court of California, Eastern District of California, entitled *Agustin Benitez, Carlos Morales, Steven Villarreal, on behalf of themselves and all others similarly situated v. Western Milling, LLC and Kruse Investment Company, Inc.*, E.D.Cal. Case No. 1:18-cv-01484-DAD-SKO.

21. “Final Approval Hearing Date” means the date set by the Federal Court for the Settlement Hearing.

22. “Federal Court” means the U.S. District Court of California, Eastern District of California.

23. “Final Approval Order” means the order granting final approval of the Parties’ Settlement by the Federal Court.

24. “Final Judgment” means the final judgment entered by the Federal Court.

25. "Individual Release" means any agreement entered into between PPF and Class Members that released, waived, or relinquished for consideration claims that would be covered by the Released Claims of Participating Class Members in this Settlement.

26. "Mailing Date" means the date that the Settlement Administrator initially mails by Regular United States Mail the Class Notice to Class Members.

27. "Named Plaintiffs" or "Plaintiffs" means Claimants/Plaintiffs Steven Villarreal, Agustin Benitez, and Carlos Morales.

28. "Net Settlement Fund" means the Settlement Fund less all (1) Class Counsel's Fees and Expenses, (2) the Class Representative Payments, (3) Settlement Administrator Costs, (4) \$22,500.00 as PAGA penalties payable to the California Labor and Workforce Development Agency ("LWDA"), and (5) the amounts previously paid by PPF to Class Members for Individual Releases as part of its individual settlement program. The Net Settlement Fund shall be available for Settlement Payments to Plaintiffs and the Participating Class Members.

29. "Notice of Final Approval" means a postcard or similar notice entitled "Notice of Final Approval of Class Action Settlement and Entry of Judgment" to be approved by the Federal Court, substantially in the form attached hereto as Exhibit B. This Notice of Final Approval shall constitute notice of the Judgment pursuant to California Rule of Court 3.771 and CCP § 664.5.

30. "Opt-Out Period" means a period of sixty (60) calendar days from the Mailing Date. If the 60th day falls on a Sunday or holiday, the Opt-Out Period shall end on the next business day that is not a Sunday or holiday. At no point will a Class Member's Opt-Out Period end more than 90 days after the Mailing Date per Paragraph E(1)(c) of the Agreement.

31. "Opt-Out Request" means a written request from a Class Member which meets the requirements of Paragraph E(2).

32. "Parties" means the Named Plaintiffs on behalf of themselves and on behalf of all Class Members, and the Defendants.

33. "Participating Class Member(s)" means all Class Members who have not timely opted out of this Settlement pursuant to Paragraph E(2) of this Agreement.

34. "Participating Class" means all Participating Class Members.

35. "Preliminary Approval Order" means an order from the Federal Court preliminarily approving this Agreement and the notice process described herein.

36. "Released Claims" means

a. Any and all Claims, during the Class Period, that could have been made based on the facts pled in the Actions through the date of Preliminary Approval including, but not limited to, failure to provide meal periods (California Labor Code sections 226.7, 512; applicable Industrial Welfare Commission Wage Order); failure to authorize and permit rest periods (California Labor Code section 226.7; applicable Industrial Welfare Commission Wage Order); failure to provide accurate itemized wage statements (California Labor Code section 226; applicable Industrial Welfare Commission Wage Order); failure to timely pay final wages (California Labor Code sections 201, 202, 203; applicable Industrial Welfare Commission Wage Order); violations of California Business and Professions Code sections 17200, *et seq.*; violations of Industrial Welfare Commission Wage Orders; penalties under California Labor Code sections 2698, *et seq.*; and any other Claims that were alleged or could have been alleged under any state, municipal, or federal statute, ordinance, regulation, order, or common law based on the facts and Claims alleged in the Actions, including, but not limited to, claims under California Labor Code sections 90.5, 200, 201, 201.5, 202, 203, 204, 204b, 210, 218, 218.5, 218.6, 221, 222, 223, 226, 226.3, 226.4, 226.6, 226.2, 226.7, 510, 512, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 2802, violations of California Business and Professions Code sections 17200, *et seq.*, California Labor Code sections 2698, *et seq.*, and California Code of Civil Procedure section 1021.5.

b. The doctrines of res judicata, claim preclusion, issue preclusion, and collateral estoppel shall fully and broadly apply to Released Claims and the release in this Settlement to the greatest effect and extent permitted by law.

c. With respect to the Named Plaintiffs, Released Claims shall also include all Claims, whether known or unknown, the Named Plaintiffs may have against Defendants and the Released Parties on or before the date on which the Federal Court enters the Final Approval Order regarding this Settlement as described in Paragraph C(6).

37. "Released Parties" shall mean Perfection Pet Foods, LLC, Western Milling, LLC, Kruse Investment Company, Inc., and all of their respective past, present, or future subsidiaries, parent companies, investors, affiliated and related corporations, holding companies, sister companies, divisions, partnerships, corporations in common control, successors or assigns, predecessors, and any other related entities, and all past, present, and future officers, directors, members, shareholders, partners, owners, principals, vendors, auditors, consultants, fiduciaries, agents, insurers, reinsurers, employees, managers, attorneys, advisors, accountants, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns, employee benefit plans, and joint venturers of any of the foregoing entities referred to in this Paragraph (all of whom are expressly deemed to be third party beneficiaries of this Agreement), any temporary staffing agencies that provided employees to work at the PPF pet food plants and/or warehouse during the Class Period, and any individual or entity who or which could be jointly liable with Defendants and all persons or entities acting by, through, under or in concert with any of them.

38. "Settlement" means the settlement of the Actions and related Claims effectuated by this Agreement.

39. "Settlement Administrator" shall mean a neutral, third-party settlement administrator, the parties will propose Simpluris, Inc., which is the entity that has been mutually agreed upon by the Parties and selected by Plaintiffs to provide notice of this class and collective action settlement to the Class Members and to perform other related functions to administer the settlement contemplated by this Agreement as described herein. The Parties, and their counsel, each represent that they do not have any financial interest

in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

40. "Settlement Administrator Costs" means the estimated reasonable cost of up to \$15,000.00 payable to the Settlement Administrator for claims and settlement administration as described herein.

41. "Settlement Fund" means the maximum settlement amount of Six-hundred Fifty Thousand Dollars and No Cents (\$650,000.00) to be paid by PPF pursuant to this Agreement and available to pay all amounts provided for under this Agreement, including (1) Class Counsel's Fees and Expenses; (2) the Class Representative Payments; (3) Settlement Administrator Costs; (4) PAGA penalties in the amount of thirty-thousand dollars and no cents (\$30,000.00) of which 75% or twenty-two thousand five hundred dollars and no cents (\$22,500.00) will be paid to the LWDA and 25% or seven thousand five hundred dollars and no cents (\$7,500.00) will be paid to the Participating Class Members; and (5) all Settlement Payments to Plaintiffs and Participating Class Members. A credit of \$315,400.00 will be applied towards the Settlement Fund of \$650,000.00, which shall reflect the amount paid for the Individual Releases obtained by PPF from 194 Class Members. Separate from and in addition to the Settlement Fund, PPF shall pay the Employer's Payroll Taxes applicable to the portion of payments allocated to wages. Other than the amount of the Settlement Fund and the Employer's Payroll Taxes, PPF will not be obligated, required, or otherwise expected to pay any additional monies in exchange for the releases and other benefits set forth herein.

42. "Settlement Hearing" means the hearing on the Final Approval Hearing Date at which the Federal Court shall determine whether to fully and finally approve the fairness and reasonableness of this Agreement, and enter an order permanently enjoining all Participating Class Members from pursuing, or seeking to reopen, any of the Released Claims.

43. "Settlement Payment" means the payment made to each Participating Class Member out of the Net Settlement Fund pursuant to this Agreement. The Settlement Payment is subject to the Employee Payroll Taxes, as stated in Paragraph D(3).

44. "Settlement Proceeds Distribution Deadline" means the first regular business date that is ten (10) calendar days after all of the following occur: (1) the Effective Date; and (2) the time allotted to the Settlement Administrator to provide PPF the information set forth in Paragraph E5 and the time allotted to PPF to make the one-time deposit as set forth in Paragraph E5.

45. "Workweeks" or "Weeks Worked" means the number of weeks in which a Class Member performed work during the Class Period, as regularly recorded by PPF's timekeeping systems then in effect.

C. RELEASE PROVISIONS

1. Non-Admission Of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that they have violated any federal, state, or local law, statute, ordinance, regulation, order, or common law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; violated any public policy; breached any contract, violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Named Plaintiffs or any Class Member. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, nor the Memorandum of Understanding dated May 16, 2019 and signed on that date shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law or public policy. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a

violation of, or a non-compliance with, federal, state, local or other applicable law or public policy.

2. Conditional Nature Of Class Settlement. For settlement purposes *only*, the Parties agree that the Class may be certified in the Arbitration. In support of this Agreement, Named Plaintiffs will request that the Federal Court certify for settlement purposes only the Class as to all Claims that have been asserted or which are additionally sought to be asserted in the Actions as part of this Agreement.

a. The Parties intend their Settlement to be contingent upon the preliminary and final approval of each and every term of this Agreement, without material or substantive modification, unless the Parties agree to such modification. A modification, reduction, or denial of Class Counsel's application for Class Counsel's Fees and Costs or a modification, reduction, or denial of the application for Class Representative Payments for the Named Plaintiffs shall not constitute a material alteration of a term of this Agreement. If the Federal Court does not grant Final Approval, the Parties intend this Agreement to become null and void, and unenforceable, in which event the settlement terms set forth herein, including any modifications made with the consent of the Parties, and any action taken or to be taken in connection with this Agreement shall be terminated and shall become null and void and have no further force or effect, and the Class certified pursuant to this Agreement will be decertified for all purposes.

b. In the event that the Federal Court does not grant preliminary or final approval of the Parties' Settlement, or if this Agreement shall terminate or the Settlement embodied herein does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of the Named Plaintiffs, Class Members and Defendants, each of whom shall be restored to her/their/its respective positions existing prior to the execution of this Agreement, and evidence relating to the Agreement and all negotiations shall not be discoverable or admissible in the Actions or any other litigation. Defendants do not waive, and instead expressly reserves, its rights to challenge the propriety of class certification for

any purpose should the Federal Court not grant preliminary or final approval of the Parties' Settlement.

c. If the Federal Court grants preliminary approval but does not grant final approval of the Parties' Settlement, then neither this Agreement, the Preliminary Approval Order, nor any other document in any way relating to the Agreement or Settlement may be relied upon, referred to or used in any way for any purpose in connection with any further proceedings in this or any related action, including class certification proceedings. Defendants do not waive, and instead expressly reserve, their right to challenge the propriety of class certification should the Federal Court not grant final approval of the Parties' Settlement.

3. Filing of Preliminary Approval and Final Approval Motions in the Federal Action. The Parties agree that the Named Plaintiffs will then file a Motion for Preliminary Approval in Federal Court to effectuate this Agreement and the contemplated Settlement, and a subsequent Motion for Final Approval.

4. Dismissal of Claims. Subject to final approval in Federal Court and Final Judgment and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth herein, the Named Plaintiffs, and all Participating Class Members, shall dismiss with prejudice all Released Claims in the Actions, to the greatest extent permitted by law.

5. Release Of All Released Claims. As of the Effective Date, the Named Plaintiffs and all Participating Class Members on their behalf and on behalf of their successors in interest, heirs, spouses, executors, beneficiaries, trustees, administrators, attorneys, agents, successors, assigns, and estates hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged Defendants and the Released Parties of and from any and all Released Claims.

a. As of the Effective Date, the Named Plaintiffs and each Participating Class Member, and their successors in interest, heirs, spouses, executors, beneficiaries, trustees, administrators, attorneys, agents, successors, assigns, and estates shall be

1 permanently enjoined and forever barred from prosecuting any and all Released Claims
2 against Defendants and the Released Parties.

3 b. The Parties agree for settlement purposes only that, because the
4 Class Members are so numerous, it is impossible or impracticable to have each Class
5 Member execute this Agreement.

6 c. The Named Plaintiffs and Class Counsel represent, covenant, and
7 warrant that they have not directly or indirectly assigned, transferred, encumbered or
8 purported to assign, transfer, or encumber to any person or entity any portion of any Claim,
9 liability, demand, action, cause of action, or rights herein released and discharged, except
10 as set forth herein. To the extent any state agency has asserted a lien on the distribution to
11 be paid to plaintiff Villarreal, the administrator will make payments to any lienholder
12 pursuant to the terms of any such lien as it exists at the time of distribution.

13 6. General Release By The Named Plaintiffs. As of the Effective Date, the
14 Named Plaintiffs on their behalf and on behalf of their successors in interest, heirs,
15 spouses, executors, beneficiaries, trustees, administrators, attorneys, agents, successors,
16 assigns, and estates, shall be deemed to fully, finally, and forever release, settle,
17 compromise, relinquish, and discharge Defendants and the Released Parties from any and
18 all Claims of every nature and description whatsoever, asserted or that might be asserted,
19 whether in tort, contract, or for violation of any state, municipal, or federal statute,
20 ordinance, or regulation, or common law arising out of, relating to, or in connection with any
21 act or omission by or on the part of Defendants or any of the Released Parties, or arising
22 out of or relating to the Named Plaintiffs' alleged employment or severance of employment
23 with Defendants or Released Parties, prior to or on the date of which the Federal Court
24 enters an order of final approval of this Agreement ("General Release"). This General
25 Release also includes any unknown claims the Named Plaintiffs do not know or suspect to
26 exist in their favor at the time of this General Release, which, if known by them, might have
27 affected their settlement with, and release of, Defendants and the Released Parties or
28 might have affected their decision not to object to this Agreement or this Release. To the

1 extent the foregoing releases are releases to which Section 1542 of the California Civil
2 Code or similar provisions of other applicable law may apply, the Named Plaintiffs
3 expressly waive any and all rights and benefits conferred upon them by the provisions of
4 Section 1542 of the California Civil Code or similar provisions of applicable law which are
5 as follows:

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

13 The significance of this release and waiver of California Civil Code Section 1542 has
14 been explained to the Named Plaintiffs by their counsel.

15 In giving this release, the Named Plaintiffs acknowledge that they are aware that
16 facts may be discovered in addition to or different from those which they now know or
17 believe to be true with respect to the subject matter of the release, but that it is their
18 intention to, and they do hereby fully, finally, and forever release, settle, compromise,
19 relinquish, and discharge Defendants and the Released Parties from any and all Claims
20 without regard to the subsequent discovery or existence of such additional or different
21 facts. The Named Plaintiffs assume any and all risk of mistake (or discovery of different or
22 additional facts) in connection this general release.

23 Notwithstanding the foregoing, the general release by the Named Plaintiffs does not
24 include any claim or right for workers' compensation benefits or any claim or right that is not
25 waivable as a matter of law.

26 a. Without limiting the generality of the foregoing, and in addition to the
27 foregoing, the Named Plaintiffs specifically and expressly release to the maximum extent
28 permitted by law all Claims against Defendants and the Released Parties occurring prior to

the date on which the Federal Court enters an order of final approval regarding this Settlement arising out of or relating to violations of any federal or state employment discrimination laws; the Family and Medical Leave Act; the California Fair Employment and Housing Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the California Family Rights Act; the Americans with Disabilities Act; the National Labor Relations Act; the Fair Labor Standards Act; the Equal Pay Act; the Employee Retirement Income Security Act of 1974; the United States or State of California Constitutions; the California Labor Code, including but not limited to California Labor Code sections 90.5, 200, 201, 201.5, 202, 203, 204, 204b, 210, 218, 218.5, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.4, 226.6, 226.7, 510, 512, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2802, and 2698, *et seq.*); the California Government Code; the California Business & Professions Code, including but not limited to California Business & Professions Code sections 17200, *et seq.*; the California Code of Civil Procedure; state and federal wage and hour laws; tort; contracts; breach of contract; fraud; misrepresentation; common counts; unfair competition; unfair business practices; negligence; defamation; infliction of emotional distress; invasion of privacy; assault; battery; false imprisonment; wrongful termination; and any other state or federal law, rule, or regulation.

b. As of the Effective Date, the Named Plaintiffs, and their successors in interest, heirs, spouses, executors, beneficiaries, trustees, administrators, attorneys, agents, successors, assigns, and estates, shall be permanently enjoined and forever barred from prosecuting any and all Released Claims against Defendants and the Released Parties.

7. Waiver of Employment/Reemployment By Named Plaintiffs. As part of the full settlement of all Claims with Defendants and Released Parties, the Named Plaintiffs further agree not to seek future employment, reemployment, or reinstatement of employment with Defendants or the Released Parties, including any of their parent, subsidiary, and affiliated business entities, divisions, or business units. The Named Plaintiffs further agree that

Defendants and the Released Parties, including any of their parent, subsidiary and affiliated business entities, divisions, or business units may reject without cause any application for employment that the Named Plaintiffs may make, and the Named Plaintiffs agree that they shall have no legal recourse arising out of any such rejection.

8. Release of Claims By Class Counsel. Upon receipt of Class Counsel's Fees and Expenses, as ordered by the Court on final approval of the Settlement, Class Counsel shall fully and finally release Defendants and the Released Parties from any and all Claims for attorneys' fees, costs, and expenses arising from the Actions and any Claims released by the Named Plaintiffs and Participating Class Members, whether known and unknown, whether under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. Class Counsel's released Claims include, but are not limited to, claims for attorneys' fees and expenses arising from or dependent on the California Civil Code; the California Code of Civil Procedure; the California Labor Code; the wage orders of the California Industrial Welfare Commission; California Business and Professions Code sections 17200, *et seq.*; California Labor Code sections 2698, *et seq.*; the California common law of contract and tort; and the Fair Labor Standards Act.

9. Labor Code Sections Do Not Apply To Releases. The Parties agree that California Labor Code sections 206.5 and 2804 do not invalidate any provision of this Agreement, because among other things, the Claims and Released Claims are disputed and contested, and the Settlement was bargained for at arms' length and approved and confirmed by the Federal Court.

D. PAYMENT PROVISIONS

1. Allocation of Settlement Fund. Subject to final approval from and confirmation by the Federal Court and the conditions specified in this Agreement, and in consideration of the mutual covenants, releases, and promises set forth herein, PPF agrees to make a total settlement payment under this Agreement in the amount of \$650,000, *i.e.*, the Settlement Fund. A credit of \$315,400 will be applied towards the Settlement Fund, which shall reflect the amount already paid for the Individual Releases obtained by PPF from 194 Class

Members. Thus, a new payment of \$334,600 will be made by PPF following Final Approval. Under no circumstances shall PPF be required to pay any amount beyond this Settlement Fund to effectuate the terms of this Agreement. The Parties agree, subject to approval and confirmation by the Federal Court, that the Settlement Fund shall be apportioned as follows:

a. At the Settlement Hearing, Class Counsel will apply to the Court for an award of attorneys' fees incurred by Class Counsel in an amount not to exceed two-hundred sixteen thousand six-hundred sixty-six dollars and sixty-seven cents (\$216,666.67), which equals approximately 33.333 percent of the Settlement Fund, plus reasonable costs actually incurred. Defendants will not oppose such application. These fees and costs are included in, and shall come from, the Settlement Fund. Class Counsel must provide the Settlement Administrator with an IRS Form W-9 or other appropriate forms for the issuance of an IRS Form 1099 misc. It is understood and agreed by the Parties, Class Counsel, and Defendants' Counsel that no amounts designated herein as Class Counsel's Fees and Expenses are accessible or otherwise made available to Class Counsel until the payment amount and method are agreed to by Class Counsel and the Settlement Administrator pursuant to an Attorney Fee Distribution Agreement. To the extent attorneys' fees are not approved in the full amount set forth above, then the amount not approved shall remain in the Net Settlement Fund for distribution to Participating Class Members. Similarly, to the extent costs sought by Class Counsel are not approved in their entirety, any sum not approved shall remain in the Net Settlement Fund for distribution to Participating Class Members. Except as provided in this Paragraph, upon final approval of the Settlement, each Party shall bear his/their or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, and settlement of the Actions. The Parties do not intend approval of this Settlement to be contingent upon the Court's award of Class Counsel's Fees and Expenses, in any amount, to Class Counsel. Nothing precludes Class Counsel, however, from appealing the Court's decision relating to Class Counsel's Fees and Expenses.

b. At the Settlement Hearing, Class Counsel will apply to the Federal Court for a Class Representative Payment of up to \$10,000 each for Benitez and Morales and up to \$20,000 for Villarreal due to his individual claim for the Named Plaintiffs' services and for assuming the risks associated with this litigation and also as consideration for their general releases. Defendants will not oppose such application. Any Class Representative Payment is included in, and shall come from, the Settlement Fund. Except as indicated below with respect to Villarreal, any Class Representative Payment approved by the Court pursuant to this Paragraph and made to the Named Plaintiffs shall be allocated and treated as 1099 income. If the Court approves and awards a Class Representative Payment in an amount less than amounts set forth herein, the amount not approved shall remain in the Net Settlement Fund for distribution to Participating Class Members. As to Villarreal, \$10,000 of his Class Representative Payment (or one half of whatever amount is ultimately approved by the Court) will be paid to Villarreal as wages in resolution of his individual FMLA claim. The Parties acknowledge and understand that any monies belonging to Villarreal are subject to the pending lien filed in the Federal Action and the Settlement Administrator will pay monies as required to resolve the lien from any payment designated as wages before paying any monies directly to Villarreal.

c. An amount of thirty thousand dollars and no cents (\$30,000.00) shall be allocated to the release of the PAGA claims of which 75% or twenty-two thousand five hundred dollars and no cents (\$22,500.00) will be paid to the LWDA and 25% or seven thousand five hundred dollars and no cents (\$7,500.00) will be paid to the Participating Class Members. This amount is to be paid for settlement of all Claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA").

d. Subject to Federal Court approval, an amount of up to Fifteen Thousand Dollars and No Cents (\$15,000.00) will be set aside from the Settlement Fund to cover any of the Settlement Administrator Costs. If the actual costs of administration are

less than \$15,000.00, the remainder will be made part of the Net Settlement Fund and distributed to the Participating Class Members.

e. Each Participating Class Member shall be entitled to a pro rata portion of the Net Settlement Fund. Settlement Payments shall be awarded to each Participating Class Member from the Net Settlement Fund based on the number of Weeks Worked, as a fraction of the total Weeks Worked of all Participating Class Members. Accordingly, the Settlement Payments to each Participating Class Member shall be calculated by multiplying the Net Settlement Fund by a Payment Ratio (the number of Work Weeks for each Participating Class Member during the Applicable Period divided by the total Weeks Worked by all Participating Settlement Class Members during the Applicable Period).

f. In order to account for Class Members who previously signed Individual Releases which release claims corresponding with the Participating Class Members' Released Claims, the distribution calculation shall be made by determining the sum of the Net Settlement Fund added to the amounts paid to Participating Class Members who signed Individual Releases (\$315,400). All Participating Class Members entitled to less money under this Agreement than previously received through Individual Releases will be removed from the distribution calculation. Those Participating Class Members entitled to more money under this agreement will be entitled to an amount proportional to the difference between what they would be entitled to under this Agreement and what they previously received through Individual Releases. The final distribution calculation will disregard amounts previously paid in Individual Releases.

g. The Parties acknowledge and agree that the formula used to calculate Settlement Payments does not imply that all of the elements of damages alleged in the Action are not being taken into account. The above formula was devised as a practical and logistical tool to simplify the claims process.

h. The Parties agree that the entire amount of the Net Settlement Fund, less the applicable Employee Payroll Taxes, shall be distributed to Participating Class Members. PPF will be responsible for the Employer Payroll Taxes, which will not be

deducted from the Settlement Fund. Any Class Member who is not a Participating Class Member shall not receive a Settlement Payment.

2. No Credit Toward Benefit Plans. Except as otherwise required by applicable plan documents, the Settlement Payments made to Participating Class Members under this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Participating Class Member may be eligible including, but not limited to: retirement plans, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, incentive plans, vacation plans, sick leave plans, PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Participating Class Member may be entitled under any benefit plans.

3. Taxation Of Settlement Proceeds. All Settlement Payments paid to Participating Class Members and the Named Plaintiffs shall be paid in a net amount after any applicable federal, state, and local tax withholdings, including payroll taxes, have been deducted. The Settlement Payment is subject to the Employee Payroll Taxes for the portion of the Settlement Payments allocated to wages. PPF will be responsible for the Employer Payroll Taxes for the portion of the Settlement Payments allocated to wages.

a. The Parties agree that thirty-three percent (33%) of the Settlement Payment to each Participating Class Member will be considered wages, thirty-three percent (33%) of the Settlement Payment to each Participating Class Member will be considered interest, and thirty-four percent (34%) of the Settlement Payment to each Participating Class Member will be considered penalties. The portion allocated to wages in each Settlement Payment will be reported on an IRS Form W-2 and the portion allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement Administrator. The Settlement Administrator will issue appropriate tax forms to each Participating Class Member consistent with the foregoing allocation. The foregoing tax allocation shall not apply to sums paid to the Named Plaintiffs for Class Representative Payment as described in Paragraph D(1)(b), and the Settlement Administrator shall issue

1 Named Plaintiffs Form 1099 for their Class Representative Payment except as discussed
2 above with respect to wage portion of the Class Representative Payment made to
3 Villarreal.

4 b. The Settlement Administrator shall calculate, withhold from the
5 Settlement Payment, and remit to applicable governmental agencies sufficient amounts as
6 may be owed by Participating Class Members for the employee's share of any Employee
7 Payroll Taxes. The Settlement Administrator shall calculate and remit to the applicable
8 governmental agencies sufficient amounts as owed by PPF for the employer's share of the
9 Employer Payroll Taxes. The Settlement Administrator shall provide each Participating
10 Class Member who is entitled to a Settlement Payment with appropriate documentation
11 setting forth the amount of any tax or other payment withheld and employer contribution
12 made, in accordance with state and federal tax requirements.

13 c. The Parties agree that the Settlement Fund will qualify as a settlement
14 fund pursuant to the requirements of section 468(B)(g) of the Internal Revenue Code of
15 1986, as amended, and section 1.468B-1, *et seq.* of the income tax regulations.
16 Furthermore, the Settlement Administrator is hereby designated as the "Administrator" of
17 the qualified settlement funds for purposes of section 1.46B-2(k) of the income tax
18 regulations. As such, all taxes imposed on the gross income of the Settlement Fund and
19 any tax-related expenses arising from any income tax return or other reporting document
20 that may be required by the Internal Revenue Service or any state or local taxing body will
21 be paid from the Settlement Fund.

22 d. Plaintiffs and Participating Class Members shall be solely and
23 exclusively responsible for remitting to state and/or federal taxing authorities any applicable
24 other taxes due and shall hold Defendants and Released Parties harmless for any taxes,
25 penalties, fines, interest, liabilities, attorneys' fees, costs, or expenses caused by any such
26 taxing authority relating in any way to Plaintiffs or Participating Class Members' tax
27 treatment of payments made to them pursuant to this Agreement or failure to timely or
28 properly pay any taxes owed on their respective Settlement Payments.

e. All Parties represent that they have not received, and shall not rely on, advice or representations from the other Party or his/her/their/its agents regarding the tax treatment of payments under federal, state, or local law.

E. NOTICE, CLAIMS PROCEDURE AND DISTRIBUTION

1. Notice Procedure. Within ten (10) days after entry of the Preliminary Approval Order, PPF shall provide to the Settlement Administrator a list of Class Members that identifies each Class Member's name, Social Security number, last-known address, the number of Weeks Worked during the Class Period, and if the Class Member entered into an Individual Release with PPF, the amount received by that Class Member in exchange for the Individual Release. PPF agrees to provide the list in an electronic format reasonably acceptable to the Settlement Administrator. The Settlement Administrator will keep the list confidential, use it only for the purposes described herein, and return it to PPF upon completion of the settlement administration process. Class Counsel shall have the right to verify with the Settlement Administrator whether individual Class Members are included on the list.

a. Within ten (10) days after receipt of the list of Class Members described in the preceding paragraph, the Settlement Administrator shall mail by First-Class United States mail the Class Notice to each Class Member. With regard to the Named Plaintiffs, the Class Notice shall be mailed to Class Counsel. It shall be conclusively presumed that each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days after the Mailing Date has received the Class Notice.

b. The Settlement Administrator shall promptly re-mail any Class Notice returned by the Post Office with a forwarding address. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days after re-mailing has received the Class Notice.

1 c. The Settlement Administrator will use appropriate skip tracing and
2 National Change of Address ("NCOA") searches to increase the likelihood of delivery of the
3 Class Notice, including one address confirmation and, if applicable, update of Class
4 Members' mailing address prior to the initial mailing. The Settlement Administrator shall not
5 perform more than one re-mailing to any Class Member unless contacted by the individual
6 Class Member within the Opt-Out Period with updated address information. For any Class
7 Notice that must be re-sent or otherwise cured, the Opt-Out Period for that Class Member
8 shall be extended for one thirty (30) day period.

9 d. Class Counsel shall provide to the Federal Court at or before the
10 Settlement Hearing, a declaration from the Settlement Administrator confirming that the
11 Class Notice was mailed to all Class Members as required by this Agreement, and whether
12 and when any Opt-Outs were received (by whom and with post mark date) as well as any
13 additional information Class Counsel or Defendants' Counsel deems appropriate to provide
14 to the Court.

15 e. The Class Notice will include a procedure by which a Class Member
16 may challenge the number of Weeks Worked identified in the Class Notice by submitting a
17 timely postmarked written challenge to the Settlement Administrator, within the Opt-Out
18 Period. A Class Member challenging the number of Weeks Worked identified in the Class
19 Notice will bear the burden of proof and must submit documentary evidence sufficient to
20 prove the number of Weeks Worked during the Class Period. Defendants shall have the
21 right to respond to the challenge by any Participating Class Member. The Settlement
22 Administrator will resolve the challenge and make a final and binding determination without
23 hearing or right of appeal. The personnel records, including payroll records, of Defendants
24 shall be considered by the Settlement Administrator as the presumptive best evidence of
25 the number of Weeks Worked. If a Class Member successfully challenges Defendants'
26 records, the settlement amount for the other Class Members shall be prorated accordingly.
27 In no case will a challenge result in a payment by PPF in excess of the Settlement Fund.
28

f. Within ten (10) days after the close of the Opt-Out Period, the Settlement Administrator will provide Defendants' Counsel and Class Counsel with a report by listing the estimated Settlement Payment to be made to each Class Member, a list by name of all Class Members who timely opted out under Paragraph E(2), below, and a list of all Class Members who timely objected under Paragraph E(4) below. After receiving the Settlement Administrator's report, Class Counsel and Defendants' Counsel shall jointly review the same to determine if the calculation of payments to Participating Class Members is consistent with this Agreement.

2. Opt-Out Procedure. Unless a Class Member opts-out of the Settlement described in this Agreement, he or she shall be a Participating Class Member and shall be bound by the terms and conditions of this Agreement, and shall also be bound by the Court's Order(s) enjoining all Participating Class Members from pursuing, or seeking to reopen, any of the Released Claims against Defendants and the Released Parties. A Class Member will not be entitled to opt-out of the Settlement established by this Agreement unless he or she makes an Opt-Out Request. An Opt-Out Request must be: (i) made in writing; (ii) signed and dated by the Class Member seeking exclusion from the Settlement; and (iii) mailed to the Settlement Administrator so that it is postmarked on or before the expiration of the Opt-Out Period. The Opt-Out Request must contain the name, address, and last four digits of his or her Social Security Number and state in substance that the person requests exclusion from the Class and does not wish to take part in the Settlement. The Opt-Out Request must be completed by the Class Member seeking exclusion from the Settlement. No other person may opt-out for a Class Member. Any Class Member who properly opts-out of the Class using this procedure will not be entitled to any payment from the Settlement Fund and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Plaintiffs shall not be permitted to opt-out of this Settlement.

a. Upon receipt of any Opt-Out Request within the Opt-Out Period, the Settlement Administrator shall review the request to verify the information contained therein, and to confirm that the request complies with the requirements of this Agreement.

Any Class Member who fails to submit a timely, complete, and valid Opt-Out Request (*i.e.*, a Deficient Opt-Out Request) shall be contacted by the Settlement Administrator via telephone and U.S. mail to inform the Class Member of the Deficient Opt-Out Request. The Class Member shall have until the end of the Opt-Out Period to resubmit a compliant Opt-Out Request or be barred from opting out of this Agreement or the Settlement. The Settlement Administrator shall not review or consider any Opt-Out Request postmarked after the end of the Opt-Out Period. It shall be conclusively presumed that, if an Opt-Out Request is not postmarked on or before the end of the Opt-Out Period or is not sent to the Settlement Administrator, the Class Member did not make the request in a timely or valid manner. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit an Opt-Out Request.

3. Excessive Opt-Outs. If more than 5% of the Class Members submit timely, complete, and valid Opt-Out Requests, Defendants shall have the sole and absolute discretion to withdraw from this Agreement within ten (10) days after receiving from the Settlement Administrator the list of opt-outs. Defendants agree to meet and confer in good faith with Class Counsel before withdrawing from this Agreement. In the event that Defendants elect to withdraw, it shall provide written notice of such withdrawal to Class Counsel. Such withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement, and the Agreement shall become null and void and have no further force or effect, and the Settlement Class certified pursuant to this Agreement will be decertified for all purposes. If Defendants choose to terminate this Agreement under this provision, it shall be responsible to pay the Settlement Administrator's fees and costs incurred to that point. If the Agreement is terminated for any other reason, including but not limited to the Court's failure to grant a Preliminary Approval Order, Final Approval Order, or Final Judgment, then Class Counsel and PPF shall split evenly the Settlement Administrator's fees and costs.

4. Objections To Settlement. Any Participating Class Member may object to the Settlement. To object, a Participating Class Member must submit a written objection. If a

1 Participating Class Member wishes to attend the Final Approval Hearing he/she must state
2 in writing their intent to appear at the Final Approval Hearing and notify the Federal Court of
3 their intent to do so. All written objections, supporting papers and/or notices of intent to
4 appear at the Final Approval Hearing must: be mailed to the Settlement Administrator; and
5 be filed or postmarked on or before the end of the Opt-Out Period. An objection must state
6 all of the specific grounds on which it is being made and all of the supporting facts. Only
7 Participating Class Members may object to the Settlement. If a Class Member submits both
8 a timely Opt-Out Request and an objection(s), then the Opt-Out Request will be considered
9 valid, and the Class Member will not be considered a Participating Class Member with
10 standing to object to the Settlement. If a Class Member objects to the Settlement, and it is
11 overruled at the Settlement Hearing, that Class Member will still be bound by the
12 Settlement and issued a Settlement Check. A Class Member will not be able to opt-out of
13 this Settlement if he/she cashes his/her check. Class Counsel and Defendants' Counsel
14 may, at least five (5) days before the Settlement Hearing (or as otherwise scheduled by the
15 Federal Court), file responses to any written objections.

16 5. Funding And Distribution Of Settlement. Within five (5) calendar days of the
17 Effective Date, the Settlement Administrator will provide PPF with a calculation of the
18 portion of the Settlement Fund actually to be paid out to Class Members, i.e. individual
19 Settlement Payments, as well as the employer's share of the Employer's Payroll Taxes
20 payable on account of the portion of the Settlement Fund allocated as wages under the
21 terms of this Agreement. The later of within ten (10) calendar days after the Effective Date
22 or within ten (10) calendar days after the Settlement Administrator provides PPF the above
23 information after the Effective Date, PPF shall make a one-time deposit of the amount
24 equal to the Settlement Fund (less the amount previously paid in Individual Releases) and
25 its share of the Employer's Payroll Taxes payable on account of the portion of the
26 Settlement Fund actually to be paid out to Class Members and to be allocated as wages
27 under the terms of this Agreement (referred to as the "Settlement Fund Deposit Amount")
28 into a Qualified Settlement Fund account from which the Settlement Administrator will have

1 authority to distribute money in accordance with the terms of this Agreement. The delivery
2 of the Settlement Fund Deposit Amount by PPF to the Settlement Administrator shall
3 constitute full and complete discharge of the entire obligation of Defendants under this
4 Agreement. No Defendants or Released Party shall have any further obligation or liability to
5 the Named Plaintiffs or Participating Class Members under this Agreement.

6 a. The distribution of Settlement Payments to Participating Class
7 Members shall occur no later than the Settlement Proceeds Distribution Deadline. The
8 Settlement Administrator shall be deemed to have timely distributed Settlement Payments if
9 it places in the mail Settlement Payments for all Participating Class Members by the
10 Settlement Proceeds Distribution Deadline. No person shall have any Claim against the
11 Settlement Administrator, Defendants, Class Counsel, Defendants' Counsel, the Released
12 Parties, or any other agent designated by the Named Plaintiffs or Defendants based upon
13 the distribution of Settlement Payments made substantially in accordance with this
14 Agreement or further orders of the Federal Court.

15 b. Any Settlement Payment checks issued to Participating Class
16 Members shall remain valid and negotiable for 90 days from the date of their mailing.
17 Uncashed checks, along with any interest that has accrued on the sum attributable to the
18 uncashed checks, shall be paid to Valley Children's Hospital, subject to the approval by the
19 Court. If any Participating Class Member does not cash his or her settlement check within
20 90 days after issuance, then 10 business days after the check-cashing deadline, the
21 Settlement Administrator shall void the check and remit the funds, along with any interest
22 that has accrued on the sum attributable to the uncashed checks, to Valley Children's
23 Hospital. Additionally, any tax forms issued to class members in connection with the
24 proceeds from any uncashed checks will be withdrawn and voided by the Claims
25 Administrator, with all applicable employer payroll taxes refunded to PPF.

26 c. The Settlement Administrator's distribution of Class Counsel's Fees
27 and Expenses, the LWDA payment, and the Class Representative Payments from the
28 Settlement Fund shall occur no later than the Settlement Proceeds Distribution Deadline.

Upon such payment, Defendants, the Released Parties, and Defendants' Counsel shall have no further liability or responsibility to Class Counsel or to any vendors or third parties employed by the Named Plaintiffs or Class Counsel.

d. PPF shall not be obligated to make any payments contemplated by this Agreement unless and until the Federal Court enters a Final Approval Order and Final Judgment, and then only after the Effective Date. If PPF remits the amount of the Settlement Fund or any other amount to the Settlement Administrator prior to the Effective Date and the Federal Action is not dismissed, the Federal Court does not enter a Final Approval Order and Final Judgment, the Effective Date does not occur, or the Settlement Agreement is deemed null and void, then the full amount of the Settlement Fund and any other amount shall be returned to PPF.

F. COURT APPROVAL AND EFFECTIVE DATE

1. Binding Effect Of Agreement On Class Members. Upon final approval by the Federal Court of the Settlement and, all Participating Class Members and Named Plaintiffs shall be bound by this Agreement, and judgment shall be entered in the Arbitration and Federal Court resolving all Released Claims with prejudice. In addition, unless a Class Member effectively opts-out of the Settlement, he or she shall be bound by the Federal Court's Order(s) enjoining all Participating Class Members and Named Plaintiffs from pursuing or seeking to reopen Released Claims against the Released Parties.

a. Preliminary Approval Of Settlement in Federal Court. After execution of this Agreement, the Named Plaintiffs shall file a motion in the Federal Court requesting that it:

- i. Preliminarily approve for settlement purposes only the proposed Settlement and this Agreement;
- ii. Preliminarily approve the appointment of the Named Plaintiffs as the representative of the Class for settlement purposes only;
- iii. Preliminarily approve the appointment of Class Counsel as counsel for the Class for settlement purposes only;

- iv. Appoint and approve the Settlement Administrator as mutually agreed upon by the Parties and selected by Plaintiffs as provided herein and approved by the Court, to administer the claims and settlement payment procedures required by this Agreement;
- v. Approve the form of the Class Notice, and require that each be sent to Class Members as provided in this Agreement;
- vi. Approve the plan for the provision of notice to Class Members, as stated herein and in the Class Notice;
- vii. Schedule the Settlement Hearing;
- viii. Approve the procedure for Class Members to opt-out of the Settlement and the date after which no Class Member shall be allowed to submit an Opt-Out Request; and
- ix. Approve the procedure for Participating Class Members to object to the Settlement and the date after which no Participating Class Member shall be allowed to object.

2. Notice to the LWDA. Class Counsel shall submit this Settlement Agreement to the LWDA at the same time that it is submitted to the Federal Court in accordance with Labor Code Section 2699(l)(2). Class Counsel shall also submit a copy of the Final Approval Order and Final Judgment to the LWDA within 10 days after entry of the Final Approval Order and Final Judgment in accordance with Labor Code Section 2699(l)(3).

3. Non-Interference With Opt-Out Procedure. The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage Class Members to submit an Opt-Out Request or an objection to the Settlement or to appeal from the Final Approval Order or Final Judgment.

4. Final Approval Order. The Named Plaintiffs and Defendants request that the Federal Court enter, after the Settlement Hearing, a Final Approval Order. The Named Plaintiffs will request that the Final Approval Order certify the Participating Class for Settlement purposes; find that this Agreement and the Settlement is fair, just, equitable,

reasonable, adequate and in the best interests of the Class; permanently enjoin all Participating Class Members and Named Plaintiffs from pursuing or seeking to reopen Released Claims against Defendants and the Released Parties; and require the Parties to carry out the provisions of this Agreement.

5. Entry Of Final Judgment. The Named Plaintiffs will request that the Federal Court enter, at or after the Settlement Hearing, a Final Judgment in the form substantially similar to the Final Approval Order.

6. Mailing of Notice of Final Approval. Within ten (10) days of the Effective Date, the Administrator will mail the Notice of Final Approval to all Participating Class Members.

7. Effective Date Of Agreement. The occurrence of the Effective Date is a prerequisite to any distributions from the Settlement Fund. The "Effective Date" of this Agreement shall be the first court day after the latter of: (a) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in either Action and/or moved to set aside the Final Judgment, the date of final affirmance of an appeal of the Final Approval Order and Final Judgment; (b) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Federal Action and/or moved to set aside the Final Judgment, the date of final dismissal of any appeal from the Final Approval Order and Final Judgment or the final dismissal of any proceeding on certiorari to review the Final Approval Order and Final Judgment; (c) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Federal Action and/or moved to set aside the Final Judgment, five days after the expiration date of the time for the filing or noticing of any appeal from the Final Approval Order and Final Judgment if any timely Objections are served on the Administrator; or (d) if no Participating Class Member has moved to intervene or moved to set aside the Judgment, the date of the entry of the Final Approval Order and Judgment. The Effective Date is conditioned upon all of the following occurring:

- a. This Agreement has been signed by the Parties and Class Counsel;
- b. The expiration of the Opt-Out Period;

c. Five percent (5%) or fewer of the Class Members submit timely, complete, and valid requests to opt-out of the Class for the Released Claims (or if more than five percent (5%) opt-out, or Defendants do not exercise their right to rescind and void the Agreement as set forth in Paragraph E3;

d. The Federal Court has entered a Preliminary Approval Order;

e. The Class Notice has been mailed to the Class Members as ordered by the Federal Court;

f. The Federal Court has entered a Final Approval Order; and

g. It is intended and understood by the Parties that any appeal related to Class Counsel's Fees and Expenses and/or Class Representative Payments shall constitute an appeal for purposes of this provision and for purposes of the occurrence of the Effective Date.

8. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason the Settlement set forth in this Agreement does not become final, the Settlement shall be null and void and all orders, judgment, and dismissal entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the *status quo* prior to entering this Agreement with respect to the Actions, as if the Parties had never entered into this Agreement, and the settlement class certified pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the Agreement (including but not limited to all exhibits, drafts and related documents, papers, and communications) and all negotiations, court orders, and proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto, and evidence relating to the Agreement (including but not limited to all exhibits, drafts and related documents, papers, and communications) and all negotiations shall not be admissible or discoverable in the Actions or otherwise.

9. Confidentiality and Non-Disparagement and Returning Documents.

a. Except for disclosures that are authorized by Defendants, that are required by law for Defendants to make, or that are necessary to prepare the Motion for

Preliminary Approval, the terms of this Settlement shall remain confidential until they are presented to the Court in connection with the Motion for Preliminary Approval.

b. Following preliminary approval, the Parties and their counsel will direct inquiries from Class Members to the Settlement Administrator to ensure consistent and accurate communication with Class Members. The Parties will make no efforts to solicit requests for exclusion or opt-outs or objections to this Settlement. Notwithstanding anything to the contrary in this Paragraph F(11) or elsewhere in this Agreement, Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel shall be permitted to disclose the Settlement in order to comply with any state or federal law. Nothing in this Paragraph F(11) shall limit Defendants from communicating with their counsel regarding this Agreement or Plaintiffs from communicating with Class Counsel regarding this Agreement.

c. Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel agree: not to comment upon or otherwise publicize the Actions, the Parties' Settlement, this Agreement, or the negotiations leading to this Agreement in the press or media (including without limitation internet, print, radio, television, litigation reporting service, or social media); not to initiate or issue any press release, advertising, mass mailing, social media or website posting or content; not to disparage or comment negatively about one another, including but not limited to Defendant, its officers, directors, management, and/or current or former employees; and not to engage in any communications or take any other action that would directly or indirectly provide the press or media or any litigation reporting service with information about these Actions, the Parties' Settlement, this Agreement, or the negotiations leading to this Agreement or would otherwise enable or allow the press or other media or any litigation reporting service to learn or obtain such information. If Plaintiff, Class Counsel, Defendant, or Defendant's counsel is contacted about this Action or Settlement by the press or other media, the party or their counsel shall state only that the case was settled on mutually satisfactory terms. This Paragraph F(11) does not apply to any Court-Approved notice of the Settlement. Nothing in this Paragraph F(11) shall be

1 construed as prohibiting the Parties or their counsel from responding to an inquiry issued
2 under court order, subpoena, or other request issued under the law.

3 d. Within one-hundred twenty (120) calendar days after the Effective Date
4 of this Agreement, the Named Plaintiffs and Class Counsel agree to return to Defendants'
5 Counsel or destroy any information designated as confidential during the course of the
6 Actions, except the Named Plaintiffs may maintain their own wage statements and
7 personnel files, and Class Counsel may maintain the same records and any pleadings or
8 briefs that incorporate the information designated as confidential. Class Counsel may also
9 maintain an archive copy of Class Counsel's work product that includes information
10 designated as confidential during the course of the Actions, but Class Counsel will not use
11 or access that information for any purposes other than to defend against a claim asserted
12 against Class Counsel. Further, Class Counsel will maintain that work product according to
13 the terms of the Protective Order in place in these Actions and will destroy that work
14 product three years after the Effective Date. If the Named Plaintiffs or Class Counsel
15 choose to destroy rather than return confidential materials, Class Counsel shall timely
16 provide to Defendants' Counsel a written representation that all information designated as
17 Confidential has been destroyed. Defendants' Counsel shall maintain copies of any such
18 information designated as Confidential for three years after the Effective Date. If litigation is
19 pursued against Class Counsel in relation to these Actions within this period of time,
20 Defendants' Counsel and Class Counsel shall meet and confer regarding Class Counsel's
21 need, if any, for the Confidential information and access thereto. Defendants' Counsel shall
22 not unreasonably deny Class Counsel access to the Confidential information, but access
23 may be conditioned upon reasonable safeguards.

24 10. Invalidation Of Agreement For Failure To Satisfy Conditions. The terms and
25 provisions of this Agreement are not recitals, but are deemed to constitute contractual
26 terms. In the event that any of the material terms or conditions set forth in this Agreement
27 are not fully and completely satisfied, this Agreement shall terminate and all terms of the
28 Agreement including, but not limited to, the conditional certification of the class, the

1 payment of Settlement Payments to Participating Class Members, the payment of Class
2 Counsel's Fees and Costs, the Class Representative Payment to the Named Plaintiffs, and
3 the payment to the LWDA shall be null and void. In such event, nothing in this Agreement
4 shall be used, construed, or admissible as evidence by or against any Party as a
5 determination, admission, or concession of any issue of law or fact in these Actions, or in
6 any other proceeding for any purpose; and the Parties do not waive, and instead expressly
7 reserve, their respective rights to prosecute and defend these Actions as if this Agreement
8 never existed. In addition, notwithstanding the generality of the foregoing, if this Agreement
9 is terminated for failure to satisfy any of the terms or conditions of this Agreement,
10 Defendants shall not be obligated to create or maintain any type of settlement fund, and
11 shall not be obligated to make any payment to any Class Member, to Class Counsel, or to
12 the Named Plaintiffs.

13 **G. GENERAL PROVISIONS**

14 1. **Notices.** All notices, requests, demands, and other communications required
15 or permitted to be given pursuant to this Agreement shall be in writing, and shall be
16 delivered personally or by first class mail to the Settlement Administrator and to counsel at
17 their respective addresses as set forth below:

18 **CLASS COUNSEL**

19 Richard A. Hoyer
20 rhoyer@hoyerlaw.com
21 Ryan L. Hicks
22 rhicks@hoyerlaw.com
23 HOYER & HICKS
24 4 Embarcadero Center, Suite 1400
25 San Francisco, CA 94111
26 Tel.: (415) 766-3539
27 Fax: (415) 276-1738

28 Walter L. Haines
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, P.C.
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Fax: (562) 256-1006

COUNSEL FOR PERFECTION PET FOODS, LLC

Mark D. Kruthers
mkruthers@dowlingaaron.com
Dowling Aaron Incorporated
8080 N. Palm Ave. Third Floor
Fresno, CA 93711
Telephone: (559) 432-4500
Fax: (559) 432-4590

**COUNSEL FOR WESTERN MILLING, LLC AND KRUSE
INVESTMENT COMPANY, INC.**

Howard A. Sagaser
has@sw2law.com
Ian B. Wieland
ian@sw2law.com
Christopher M. Rusca
chris@sw2law.com
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483

SETTLEMENT ADMINISTRATOR

Simpluris, Inc.
PO Box 26170
Santa Ana, CA 92799
Telephone: 888.369.3780

2. Modification In Writing. This Agreement may be altered, amended, modified, or waived, in whole or in part, only in a writing signed by all signatories to this Agreement. This Agreement may not be amended, altered, modified, or waived, in whole or in part, orally. In determining whether to approve this Settlement, the Court or Arbitrator may not delete, modify, or change its provisions, except for the amounts awarded to Class Counsel for Class Counsel's Fees and Costs, Settlement Administrators Costs, and Named Plaintiff's Class Representative Payment.

3. Ongoing Cooperation. The Named Plaintiffs, Defendants, and their counsel shall support the Agreement and shall execute all documents and perform all acts

necessary and proper to effectuate the terms of this Agreement. The execution of documents must take place prior to the Settlement Hearing.

4. Binding on Successors. This Agreement shall be binding and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

5. Entire Agreement. This Agreement constitutes the full, complete, and entire understanding, agreement, and arrangement between the Named Plaintiffs and the Class Members on the one hand, and Defendants on the other hand, with respect to the Settlement of the Actions and the Released Claims against Defendants and the Released Parties. This Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the Settlement of the Actions and the Released Claims against Defendants and the Released Parties, including to the extent its terms are addressed herein, the Memorandum of Understanding styled "Mediator's Proposal Steven Villarreal, Agustin Benitez, Carlos Morales v. Perfection Pet Foods, LLC Mediation Date: Thursday May 16, 2019." However, the terms of the Memorandum of Understanding of Settlement Reached Between Named Plaintiffs and Defendants, dated May 16, 2019 shall be considered instructive in the interpretation of the terms of this Agreement. Except for those set forth expressly in this Agreement, there are no other agreements, covenants, promises, representations, or arrangements between the Parties with respect to the Settlement of the Actions and the Released Claims against Defendants and the Released Parties. The Parties explicitly recognize California Civil Code section 1625 and California Code of Civil Procedure section 1856(a), which provide that a written agreement is to be construed according to its terms, and may not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement subject to its approval and/or non-material or non-substantive modification by the Arbitrator and/or Court (unless the Parties agree to such modification) in the course of the Parties seeking approval of this Agreement.

6. Multiple Originals/Execution In Counterpart. This Agreement may be signed in one or more counterparts. All executed copies of this Agreement, and photocopies thereof (including facsimile or PPF copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

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

8. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California.

9. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Arbitration and Federal Action upon enforcement/confirmation of the Final Judgment, the Federal Court shall retain exclusive jurisdiction for purposes of interpreting and enforcing the terms of this Agreement. The Arbitrator shall not retain any jurisdiction following dismissal of the Arbitration.

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

11. Severability. The Parties to this Agreement agree, covenant, and represent that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each and every provision of this Agreement shall be considered severable, except for the release provisions of Section C of this Agreement. If a court of competent jurisdiction finds any provision, other than the release provisions of Section C, or part thereof to be invalid or unenforceable for any reason, that provision, or part thereof, shall remain in full force and effect to the extent

1 allowed by law, and all of the remaining provisions of this Agreement shall remain in full
2 force and effect.

3 12. Warranties And Representations. With respect to themselves, each of the
4 Parties to this Agreement and or their agent or counsel represents, covenants, and
5 warrants that (a) they have full power and authority to enter into and consummate all
6 transactions contemplated by this Agreement and have duly authorized the execution,
7 delivery, and performance of this Agreement; and (b) the person executing this Agreement
8 has the full right, power, and authority to enter into this Agreement on behalf of the Party for
9 whom he/she/it has executed this Agreement, and the full right, power, and authority to
10 execute any and all necessary instruments in connection herewith, and to fully bind such
11 Party to the terms and obligations of this Agreement.

12 13. Representation By Counsel. The Parties acknowledge that they have been
13 represented by counsel throughout all negotiations that preceded the execution of this
14 Agreement, and that this Agreement has been executed with the consent and advice of
15 counsel. Further, the Named Plaintiffs and Class Counsel warrant and represent that there
16 are no liens on the Agreement, and that after entry by the Federal Court of the Final
17 Approval Order and Final Judgment, PPF may distribute funds through the Settlement
18 Administrator to Participating Class Members, Class Counsel, the LWDA, the Settlement
19 Administrator and the Named Plaintiffs as provided by this Agreement.

20 14. Authorization By The Named Plaintiffs. The Named Plaintiffs authorizes Class
21 Counsel to sign this Agreement and further agree not to request to be excluded from the
22 Class and not to object to any terms of this Agreement. Any such request for exclusion or
23 objection shall therefore be void and of no force or effect.

24 IT IS SO AGREED:

25
26 Dated: Nov. 4, 2019

27 By: Steven Villarreal
28 Plaintiff/Class Representative

1 Dated: 11/07/19, 2019By: Agustin BenitezAgustin Benitez
Plaintiff/Class Representative2
3
4 Dated: _____, 2019

By: _____

Carlos Morales
Plaintiff/Class Representative5
6
7 PERFECTION PET FOODS, LLC8
9 Dated: _____, 2019

By: _____

Brian Newbegin
Chief Financial Officer10
11
12 WESTERN MILLING, LLC13
14 Dated: _____, 2019

By: _____

Chad Pinter
Chief Financial Officer15
16
17 KRUSE INVESTMENT COMPANY, INC.18
19 Dated: _____, 2019

By: _____

Kevin Kruse
President20
21
22 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFFS
23 AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
CLASS MEMBERS, AND IT IS SO AGREED:

24 HOYER & HICKS

25 Dated: _____, 2019

By: _____

Richard Hoyer
Ryan Hicks
Counsel for Plaintiff and the Class26
27
28 APPROVED AS TO FORM, AND IT IS SO AGREED:

1 Dated: _____, 2019

By: _____

Agustin Benitez
Plaintiff/Class Representative

2
3 Dated: 10.29.19, 2019

By: Carlos Morales

Carlos Morales
Plaintiff/Class Representative

4
5
6 PERFECTION PET FOODS, LLC

7
8 Dated: _____, 2019

By: _____

Brian Newbegin
Chief Financial Officer

9
10
11 WESTERN MILLING, LLC

12
13 Dated: _____, 2019

By: _____

Chad Pinter
Chief Financial Officer

14
15
16 KRUSE INVESTMENT COMPANY, INC.

17
18 Dated: _____, 2019

By: _____

Kevin Kruse
President

19
20
21 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFFS
22 AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
23 CLASS MEMBERS, AND IT IS SO AGREED:

24 HOYER & HICKS

25 Dated: _____, 2019

By: _____

Richard Hoyer
Ryan Hicks
Counsel for Plaintiff and the Class

26
27
28 APPROVED AS TO FORM, AND IT IS SO AGREED:

42.

1 Dated: _____, 2019 By: _____
2 Agustin Benitez
3 Plaintiff/Class Representative

4 Dated: _____, 2019 By: _____
5 Carlos Morales
6 Plaintiff/Class Representative

7 PERFECTION PET FOODS, LLC

8 Dated: _____, 2019 By: _____
9 Brian Newbegin
10 Chief Financial Officer

11 WESTERN MILLING, LLC

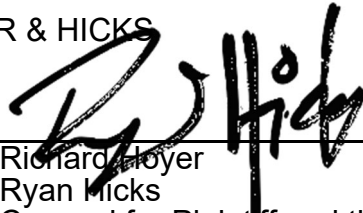
12 Dated: _____, 2019 By: _____
13 Chad Pinter
14 Chief Financial Officer

15 KRUSE INVESTMENT COMPANY, INC.

16 Dated: _____, 2019 By: _____
17 Kevin Kruse
18 President

19
20
21 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFFS
22 AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
23 CLASS MEMBERS, AND IT IS SO AGREED:

24 HOYER & HICKS

25 Dated: November 5, 2019 By: 
26 Richard Hoyer
27 Ryan Hicks
28 Counsel for Plaintiff and the Class

APPROVED AS TO FORM, AND IT IS SO AGREED:

1 Dated: _____, 2019 By: _____
2 Agustin Benitez
3 Plaintiff/Class Representative

4 Dated: _____, 2019 By: _____
5 Carlos Morales
6 Plaintiff/Class Representative

7 PERFECTION PET FOODS, LLC

8 Dated: 11/6/ _____, 2019 By: [Signature] _____
9 Brian Newbegin
10 Chief Financial Officer

11 WESTERN MILLING, LLC

12 Dated: _____, 2019 By: _____
13 Chad Pinter
14 Chief Financial Officer

15 KRUSE INVESTMENT COMPANY, INC.

16 Dated: _____, 2019 By: _____
17 Kevin Kruse
18 President

19
20
21 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFFS
22 AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
23 CLASS MEMBERS, AND IT IS SO AGREED

24 HOYER & HICKS

25 Dated: _____, 2019 By: _____
26 Richard Hoyer
27 Ryan Hicks
28 Counsel for Plaintiff and the Class

APPROVED AS TO FORM, AND IT IS SO AGREED

42.

DOWLING AARON, INC

Dated: November 6 2019

By


Mark Kruthers
Counsel for Perfection Pet Foods,
LLC

SAGASER, WATKINS & WIELAND, PC

Dated _____ 2019

By

Ian Wieland
Counsel for Western Milling, LLC
and Kruse Investment Company,
Inc.


1 Dated: _____, 2019 By: _____
2 Agustin Benitez
3 Plaintiff/Class Representative

4 Dated: _____, 2019 By: _____
5 Carlos Morales
6 Plaintiff/Class Representative

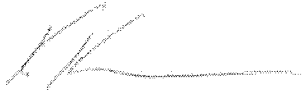
7 PERFECTION PET FOODS, LLC

8 Dated: _____, 2019 By: _____
9 Brian Newbegin
10 Chief Financial Officer

11 WESTERN MILLING, LLC

12
13 Dated: November 6, 2019 By: 
14 Chad Pinter
15 Chief Financial Officer

16 KRUSE INVESTMENT COMPANY, INC

17
18 Dated: Novmber 6, 2019 By: 
19 Kevin Kruse
20 President

21 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFFS
22 AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
23 CLASS MEMBERS, AND IT IS SO AGREED:

24 HOYER & HICKS

25 Dated: _____, 2019 By: _____
26 Richard Hoyer
27 Ryan Hicks
28 Counsel for Plaintiff and the Class

APPROVED AS TO FORM, AND IT IS SO AGREED.

42.

DOWLING AARON, INC.

Dated: _____, 2019

By: _____
Mark Kruthers
Counsel for Perfection Pet Foods,
LLC

SAGASER, WATKINS & WIELAND, PC

Dated: November 6, 2019

By:  _____
Ian Wieland
Counsel for Western Milling, LLC
and Kruse Investment Company,
Inc.

EXHIBIT 1

<<Class Member Name>>
<<Street Address>>
<<City, State Zip>>

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

This is a Notice of Settlement for the Class and Collective Action Titled:

Benitez et al. v. Western Milling LLC, et al.

Federal Court for the Eastern District of California

Case No. 1:18-cv-01484-DAD-SKO

Please Read This Entire Notice Carefully. This Notice Involves Your Legal Rights.

A Court authorized this notice. This is not a solicitation from a lawyer.

You are receiving this notice because you are class or collective member in a class and collective action lawsuit against Perfection Pet Foods, LLC, Western Milling, LLC and Kruse Investment Company, Inc. (collectively “Defendants”). The Lawsuit alleges that Defendants failed to provide meal and rest breaks to non-exempt employees that worked at the Perfection Pet Foods, LLC (“PPF”) pet food plants and warehouse in Visalia, CA, and as a result, failed to them pay minimum wage and overtime wages, failed to provide them with accurate wage statements, and failed to timely pay them final wages upon termination. Defendants dispute the allegations. All Parties involved have strenuously fought for their positions during the course of the Lawsuit, and eventually reached a compromise or “settlement.” The Court has preliminarily approved this settlement, subject to a further hearing to consider any objections by those who do not opt out of the settlement. This Notice describes your rights and potential benefits under the settlement.

Why did I get this Notice? You received this Notice because you are a person who will receive a payment from a proposed settlement of a class and collective action lawsuit filed against the Defendants by three former workers at the pet food plants and warehouse, Steven Villarreal, Agustin Benitez, and Carlos Morales, that has been reached in the Lawsuit (*Benitez et al. v. Western Milling LLC, et al.*, Federal Court for the Eastern District of California, Case No. 1:18-cv-01484-DAD-SKO) (the “Settlement”).

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you can review the settlement agreement available by visiting Class Counsel’s website at [insert URL]. If you want more information, you can also contact class counsel (whose contact information is at the end of this Notice).

Copies of the filings and documents related to the settlement are available for download and review at Class Counsel's website [\[insert URL\]](#).

You are receiving this Notice because you are in the Class. You are in the Class because you worked as a non-exempt hourly employee at PPF's pet food plants and/or warehouse on or after November 2, 2012 through December 31, 2017 (the "Class Period"). This Notice describes your rights and potential benefits from a class and collective action settlement. You have the right to opt-out of the settlement, as described below.

The Court authorized this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to approve the proposed Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING / RECEIVE A CHECK	If you do not exclude yourself, as described below, you will receive a settlement check. You have ninety (90) days from the date on your individual settlement check to cash the check. If you receive a settlement check, you <u>will release all claims asserted in the lawsuit</u> through the date the Court enters preliminary approval of the Settlement. If you do not cash your settlement check, the amount will be transmitted to Valley Children's Hospital.
OBJECT TO THE SETTLEMENT	You may object to the proposed Settlement by writing to the "Settlement Administrator" at the address listed below explaining why you disapprove of the proposed Settlement. If you object, you may also ask to speak to the Court about the fairness of the settlement at the Settlement Hearing. If you wish to appear at the Settlement Hearing, you must mail the Settlement Administrator at the address listed below a Notice of Intention to Appear. If your objection is overruled at the hearing, you will still be bound by the Settlement and receive a payment from the Settlement Fund.
OPT OUT OF THE SETTLEMENT	Alternatively, you may exclude yourself from the Settlement by requesting exclusion from the settlement. If you exclude yourself from the settlement, you will receive no payment, but will preserve whatever right you might otherwise have, if any, to pursue your claims in a separate lawsuit. This option could allow you to bring your own lawsuit or claim, or to be a part of another lawsuit against the Defendants for the same or similar claims brought in this lawsuit during the Class Period, including claims for unpaid wages and missed meal and rest breaks. To unconditionally exclude yourself from the Settlement, you must send a letter by mail to the "Settlement Administrator" address listed below that states that you wish to opt out of the class and

	<p>collective action and the settlement of the case. This process is explained further below.</p> <p><i>If you exclude yourself from the settlement, you will not be entitled to receive any payment from the settlement fund.</i></p>
--	--

What is this lawsuit about? Three former workers at the PPF pet food plants and warehouse in Visalia, CA brought the lawsuit alleging that Defendants failed to provide non-exempt employee with meal or rest breaks (and second meal periods and third rest periods for shifts of longer than ten hours), and as a result, failed to pay those workers all wages due, including minimum wages, overtime wages, failed to provide accurate wage statements, and failed to timely pay final wages. Plaintiffs also allege that the Class is entitled to penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”) for these underlying violations. Defendants strenuously dispute the allegations, but have agreed to settle the lawsuit in order to avoid the burden, expense, inconvenience, and uncertainty of continued litigation.

What are the terms of the Settlement? To settle the lawsuit, Defendants have agreed to pay a Gross Settlement Amount of six-hundred fifty thousand dollars (\$650,000) to be divided between the [insert total number PCMS] Class Members (including you) who do not opt out of the settlement (“Settlement Class Members”). The \$650,000 less deductions for (1) Class Counsel’s fees and expenses, (2) the payments to Steven Villarreal, Agustin Benitez, and Carlos for being class representatives and prosecuting the claims on behalf of the Class Members, (3) all costs of administering the settlement up to a maximum of \$15,000, (4) the \$22,500 payment to the California Labor and Workforce Development Agency (“LWDA”), (5) amounts previously paid to class members who signed Individual Releases regarding these claims during the pendency of the Actions (totaling \$315,400), and (6) all other costs associated with the Settlement (“Net Settlement Amount”) will be split up between the Settlement Class Members proportionally, based on the number of weeks each Settlement Class Member worked as indicated by the personnel records that the Defendants maintain. This calculation method is explained in more detail below.

Payments. Class Members who do not opt out of the Settlement (*i.e.*, Settlement Class Members) will receive a payment that will be calculated based on the number of weeks the Settlement Class Member worked for the Defendants during the Class Period. The number of weeks worked will be calculated through the personnel records that Defendants maintain. Each Settlement Class Member’s share of the settlement proceeds will go up or down depending upon the number of weeks that Settlement Class Member worked when compared to the other Settlement Class Members. Per these calculations, the amount you are estimated to receive, if you do not exclude yourself from the Settlement, is set forth in the box marked “Estimated Settlement Payment.” Note, the Estimated Settlement Payment is a preliminary calculation. If one or more Settlement Class Members successfully challenge the Defendants’ records, the Estimated Settlement Payment for the other Settlement Class Members, including you, shall be modified accordingly. To accept this payment from the proposed Settlement, you do not need to do anything other than cash the check that will be sent after the Court finally approves the settlement.

Many members of the Settlement Class have already received some payments from PPF apart from this Settlement in exchange for a release of claims. Plaintiffs argue that those releases were improperly obtained and invalid, and that those individuals are entitled to a share of the settlement as well. The parties have agreed that the amount that these class members have already received from PPF will be deducted from the proceeds that they will receive from this Settlement, if any.

How do I challenge the number of weeks I worked during the Class Period? You may challenge the number of weeks worked identified in this Class Notice by submitting a written letter (postmarked by [insert end of Opt-Out Period]) to the Settlement Administrator stating you wish to challenge the number of weeks worked on your Class Notice and providing the basis for and documentation in support of your challenge. You will bear the burden of proof and must submit documentary evidence sufficient to prove the number of weeks you claim you worked as a piece rate or hourly plus production bonus technician during the Class Period. This means that if you fail to provide written documentation supporting a different amount than your Estimated Settlement Payment, your challenge will be denied. Defendants shall have the right to respond to your challenge. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The personnel records, including payroll records, of Defendants shall be considered by the Settlement Administrator as the presumptive best evidence of the number of days worked.

How much is my settlement payment? Under the settlement allocation formula you have worked [redacted] weeks and are projected to receive approximately the following amount:

Estimated Settlement Payment: \$ [redacted]

[If the PCM received a payment from an Individual Release, but will still receive funds pursuant to the distribution formula, then include the following text: Defendants' records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$[INSERT AMOUNT], which has been deducted from your share of the settlement.]

[If the PCM received a payment from an Individual Release, and will NOT receive funds pursuant to the distribution formula, then include the following text: Defendants' records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$[INSERT AMOUNT]. The amount that you previously received has been deducted from the amount you would receive under this agreement. The amount you previously received is **greater** than the amount that you would receive under this agreement, and reduces the amount you are currently owed to \$0.00.]

The amount above will be reduced for any requested or required withholdings, including state and federal taxes, income withholding orders, garnishments, or levies. Thirty-three percent (33%) of the above payment will be treated as wages, subject to payroll taxes, and reported on a W-2. Thirty-three percent (33%) of the above payment will be treated as interest and thirty-four percent (34%) will be treated as non-wage damages, including penalties. Payroll tax withholdings

will not be withheld from the non-wage portion of any payment, which portion will be reported on a Form 1099 if required by law. Neither Class Counsel nor the Defendants make any representations concerning the tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

Who is included in the Settlement? You are included in the Settlement because you worked at least one day as a non-exempt hourly employee at a PPF pet food plant and/or warehouse during the Class Period.

HOW YOU GET A PAYMENT

How do I get my payment? To receive your settlement payment, you do not need to do anything other than cash the check that will be promptly sent after the Court finally approves the settlement. If you choose to exclude yourself, follow the procedure set forth below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

How do I exclude myself? If you don't want to be included in the Settlement, you must exclude yourself from this Settlement. To exclude yourself from the Settlement, you must send a letter by mail that says that you wish to opt out of the class and collective settlement of the Actions. You must sign the letter and include your full name, address, and last four digits of your Social Security Number/Tax Identification Number. The letter must be dated and signed, postmarked on or before [insert end of Opt-Out Period], and sent to and received at the following address:

Settlement Administrator
[insert name and address]

If your letter requesting to opt out of this Settlement does not contain all of the requisite information above or it is postmarked after [insert end of Opt-Out Period], it will still be submitted to the Court, but your right to be excluded from the Settlement may be waived absent good cause found by the Court. If you properly request to opt out of the settlement, you will not be legally bound by anything that happens in the Actions. You also will not be eligible to receive any settlement payment, and you will not be allowed to object to the settlement.

If you do not opt out of the settlement yourself, you will be sent your individual settlement payment in the form of a settlement check. You will have ninety (90) days from the date on your individual settlement check to cash the check. If you do not cash your settlement check, it will be transmitted to Valley Childrens' Hospital. If you do not opt out of the settlement and then receive a settlement check, you **will release all claims asserted in the Actions** through the date the Court enters preliminary approval of the Settlement, whether or not you cash the check. If there is ever any subsequent dispute over whether you actually received the check, the burden shall be on Defendants to prove that you received it. Defendants shall further be entitled to a presumption that you can challenge that you received the check if Defendants show it was sent to an address provided by you as correct.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in this case? The Court has decided that the lawyers at the law firms of HOYER & HICKS and UNITED EMPLOYEES LAW GROUP, P.C. are qualified to represent you and the other Settlement Class Members. These law firms and their lawyers are called “Class Counsel.” The contact information for Class Counsel is:

Richard A. Hoyer
rhoyer@hoyerlaw.com
Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

Walter L. Haines
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, P.C.
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Tel.: (562) 256-1047
Fax: (562) 256-1006

How will the lawyers be paid? Class Counsel have pursued the lawsuit on a contingent fee basis and have not yet received any payment of fees or any reimbursement of their out-of-pocket expenses related to the recovery on behalf of the Settlement Class Members. As part of the settlement, subject to Court approval, Class Counsel will ask the Court to award payment of their fees (in an amount not to exceed \$216,666.67) and costs, based on the number of hours they invested into the case and other factors. The fees or costs that Class Counsel seek or that the Arbitrator awards will come from the Gross Settlement Amount. In other words, the \$650,000 Gross Settlement Amount will be reduced depending on the amount of attorneys’ fees and costs that the Court awards. Court-approved fees will compensate Class Counsel for investigating the law and facts, litigating the case, and negotiating the settlement.

Class Counsel will also ask the Court to approve a “service payment” of up to \$10,000 each to Mr. Villarreal, Mr. Benitez, and Mr. Morales, for their active participation in the Actions before the settlement and in recognition of the risks they took and their service to the Class. This also will also come from the Gross Settlement Amount. Other costs incidental to the Settlement, including but not limited to a maximum of \$15,000 for settlement administration, will also come from the Gross Settlement Amount. A \$22,500 payment will also be made from the Gross Settlement Amount to the California Labor Workforce and Development Agency for penalties that the State could have sought against Defendants for the Claims alleged in the case. Mr. Villarreal will also receive up to \$10,000 in exchange for a release of separate claims he brought against Defendants in the Actions.

Class Counsel’s motion for attorneys’ fees and service payment will be filed with the Court by [insert date] and will be available for your review. You may obtain a copy by contacting class counsel (whose contact information is at the end of this Notice, or at their website at [insert URL]).

OBJECTING TO THE SETTLEMENT

How do I object to the Settlement? As a Settlement Class Member, you may object to the proposed settlement, but must do so in writing. You may also appear at the Settlement Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must be mailed to the Settlement Administrator identified at the address below and postmarked on or before [Opt-Out Deadline]. You must give all reasons why you think the Court should not approve it. The Court will consider your views. You must sign the objection and include your full name, address, last four digits of your Social Security Number/Tax Identification Number, and telephone number(s). If your written objection does not contain all of the requisite information above or it is postmarked after [insert end of Opt-Out Period], it will still be submitted to the Court, but your right to object to the Settlement may be waived absent good cause found by the Court.

Settlement Administrator
[insert name and address]

If your objection is overruled at the Settlement Hearing, you will still receive a settlement check and be bound by the Settlement.

THE COURT'S SETTLEMENT HEARING

What is the Settlement Hearing? The Court will hold a Settlement Hearing to decide whether to approve the Settlement. You are not required to attend the Settlement Hearing, and will still receive a payment even if you do not attend the Settlement Hearing. If you wish, you may attend and you may ask to speak. If you wish to bring anything to the Court's attention about the Settlement, you must provide it in writing in your objection letter mentioned above, which must be mailed to the "Settlement Administrator" at the address above by [insert end of Opt-Out Period].

When and where will the Court decide whether to approve the settlement? The Court will hold a Settlement Hearing on [insert date] at [insert time], at [insert location].

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are challenges or objections, the Court will consider them. The Court will listen to any people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Do I have to come to the hearing? No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. However, if you submit an objection, you may come to the hearing to talk about it. However, as long as you submitted a timely, valid written objection to the Settlement Administrator, the Court will consider it. You may also pay another lawyer to attend, but it is not necessary.

May I speak at the hearing? If you submit an objection to the Settlement and Notice of Intention to Appear, you may ask the Court for permission to speak at the Settlement Hearing. Your testimony at the Fairness Hearing will be limited to those reasons that are included in your written objection. You cannot speak at the hearing if you opt out of the settlement.

GETTING MORE INFORMATION

Are there more details about the settlement? This Notice summarizes the proposed terms of the Settlement. More details are contained in the parties' Settlement Agreement. You can get a copy of the Settlement Agreement by sending a request, in writing, to:

Richard A. Hoyer
rhoyer@hoyerlaw.com
Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

Class Counsel have also posted documents related to the case and the Settlement on their website for download, at [\[insert URL\]](#).

How can I get more information about the Settlement? If you have other questions about the Settlement, you can contact Class Counsel at the addresses and/or telephone numbers above.

DATED: [\[Insert Date of Mailing\]](#), 2019

EXHIBIT 2

<<Class Member Name>>
<<Street Address>>
<<City, State Zip>>

NOTICE OF FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION
SETTLEMENT AND ENTRY OF JUDGMENT

This is a Notice of Final Approval of Settlement and Entry of Judgment for the Class and Collective
Action Titled:

Benitez et al. v. Western Milling, LLC, et al.

Eastern District of California

Case No. 1:18-cv-01484-DAD-SKO

This notice is being mailed to all Settlement Class Members, including you, to advise you that the Court has approved the settlement of this matter and entered judgment accordingly. Because you, the addressee of this notice, are a Member of the Settlement Class, and because you did not opt out of the Settlement Class, you are receiving this notice and no further action from you is required under the Judgment.