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22
23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **OAKLAND DIVISION**

26 RONDA AUSTIN, CHRISTOPHER
27 CORDUCK, ERNEST DIAL, BILLY
28 WAYNE GIBSON, and BOBBY G. SMITH,
on behalf of themselves and others similarly
situated;

Plaintiffs,

vs.

FOODLINER, INC.,

Defendant.

Case No. 4:16-cv-07185-HSG

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

1 This Joint Stipulation for Class Action Settlement and Release of Claims is made and
2 entered into by and between Class Representatives Ronda Austin, Christopher Corduck, Ernest
3 Dial, Billy Wayne Gibson, and Bobby G. Smith (“Plaintiffs”), individually and on behalf of the
4 alleged putative class of all other similarly situated individuals, and Defendant Foodliner, Inc.
5 (“Foodliner”) (jointly, “the Parties”) to resolve the class and representative action wage and hour
6 disputes that led to the above-captioned Litigation.

7 THE PARTIES STIPULATE AND AGREE as follows:

8 **I. DEFINITIONS**

- 9 1. “**Agreement,**” “**Stipulation,**” and “**Joint Stipulation**” all mean this document.
- 10 2. “**Class Counsel**” shall mean Hunter Pyle and Chad Saunders of Hunter Pyle Law.
- 11 3. “**Class Counsel Fees and Costs Payment**” means the amount of attorneys’ fees
12 and costs awarded by the Court pursuant to the terms of this Agreement.
- 13 4. “**Class Member**” shall mean a member of the Class.
- 14 5. “**Class**” shall mean all individuals employed by Foodliner as truck drivers in
15 California at any time during the Class Period.
- 16 6. “**Class Period**” means November 3, 2012, continuing through and including the
17 date of the Court’s Order regarding preliminary approval of the Settlement.
- 18 7. “**Class Representative Service Payment**” means the payments to any class
19 representative described in Section IV of this Agreement.
- 20 8. “**Court**” means the United States District Court for the Northern District of
21 California.
- 22 9. “**Court’s Final Order and Judgment**” means the Final Order Approving Class
23 Action Settlement and Judgment in a form to be agreed upon by the Parties and as approved by
24 the Court.
- 25 10. “**Defendant**” shall mean Foodliner, Inc.
- 26 11. “**Defendant’s Counsel**” shall mean Gordon & Rees Scully Mansukhani LLP.
- 27 12. “**Effective Date**” shall have the meaning ascribed to it in Paragraph 69 below.
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1 13. **“Employer Payroll Taxes”** means employer-funded taxes and contributions
2 imposed on the wage portions of the Settlement Payment under the Federal Insurance
3 Contributions Act, the Federal Unemployment Tax Act, and any similar state taxes and
4 contributions required of employers, such as for unemployment insurance.

5 14. **“Final Approval Hearing”** means the hearing at which the Court shall
6 consider, without limitations, any timely objections to the Settlement from Class Members,
7 testimony from the Parties or their counsel, declarations regarding the settlement process from
8 the Settlement Administrator, and otherwise make a final determination regarding the fairness
9 of the Settlement described herein.

10 15. **“Gross Settlement Amount”** means One Million Two Hundred Thousand
11 Dollars and No Cents (\$1,200,000.00), payable by Defendant as provided by this Agreement
12 and as ordered by the Court. The Gross Settlement Amount is inclusive of all payments to
13 Class Members, the Class Counsel Fees and Costs Payment, the Class Representative Service
14 Payment, the Settlement Administration Fees, and PAGA payments described in Paragraph
15 53.b. It does not include the Employer’s Share of Payroll Taxes. Other than the Gross
16 Settlement Amount and the Employer’s Share of Payroll Taxes, Defendant shall not be
17 required to pay any further amounts to effectuate the Settlement.

18 16. **“Individual Settlement Payment”** means the payment to be made to
19 Participating Class Members from the Net Settlement Fund, pursuant to the terms of this
20 Agreement.

21 17. **“Litigation”** means the lawsuit entitled *Ronda Austin, Christopher Corduck,*
22 *Ernest Dial, Billy Wayne Gibson, and Bobby G. Smith, on behalf of themselves and others*
23 *similarly situated, vs. Foodliner, Inc.,* Northern District of California, Case No. 4:16-cv-07185-
24 HSG.

25 18. **“Net Settlement Fund”** means the remainder of the Gross Settlement Fund
26 after all monies allocated for Class Counsel Fees and Costs Payment, the Class Representative
27 Service Payment, the Settlement Administration Fees, and PAGA payments. The Net
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1 Settlement Fund shall be allocated among the Participating Class Members according to the
2 formula and other terms described in Section VI of this Agreement.

3 19. “**Non-Participating Class Member**” means a putative Class Member who
4 submits a timely and valid request to opt-out of the Settlement.

5 20. “**Notice of Proposed Settlement**” means the Notice of Pendency of Class
6 Action, Proposed Settlement, and Hearing Date for Final Court Approval in substantially the
7 form attached hereto as **Exhibit A**, and as approved by the Court.

8 21. “**Operative Complaint**” means the pleadings described in Paragraphs 32-34 of
9 this Agreement.

10 22. “**Participating Class Member**” means a Class Member who does not timely
11 and validly opt out of the Settlement.

12 23. “**PAGA**” means the California Labor Code Private Attorneys General Act of
13 2004, California Labor Code §§ 2698 *et seq.*

14 24. “**PAGA Subclass**” means all truck drivers employed by Foodliner in California,
15 at any time between October 31, 2015, and the date of Preliminary Approval of the Settlement.

16 25. “**Parties**” shall refer to the Class Members and Foodliner, each of whom is a
17 “Party.”

18 26. “**Preliminary Approval of the Settlement**” means the Court’s preliminary
19 approval of the Settlement.

20 27. “**Released Parties**” collectively means: (a) Foodliner; (b) Foodliner’s respective
21 past, present, and future parents, subsidiaries, and affiliates, predecessors, successors, and
22 assigns; and (c) the past, present, and future shareholders, directors, owners, officers, agents,
23 representatives, employees, and the predecessors, successors, and assigns of any of the
24 foregoing.

25 28. “**Released Claims**” means all claims that were plead in the Action, including
26 the Operative Complaint, or that could have been plead based on the facts alleged in the
27 Action, including but not limited to claims arising under California Labor Code sections 226,
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1 226.2, 226.7, 510, 512, 558, 1182.11-1182.13, 1194, 1194.2, 1197, 1198, 2802, and claims
2 plead under California Labor Code sections 2698 and 2699, all applicable California Industrial
3 Wage Orders, and California Business and Professions Code section 17200.

4 29. “**Settlement**” means the Parties’ agreement to settle the Litigation on the terms
5 described in this Agreement.

6 30. “**Settlement Administrator**” means the third-party claims administration firm
7 selected by the Parties and approved by the Court. The Parties have agreed to propose
8 Simpluris, Inc. as the Settlement Administrator for this Court’s consideration and approval.

9 31. “**Settlement Administration Fees**” means the amount of fees and costs
10 incurred by the Settlement Administrator awarded by the Court pursuant to the terms of this
11 Agreement, which is not anticipated to exceed Ten Thousand Dollars and No Cents
12 (\$10,000.00).

13 **II. THE LITIGATION**

14 32. On or about November 3, 2016, Plaintiffs Ronda Austin, Christopher Corduck,
15 Ernest Dial, Billy Wayne Gibson, and Bobby G. Smith filed a wage and hour class action
16 complaint in the Superior Court of California for the County of Alameda against Foodliner.
17 Foodliner removed that case to the Northern District of California.

18 33. Following expiration of the statutory notice period, on January 18, 2017,
19 Plaintiffs filed a representative action against Foodliner pursuant to the Private Attorneys
20 General Act of 2004 (“PAGA Action”) in Alameda County Superior Court (No. RG17846044).

21 34. On October 17, 2017, Plaintiffs filed a First Amended Complaint, which added
22 PAGA claims to the complaint. On December 13, 2017, the Alameda County Superior Court
23 entered a dismissal without prejudice of the PAGA Action at Plaintiffs’ request.

24 35. Investigation and Discovery. Class Counsel have conducted a thorough
25 investigation of the facts in the Litigation and have diligently pursued an investigation of Class
26 Members’ claims against Foodliner. Plaintiffs and Foodliner have engaged in substantial
27 investigation in connection with the Litigation, including informal exchange of a large volume
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1 of information, including confidential information, regarding the claims asserted in the
2 Litigation, the defenses available to Foodliner, and other relevant issues. Plaintiffs and
3 Foodliner have each made formal discovery requests. Foodliner responded to Plaintiffs' written
4 discovery on October 13, 2017; January 19, 2018; and March 16, 2018. Plaintiffs responded to
5 Defendant's discovery on January 8, 2018.

6 36. Foodliner has produced, and Class Counsel have reviewed and analyzed,
7 relevant wage and hour policies, relevant meal period and rest break policies, payroll
8 information for the Class Members, wage statements for the Class Members, driver logs for
9 Class Members and other documents related to the Class Members' employment with
10 Foodliner.

11 37. Mediation. On August 16, 2017, the Parties held an all-day mediation with
12 mediator Mark Rudy. The case did not settle at that mediation. On April 4, 2018, Mr. Rudy
13 made a mediator's proposal. The Parties accepted that proposal as modified and have since
14 memorialized its terms in a Memorandum of Understanding.

15 38. No Admission of Liability. The Parties have entered into this Settlement in
16 order to reduce the risks and costs of further litigation, and to avoid further business
17 distractions. Foodliner denies any liability or wrongdoing of any kind associated with the
18 claims alleged in the Litigation, including all allegations made in the Operative Complaint.
19 Foodliner further contends that, for any purpose other than settlement, this action is not
20 appropriate for class treatment. Among other things, Foodliner contends that it complied in
21 good faith with California wage and hour laws and the California Business and Professions
22 Code, including, but not limited to, properly paying Class Members; providing Class Members
23 with accurate, itemized wage statements in compliance with California law; providing Class
24 Members with meal periods and authorizing and permitting rest breaks as required under
25 California law; and properly and timely paying Class Members all wages due upon their
26 separation from employment in compliance with California law.

1 39. Fair, Reasonable, and Adequate Settlement. Based on the investigation
2 summarized above, Class Counsel are of the opinion that the Settlement on the terms set forth
3 in this Agreement is fair, reasonable, and adequate and is in the best interest of the Class in
4 light of all known facts and circumstances, the risk of significant delay, defenses asserted by
5 Foodliner, unresolved legal issues that could have a material impact on the outcome of the
6 Litigation, and numerous potential appellate issues. The Parties recognize that the issues
7 presented in the Litigation are likely only to be resolved after extensive and costly pretrial
8 proceedings, including a dispute as to whether any of the claims asserted can be certified as a
9 class action, and that further litigation will cause inconvenience, distraction, disruption, delay
10 and expense disproportionate to the potential benefits of continued litigation. The Parties agree
11 that they have taken into account the risk and uncertainty of the outcome inherent in any
12 complex litigation of this nature.

13 **III. SETTLEMENT AMOUNT**

14 40. Consideration. The Gross Settlement Amount that Foodliner will be obligated to
15 pay in connection with the Settlement is One Million Two Hundred Thousand Dollars and No
16 Cents (\$1,200,000.00), as set forth in Paragraph 15 above. The Gross Settlement Amount is
17 inclusive of all payments to Class Members, the Class Counsel Fees and Costs Payment, the
18 Class Representative Service Payment, the Settlement Administration Fees, withholdings for
19 wage payments made to Class Members under this Settlement, and payment to the LWDA for
20 its share of the PAGA penalties. Except as to Employer Payroll Taxes, Foodliner will not be
21 required to pay more than the Gross Settlement Amount, inclusive of all amounts set forth in
22 this Agreement or that may otherwise be required to consummate the Agreement and effectuate
23 the Settlement. The Gross Settlement Amount has been agreed to by Plaintiffs and Foodliner
24 based on the aggregation of the agreed-upon settlement value of individual claims of the Class
25 Members.

26 41. No Reversion and Not “Claims-Made”. This is a “non-reversionary” settlement.
27 Under no circumstances will any of the settlement revert to Foodliner. Participating Class
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1 Members will not have to make a claim in order to receive a distribution. Distributions, in the
2 form of Individual Settlement Payments, will be made directly to each Participating Class
3 Member.

4 42. Allocation. For purposes of calculating employer taxes, the Parties agree the
5 settlement proceeds shall be allocated to Participating Class Members as follows: thirty-three
6 percent (33%) to unpaid wages; sixty-seven percent (67%) to interest and penalties.

7 43. Tax Consequences. Foodliner makes no representation about the taxability or
8 non-taxability of any of the amounts distributed pursuant to the Agreement, and, except as
9 otherwise expressly stated herein, assumes no tax liability with respect to such distributions.

10 Each Class Member receiving an Individual Settlement Payment shall be responsible for
11 determining and paying his or her own tax liability, or penalties thereon.

12 44. Cy Pres Charity. This is a “non-reversionary” settlement. Under no
13 circumstances will any of the settlement revert to Foodliner. Any remainder from the Net
14 Settlement Fund, *i.e.*, uncashed checks delivered to Participating Class Members by the
15 Settlement Administrator pursuant to the terms of this Agreement, after reasonable efforts have
16 been made to locate Class Members, will be paid to Legal Aid at Work, a nonprofit
17 organization that furthers the objectives and purposes underlying this case and that provides
18 civil legal services to the indigent.

19 **IV. CLASS REPRESENTATIVE SERVICE PAYMENTS**

20 45. As part of the Settlement Agreement Foodliner agrees not to oppose Plaintiffs’
21 application to the Court for a Class Representative Service Payment of Ten Thousand Dollars
22 and No Cents (\$10,000.00) for Ronda Austin as Class Representative to be paid out of the
23 Gross Settlement Amount. This Service Payment is in addition to any payments Ms. Austin is
24 otherwise entitled to as a Class Member.

25 46. As part of the Settlement Agreement Foodliner also agrees not to oppose
26 Plaintiffs’ application to the Court for a Class Representative Service Payment of Seven
27 Thousand Five Hundred Dollars and No Cents (\$7,500.00) each for Christopher Corduck,
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1 Ernest Dial, Billy Wayne Gibson, and Bobby G. Smith as Class Representatives, to be paid out
2 of the Gross Settlement Amount. These Service Payments are in addition to any payments they
3 are otherwise entitled to as a Class Member.

4 47. Should the Court approve a lesser amount for Class Representative Service
5 Payments, the difference shall be added back to the Net Settlement Fund to be distributed to the
6 Participating Class Members. Any Court order awarding less than the amount sought by Class
7 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the
8 Settlement.

9 48. The Settlement Administrator will issue to each Plaintiff an IRS Form 1099
10 reflecting the Class Representative Service Payment paid to him or her.

11 **V. ATTORNEYS' FEES AND COSTS**

12 49. As part of the Settlement Agreement Foodliner agreed not to oppose an
13 application by Plaintiffs to the Court for the Class Counsel Fees and Costs Payment payable to
14 Class Counsel in the amount of up to one-third (33.33%) of the Gross Settlement Amount, plus
15 attorneys' costs and expenses not to exceed reasonable actual costs incurred by Class Counsel,
16 upon proof provided to the Court.

17 50. Should the Court approve a lesser amount of Class Counsel Fees and Costs
18 Payment than what is sought by Class Counsel, the difference shall be added back to the Net
19 Settlement Fund to be distributed to the Participating Class Members. Any Court order
20 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
21 Settlement Agreement or otherwise void the Settlement.

22 51. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
23 reflecting the amount of attorneys' fees and costs awarded by the Court.

24 **VI. CLASS MEMBER DISTRIBUTION FORMULA**

25 52. After deducting the Class Representative Service Award, the Class Counsel
26 Fees and Costs Payment, the Settlement Administration Fees, and Foodliner's share of the
27 payroll taxes from the Gross Settlement Amount, the remaining balance shall constitute the Net
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1 Settlement Fund which will be distributed as described in this Section VI.

2 53. The Settlement Administrator will calculate each Participating Class Member's
3 number of workweeks and the total number of workweeks worked by all Participating Class
4 Members using the Class Data provided by Foodliner (as described in Paragraph 59). The
5 Settlement Administrator will determine the Individual Settlement Payment for each
6 Participating Class Member according to the following formulas:

7 a. **The Class.** The Net Settlement Fund shall be divided among all
8 Participating Class Members. Each Participating Class Member shall receive a proportionate
9 share that is equal to (i) the number of workweeks he or she worked during the time period
10 from November 3, 2012, through the date of Preliminary Approval of the Settlement, divided
11 by (ii) the total number of workweeks worked by all Participating Class Members during the
12 time period from November 3, 2012, through the date of Preliminary Approval of the
13 Settlement.

14 b. **The PAGA Subclass.** From the \$81,405 allocated to PAGA penalties,
15 one-quarter (25%) (\$20,351.25) shall be distributed to the PAGA Subclass, which shall consist
16 of all Class Members who were employed at any time during the time period from October 31,
17 2015, through the date of Preliminary Approval of the Settlement ("PAGA Period"). Each
18 Participating Class Member who is a member of the PAGA Subclass will receive a
19 proportionate share of money allocated to that subclass that is equal to (i) the number of
20 workweeks he or she worked during the time period from October 31, 2015, through the date of
21 Preliminary Approval of the Settlement, divided by (ii) the total number of workweeks worked
22 by all Participating Class Members who are members of the PAGA Subclass during the time
23 period from October 31, 2015, through the date of Preliminary Approval of the Settlement.

24 54. Once determined, each Individual Settlement Payment will be reduced by any
25 required legal deductions, including tax and other required withholdings, for each Participating
26 Class Member.

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1 55. A Participating Class Member’s receipt of an Individual Settlement Payment
2 shall not entitle him or her to additional compensation or benefits of any kind under any of
3 Foodliner’s compensation or employee benefits plans, nor will it entitle any Participating Class
4 Member to any increased retirement or 401k plan benefits of any kind.

5 **VII. SETTLEMENT ADMINISTRATION**

6 56. Settlement Administrator. The Parties have agreed to and request that the Court
7 appoint Simpluris, Inc., as Settlement Administrator for this Settlement. Simpluris offered the
8 lowest bid out of three possible third party administrators. Neither Class Counsel, nor
9 Defendant’s Counsel has a separate business relationship with Simpluris. Following conclusion
10 of the settlement administration, Simpluris will destroy all Class Member information that it
11 received in order to carry out its duties under this Agreement.

12 57. Class Counsel. The Parties stipulate and agree to propose to the Court that
13 Hunter Pyle and Chad Saunders of Hunter Pyle Law be appointed as Class Counsel to carry out
14 the duties described in this Agreement.

15 58. Stipulation to Conditional Certification. The Parties stipulate, for settlement
16 purposes only, that the Court may conditionally certify the Class, as defined in this Joint
17 Stipulation, as an opt-out class (the “**Class Stipulation**”). More specifically, the Parties agree
18 as part of the Joint Stipulation that, for settlement purposes only, the legal requirements for an
19 opt-out class are satisfied. This conditional Class Stipulation is made solely for purposes of the
20 Settlement. The Class Stipulation is in no way an admission that class action certification is
21 proper, and neither this Joint Stipulation nor the Class Stipulation will be admissible in this or
22 any other action or proceeding as evidence either that (i) the claims advanced in the Litigation,
23 or any other class, collective, or representative action claims, should be certified, or that (ii)
24 Foodliner or any of the Released Parties are liable to Plaintiff, the Class Members, or any other
25 putative class members.

26 59. Provision of Class Data to Settlement Administrator. Within thirty (30) days of
27 the date of Preliminary Approval of the Settlement, Foodliner will provide to the Settlement
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1 Administrator each Class Member's (a) name, (b) last known address, (c) employment dates
2 during the Class Period, including: date of separation (if applicable) and (d) Social Security
3 Number (the "**Class Data**"). The Class Data shall be based on Foodliner's payroll and available
4 business records in a format acceptable to the Settlement Administrator. From this data, the
5 Settlement Administrator shall calculate, (a) total number of workweeks worked from November
6 3, 2012, through the date of Preliminary Approval of the Settlement, and (b) total number of
7 workweeks worked from October 21, 2015, through the date of Preliminary Approval of the
8 Settlement, The Settlement Administrator will run a check of the Class Members' addresses
9 against those on file with the U.S. Postal Service's National Change of Address List; this check
10 will be performed by the Settlement Administrator only once per Class Member. The Class Data
11 provided to the Settlement Administrator will remain confidential and will not be used or
12 disclosed to anyone, except as required by applicable tax authorities, pursuant to Foodliner's
13 express written consent, or by order of the Court.

14 **VIII. NOTICE AND CLASS MEMBER APPROVAL PROCESS**

15 60. Notice to Putative Class Members. Within ten (10) calendar days following
16 receipt of the Class Data, the Notice of Proposed Settlement ("**Notice**") shall be sent by the
17 Settlement Administrator to the Class Members, by first class mail. The proposed Notice, subject
18 to Court Approval is attached hereto as Exhibit A. If the information listed on the Notice is
19 disputed, the Class Member disputing the information may produce information to the
20 Settlement Administrator through the dispute process described in Paragraph 65 below.

21 **IX. APPROVAL PROCESS**

22 61. Opt-In Not Required. Class Members are not required to submit any type of claim
23 form in order to receive settlement payments from the Net Settlement Fund. However, if a new
24 address is obtained by way of a returned Notice, then the Settlement Administrator shall
25 promptly forward the original Notice to the updated address via first-class regular U.S. Mail
26 indicating on the original Notice the date of such re-mailing. Where a Notice is returned as
27 undeliverable, without a forwarding address, the Settlement Administrator will perform a
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1 “skiptrace” search using the National Change of Address database to obtain an updated address.
2 The Parties agree to cooperate with the Settlement Administrator to locate a more recent address
3 for Class Members where necessary. Notices will be re-mailed to any Class Member for whom
4 an updated address is located within thirty (30) calendar days following the date of initial
5 mailing of the Notice by the Settlement Administrator. The Notice shall be identical to the
6 original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request
7 must be returned within thirty (30) calendar days of the re-mailing or by the Exclusion Deadline,
8 whichever is later.

9 62. Opt-Out. Class Members who request exclusion from the Settlement in
10 accordance with the terms set forth in the Notice of Proposed Settlement will be deemed timely
11 only if postmarked on or before forty-five (45) calendar days following the date of initial
12 mailing of the Notice by the Settlement Administrator (“**Exclusion Deadline**”). Such request
13 for exclusions must contain the full name; all other names used during employment with
14 Foodliner; date of birth; the last four digits of the social security number or the employee
15 identification number; and the telephone number of the person requesting exclusion, and must
16 be returned by mail to the Settlement Administrator at the specified address, and must be
17 postmarked on or before the Exclusion Deadline. The date of the postmark on the return
18 mailing envelope shall be the exclusive means used to determine whether a request for
19 exclusion has been timely submitted.

20 63. Effect of Opt-Out. Class Members who validly and timely opt out of the Class
21 will not be entitled to any recovery under the Settlement, will not be bound by the Settlement,
22 and will not have any right to object, appeal, or comment thereon. Class Members who do not
23 submit a valid and timely request for exclusion shall be bound by all the terms of this
24 Agreement and any final judgment or order in this Litigation, and shall be deemed to have
25 waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of
26 this Agreement.

27 64. Option to Abrogate the Settlement. If seven (7) percent or more of Class
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1 Members request exclusion from the Settlement (i.e., opt out), Defendant at its sole option may
2 abrogate the Settlement, in which case the Settlement shall be null and void. Defendant shall
3 exercise this right within ten (10) days after notification by the Settlement Administrator of the
4 total number of Class Members who submitted a valid request for exclusion. If Defendant
5 abrogates the Settlement pursuant to this paragraph, Defendant shall be solely responsible for
6 the Settlement Administrator's costs of settlement administration to date.

7 65. Opt-Out List. At the conclusion of the Notice period and at any time upon
8 request, the Settlement Administrator shall provide counsel for the Parties with a complete list
9 of all Class Members who have timely requested exclusion from the Class.

10 66. Disputes Regarding Class Data. If a Class Member disputes the number of
11 workweeks listed on the Notice, the Class Member may produce evidence to the Settlement
12 Administrator disputing the identified number of workweeks. Foodliner's records will be
13 presumed determinative, absent evidence to rebut Foodliner's records, but the Settlement
14 Administrator will evaluate the evidence submitted by the Class Member and provide the
15 evidence submitted to the Parties who agree to meet and confer in good faith about the
16 evidence to determine the Class Member's actual number of workweeks and estimated
17 Individual Settlement Payment. If the Parties are unable to agree, the Parties agree to submit
18 the dispute to the Settlement Administrator to render a final decision.

19 67. Objection to Settlement. Any Class Member who has not submitted a request for
20 exclusion may object to this Joint Stipulation, or any portion thereof, by filing a written
21 objection with the Court, and supporting papers, if any, and mailing a copy to the Settlement
22 Administrator at the address that is set forth in the Notice of Proposed Settlement, and the
23 Settlement Administrator shall provide the objection to Plaintiff's counsel and Defense counsel
24 within three (3) days of receipt, and Plaintiff's counsel shall file the same with the Court within
25 three (3) days of receipt from the Settlement Administrator. To be timely, all objections must
26 be postmarked no later than sixty (60) calendar days following the date of the first mailing of
27 the Notice by the Settlement Administrator ("**Objection Deadline**"). A written objection must
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1 contain the objecting person's full name, current address, and include all objections and the
2 reasons therefore, and include any and all supporting papers (including, without limitation, all
3 briefs, written evidence, and declarations). A Class Member who desires to object but who fails
4 to comply with the objection procedure set forth herein shall be deemed not to have objected.

5 68. If a Participating Class Member wishes to appear at the Final Approval Hearing
6 and present his or her objection to the Court orally, he or she may do so. Any Participating
7 Class Member who files an objection remains eligible to receive monetary compensation from
8 the Settlement. The Parties shall not be responsible for any fees, costs, or expenses incurred by
9 any Class Member and/or his or her counsel related to any objections to the Settlement and/or
10 appeals arising therefrom.

11 69. Deadline for Cashing Settlement Checks; Cy Pres. Participating Class Members
12 shall have 180 days from the date checks are mailed by the Settlement Administrator to cash
13 the checks representing their Individual Settlement Payments. If any such checks mailed
14 remain uncashed after the expiration of this period, or an envelope mailed to a Participating
15 Class Member is returned and no forwarding address can be located for that individual after
16 reasonable efforts have been made, then the total amount of such checks shall be distributed as
17 described in Paragraph 44, above.

18 70. Effective Date of Settlement. The Settlement shall become effective when the
19 Settlement is considered as "Final." For purposes of this Agreement, "Final" means (A) in the
20 event that the Settlement has received final approval by the Court and there were no timely
21 objections filed or presented, or that any timely objections have been withdrawn, then the date
22 of the Court's Order granting final approval of the Settlement; or, (b) in the event that one or
23 more timely objections has/have been filed or presented and not withdrawn at the time of final
24 approval, then upon the passage of the applicable date for an objector to seek appellate review
25 of the trial court's order of final approval of the Settlement, without a timely appeal having
26 been filed; or, (c) in the event that a timely appeal of the court's order of final approval has
27 been filed, then when the applicable appellate court has rendered a final decision or opinion
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1 affirming the Superior Court’s final approval without material modification, and the applicable
2 date for seeking further appellate review has passed, or the date that any such Appeal has been
3 either dismissed or withdrawn by the appellant.

4 **X. DELIVERY OF FUNDS TO SETTLEMENT ADMINISTRATOR**

5 71. Within thirty (30) calendar days after the Settlement is considered “Final” as
6 described in Paragraph 69 above, Foodliner shall deposit the Gross Settlement Amount in a
7 Qualified Settlement Fund maintained by the Settlement Administrator.

8 **XI. DISTRIBUTION OF FUNDS**

9 72. Within 15 days after receipt of Foodliner’s payment to fund the Settlement as
10 provided in this Agreement, the Settlement Administrator shall do the following:

- 11 a. Mail the Individual Settlement Payment to each Class Member’s
12 last-known address, as determined from the Notice process;
- 13 b. Disburse, by such means as Class Counsel may direct, the amount
14 of the Class Representative Service Payment and Class Counsel
15 Fees and Costs Payment;
- 16 c. Distribute seventy-five percent (75%) (\$61,053.75) of the amount
17 allocated to PAGA penalties to the California Labor and Workforce
18 Development Agency.
- 19 d. Calculate, withhold, and remit to applicable governmental agencies
20 each employee’s share of the payroll taxes, including FICA and
21 FUTA, on the wage portion of the settlement payments to
22 Participating Class Members in accordance with this Agreement;

23 **XII. RELEASE OF CLAIMS**

24 73. Participating Class Members’ Release. The Parties desire to fully, finally, and
25 forever settle, compromise, and discharge all Released Claims. Upon the Settlement becoming
26 Final, each and every Participating Class Member, including each of the Plaintiffs, will forever
27 release, discharge, and agree to hold harmless Foodliner and all of the other Released Parties,
28

1 and each of them, from any and all Released Claims (as that term is defined in Paragraph 28
2 above) up through and including the date of the Court's order regarding preliminary approval
3 of the Settlement.

4 74. Scope of Class Members' Release. The Parties intend that the Settlement
5 described in this Agreement will release and preclude any further claim, whether by lawsuit,
6 administrative claim or action, arbitration, demand, or other action of any kind, by each and all
7 of the Participating Class Members to obtain a recovery based on, arising out of, and/or related
8 to any and all of the Released Claims. The Class Members shall be so notified in the Notice to
9 the Class. This paragraph does not apply to any Class Member who timely and validly opts out
10 of the Settlement.

11 75. Plaintiffs' Additional General Release. The Parties also intend that, with respect
12 to the Plaintiffs, the Settlement described in this Agreement will provide the Released Parties
13 not only the release and covenants set forth in Paragraphs 72-73 but also a general release
14 precluding any further claim, whether by lawsuit, administrative claim or action, arbitration,
15 demand, or other action of any kind, by the Plaintiffs, to obtain a recovery based on any claim
16 that could have been asserted against Foodliner as well as any other Released Party in
17 connection with his or her employment with Foodliner through the date that this Settlement is
18 signed by Plaintiffs.

- 19 a. Without limiting the generality of the foregoing general release
20 provided by Plaintiffs in any way, and subject to the exceptions
21 stated above, Plaintiffs' Released Claims include, but are not
22 limited to, any and all claims, charges, complaints, claims,
23 liabilities, obligations, promises, agreements, controversies,
24 damages, penalties, actions, causes of action, suits, rights, demands,
25 costs, losses, debts, and expenses (including attorney fees and
26 costs), known or unknown, at law or in equity, which they or any of
27 them may have against Foodliner or any of the other Released
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Parties up through and including the date of execution of the general release.

b. Named Plaintiffs’ Released Claims include all claims described above, whether known or unknown. Thus, even if any of the Named Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of their released claims, those claims will remain released and forever barred. Therefore, Named Plaintiffs, and each of them, expressly waive and relinquish the provisions, rights and benefits of Section 1542 of the California Civil Code and any analogous law, statute, or rule. Section 1542 provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

c. Named Plaintiffs, and each of them specifically acknowledge that they is aware of and familiar with the provisions of Section 1542 of the California Civil Code, and being aware of Section 1542, each Named Plaintiff hereby expressly waives and relinquishes all rights and benefits that they individually may have under Section 1542, as well as any other statute or common law principle of a similar effect.

d. Named Plaintiffs, and each of them, further agree that, to the extent permitted by law, if a claim is prosecuted in their name against Foodliner or any of the other Released Parties before any court, arbitrator, or administrative agency, Named Plaintiffs, and each of

1 them, waive, and agree not to take, any award of money or other
2 damages from such proceeding. Named Plaintiffs, and each of them,
3 agree that, unless otherwise compelled by law, if a claim is
4 prosecuted in their name against Foodliner or any of the other
5 Released Parties that, upon a written request by Foodliner’s counsel,
6 Named Plaintiffs, and each of them, will immediately request in
7 writing that the claim on their behalf be withdrawn.

8 **XIII. RETENTION OF JURISDICTION**

9 76. The Parties stipulate that the Court may retain jurisdiction over any further
10 disputes relating to this Agreement, the implementation of the Agreement, the interpretation of
11 the Agreement or any of its terms, or further issues regarding the claims in the Litigation, until
12 the Settlement Administrator and the Parties notify the Court that all issues have been resolved
13 and the Settlement has been fully effectuated. The Parties shall endeavor to give such notice
14 within 180 days from the Final Approval Order.

15 **XIV. GENERAL PROVISIONS**

16 77. Class Size. Foodliner represents that the number of Class Members is estimated
17 to include approximately 214 employees. Foodliner will provide the Settlement Administrator
18 directly with a complete and confidential list of the Class Members within thirty days following
19 preliminary approval of the Settlement. To the extent the number of Class Members increases
20 by more than 5% from the numbers Foodliner represented existed on June 30, 2018, Foodliner
21 will have the option to increase the Gross Settlement amount proportionately. If Foodliner
22 declines to do so, Plaintiffs will have the option to terminate the Settlement in its entirety and
23 the Parties will be returned to their respective positions as if no settlement had been
24 contemplated.

25 78. Interpretation. The Parties have had a full opportunity to negotiate the terms and
26 conditions of this Agreement, with the assistance of a neutral mediator. Accordingly, the
27 Parties expressly waive the common-law and statutory rule of construction that ambiguities
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1 should be construed against the drafter of an agreement. The Parties agree that the language in
2 this Agreement shall not be construed in favor or against any Party. The Parties further agree,
3 covenant, and represent that the language in all parts of this Agreement shall be in all cases
4 construed as a whole, according to its fair meaning. Each term of this Agreement is contractual
5 and not merely a recital.

6 79. Rescission. The Parties agree that if, at any time before the Effective Date, any
7 portion of the release of claims, the notice, and/or the distribution provisions of this Agreement
8 are determined to be illegal, invalid, or unenforceable, then the Parties agree to meet and confer
9 in order to attempt to resolve outstanding issue(s) and to seek the help of Mediator Mark Rudy
10 to resolve any dispute they are unable to resolve informally. If the Parties cannot resolve such
11 issue(s), this Agreement shall be rescindable at the option of either Party. The rescinding Party
12 must rescind by written notice filed with the Court and served on counsel for the opposing
13 Party within thirty (30) days after any order or written ruling that declares any such portion to
14 be illegal, invalid, or unenforceable.

15 80. Effect If No Final Approval. If the Court denies final approval of the Settlement,
16 or if the Court's final approval is reversed or fundamentally changed on appellate review, then
17 this Settlement shall become null and void. If the Settlement is voided through any of the
18 mechanisms described herein, the Parties will have no further obligations under the Settlement,
19 including any obligation by Foodliner to pay the Gross Settlement Amount, or any amounts
20 that otherwise would have been owed under this Settlement.

21 81. Cooperation. The Parties agree to fully cooperate with each other to accomplish
22 the terms of this Agreement, including but not limited to, execution of such documents and to
23 take such action as may reasonably be necessary to implement the terms of this Agreement.
24 The Parties shall use their best efforts, including all efforts contemplated by this Agreement
25 and any other efforts that may become necessary by order of the Court, or otherwise, to
26 effectuate the terms of this Agreement. As soon as practical after execution of this Agreement,
27 Class Counsel shall, with the assistance and cooperation of Foodliner and its counsel, take all
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1 reasonable and necessary steps to secure the Court’s final approval of this Agreement.

2 82. Dispute Resolution; Attorneys’ Fees and Costs. Prior to instituting legal action
3 to enforce the provisions of this Agreement or to declare rights and/or obligations under this
4 Agreement, a Party shall provide written notice to all Parties and an opportunity to cure the
5 alleged deficiencies, and the Parties agree to seek the help of Mediator Mark Rudy to resolve
6 any dispute they are unable to resolve informally. During this period, all Parties shall bear their
7 own attorneys’ fees and costs. If either Foodliner or Plaintiffs, the signatories to this
8 Agreement, institutes a legal action or other proceeding against any other Party to enforce the
9 provisions of this Agreement or to declare rights and/or obligations under this Agreement, the
10 successful Party shall be entitled to recover from the unsuccessful Party reasonable attorneys’
11 fees and costs at the Court’s discretion. This provision shall not apply to any legal action or
12 other proceeding instituted by any person or entity other than Plaintiffs or Foodliner.

13 83. Notice Requirements. Unless otherwise specifically provided herein, all notices,
14 demands, or other communications given hereunder shall be in writing and shall be deemed to
15 have been duly given as of the fifth business day after mailing by United States registered or
16 certified mail, return receipt requested, addressed as follows:

17 To Plaintiff and the Class:

18 **HUNTER PYLE LAW**
19 Hunter Pyle, Esq. (SBN 191125)
20 hunter@hunterpylelaw.com
21 Chad A. Saunders, Esq. (SBN 257810)
22 csaunders@hunterpylelaw.com
23 428 Thirteenth Street, Eleventh Floor
24 Oakland, California 94612
25 Telephone: (510) 444-4400
26 Facsimile: (510) 444-4410

23 To Defendant:

24 **MOLLIE BURKS**
25 **SAT SANG S. KHALSA**
26 **GORDON & REES**
27 **SCULLY MANSUKHANI**
28 275 Battery Street, Suite 2000
San Francisco, CA 94111
D: 415-875-3365 | P: 415-986-5900 | F: 510-984-1721

1 83. Entire Agreement. This Joint Stipulation constitutes the entire agreement
2 between the Parties and their respective counsel relating to the Settlement, this Joint Stipulation,
3 and the transactions contemplated thereby. All prior or contemporaneous agreements,
4 understandings, representations, and statements, whether oral or written and whether by a Party
5 or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
6 writing.

7 84. Notice to Class Members. Counsel for the Parties agree that because the
8 members of the Class are so numerous, it is impossible or impractical to have each member of
9 the Class execute this Agreement. The Notice of Pendency of Class Action and Proposed
10 Settlement, attached as **Exhibit A** hereto, will advise all Class Members of the binding nature of
11 the release, and the release shall have the same force and effect as if this Agreement were
12 executed by each member of the Class.

13 85. Warranty of No Prior Assignment. The Parties represent, covenant, and warrant
14 that they have not directly or indirectly assigned, transferred, encumbered, or purported to
15 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
16 action, cause of action, or rights herein released and discharged.

17 86. No Modification by Extrinsic Evidence. With respect to the subject matter
18 hereof, except this Agreement, the Parties acknowledge that no representations, statements, or
19 promises made by the other Party, or by their respective agents or attorneys, have been relied
20 upon in entering into this Agreement. The Parties explicitly recognize California Civil Code
21 Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a
22 written agreement is to be construed according to its terms, and may not be varied or
23 contradicted by extrinsic evidence, and agree that no such extrinsic oral or written
24 representations or terms shall modify, vary, or contradict the terms of this Agreement.

25 87. Modification in Writing. This Agreement may be modified or amended only if
26 such modification or amendment is agreed to in writing and signed by the duly authorized
27 representatives of the Parties hereto, and approved by the Court which writing shall expressly
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1 state the intent of the Parties to modify this Agreement.

2 88. Enforceability. If the Court finds any material provision of this Agreement to be
3 unenforceable or invalid, then this Agreement shall become voidable. Notwithstanding any
4 other provision of this Agreement, no distributions shall be required until the enforceability or
5 validity of this Agreement has been finally determined.

6 89. Binding Effect. This Agreement shall be binding upon and shall inure to the
7 benefit of the respective heirs, assigns, executors, administrators, successors, subsidiaries,
8 divisions and affiliated corporations and partnerships, past and present, and trustees, directors,
9 officers, shareholders, partners, agents and employees, past and present, of Plaintiff,
10 Participating Class Members, Foodliner, and the Released Parties.

11 90. Counterparts. This Agreement may be executed in counterparts and/or electronic
12 and/or facsimile signatures, and when each Party has signed and delivered at least one such
13 counterpart, electronic and/or facsimile signature, each said signature shall be deemed an
14 original, and, when taken together with other signed counterparts, shall constitute one Joint
15 Stipulation, which shall be binding upon and effective as to all parties.

16 91. Governing Law. This Agreement shall be subject to, governed by, construed,
17 enforced and administered in accordance with the laws of the State of California, both in its
18 procedural and substantive aspects.

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21 SIGNATURES CONTINUE ON NEXT PAGE.
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THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

IT IS SO AGREED:

Dated: 7-5-18


Ronda Austin

Dated:

Chris Corduck

Dated:

Ernest Dial

Dated:

Billy Wayne Gibson

Dated:

Bobby G. Smith

Dated:

Mike Birkett
Foodliner, Inc.
Defendant

1 THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE
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Billy Wayne Gibson

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Bobby G. Smith

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Mike Birkett
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6 IT IS SO AGREED:

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8 Dated:

9 _____
Ronda Austin

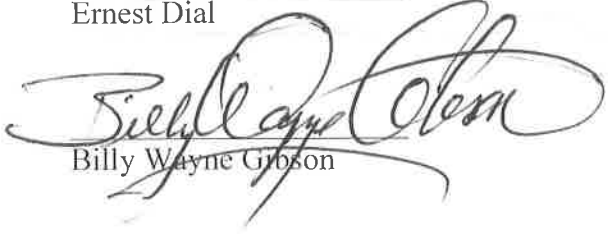
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Bobby G. Smith

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Mike Birkett
Foodliner, Inc.
Defendant

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Ronda Austin

Dated:

Chris Corduck

Dated:

Ernest Dial

Dated:

Billy Wayne Gibson

Dated: 7-5-18



Bobby G. Smith

Dated:

Mike Birkett
Foodliner, Inc.
Defendant

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CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

IT IS SO AGREED:

Dated: _____
Ronda Austin

Dated: _____
Chris Corduck

Dated: _____
Ernest Dial


Dated: _____
Billy Wayne Gibson

Dated: _____
Bobby G. Smith

Dated: 7-11-18 _____
Mike Birkett
Foodliner, Inc.
Defendant

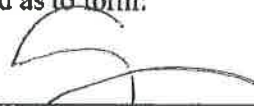
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Approved as to form:



HUNTER PYLE LAW
Hunter Pyle
Chad Saunders
Attorneys for Plaintiffs and the Putative Class

Approved as to form:



GORDON REES SCULLY MANSUKHANI, LLP
Mollie M. Burks
Sat Sang S. Khalsa
Attorneys for Defendant Foodliner Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF SETTLEMENT OF CLASS ACTION
Austin, et al. v. Foodliner, Inc.

If you were employed by Foodliner, Inc. as a truck driver in California, a class action settlement may affect your rights.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. The United States District Court for the Northern District of California has authorized this notice in the matter of *Austin, et al. v. Foodliner, Inc.*, Case No. 4:16-cv-07185-HSG (the “**Litigation**”). This is not a solicitation from a lawyer.

- Ronda Austin, Christopher Corduck, Ernest Dial, Billy Wayne Gibson, and Bobby G. Smith (called the “**Plaintiffs**” in this notice), were truck drivers employed by Foodliner, Inc. (“**Foodliner**”). They filed a lawsuit against Foodliner on November 3, 2016, in California Superior Court. Foodliner removed the case to federal court on December 16, 2016.
- Plaintiffs claim that Foodliner failed to pay all wages due, failed to provide meal periods and rest periods, failed to reimburse business expenses, failed to provide accurate wage statements, failed to timely pay all wages after the end of drivers’ employment, and violated the Private Attorneys General Act (“**PAGA**”).
- Foodliner disputes Plaintiffs’ claims. Foodliner expressly and specifically denies violating any laws.
- For settlement purposes only, the Court has conditionally certified the Litigation to be a class action on behalf of all truck drivers employed by Foodliner in California from November 3, 2012, to [date of preliminary approval order] (the “**Class Period**”).
- Your legal rights may be affected by this Settlement whether you act or do not act. Your options are explained in this notice. Thus, please read this notice carefully and in its entirety.

To request to be excluded from, or object to, this Settlement, you must act before [45 days from date of notice].

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

(1) DO NOTHING	(1) Receive part of the Settlement. <i>If you do not do anything upon receipt of this notice, you will receive a sum of money based on your dates of employment with Foodliner; you will give up your right to sue for alleged violations and related claims released by the Settlement; you will have no right to appeal; and you will forfeit your right to bring or participate in a similar action against Foodliner.</i>
(2) OPT-OUT	(2) Opt-out or exclude yourself from the Settlement. Get no benefits from it. <i>If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money, and you will not give up any rights you may have.</i>
(3) OBJECT	(3) Write to the Court about why you object to the Settlement. <i>If you object to the Settlement, you can write to the Court about why you don’t agree with the Settlement. The Court may or may not agree with your objection. If the Court approves the Settlement, you will still be bound by its terms.</i>

THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

NO MATTER WHICH OPTION YOU CHOOSE, FOODLINER WILL NOT RETALIATE AGAINST YOU.

WHAT THIS NOTICE CONTAINS

I. BACKGROUND OF THE CASE	Page 2
II. SUMMARY OF THE PROPOSED SETTLEMENT	Page 3
A. What Are the Terms of the Settlement?	Page 3
B. Who is Included in the Settlement?	Page 3
C. How are Settlement Payments Calculated?	Page 3
D. Your Settlement Calculation	Page 4
E. Release	Page 4
III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS	Page 4
A. Receive a Settlement Payment	Page 4
B. Exclude Yourself from the Settlement	Page 4
C. Object to the Settlement	Page 5
IV. FINAL SETTLEMENT APPROVAL HEARING	Page 5
V. ADDITIONAL INFORMATION	Page 5

You are receiving this notice because the United States District Court for the Northern District of California has granted preliminary approval to a class action settlement for settlement purposes only, and Foodliner's records indicate that you may be a member of the settlement Class. As such, you may be eligible for compensation from this Settlement.

As a Class Member, your interests are being represented at no expense to you by Hunter Pyle and Chad Saunders of Hunter Pyle Law. ("**Class Counsel**"). You may also hire your own lawyer at your own expense.

I. BACKGROUND OF THE CASE

On November 3, 2016, Plaintiffs Ronda Austin, Christopher Corduck, Ernest Dial, Billy Wayne Gibson, and Bobby G. Smith filed a complaint in Alameda County Superior Court on behalf of all current and former truck drivers employed by Foodliner in the State of California (referred to as "**Class Members**"). Foodliner removed that case to the Northern District of California. The complaint made claims for: (1) failure to pay minimum wages for all hours worked, (2) failure to provide off-duty meal periods, (3) failure to authorize and permit rest breaks, (4) failure to reimburse business expenses, (5) failure to provide adequate wage statements, and (6) unfair competition and unfair business practices. On October 20, 2017, Plaintiffs filed a First Amended Complaint, which added claims for civil penalties pursuant the PAGA.

The Parties thoroughly investigated the case. Plaintiffs and Foodliner were then able to agree on a Settlement of the case with the assistance of a professional mediator.

Class Counsel believe the Settlement is fair, reasonable, and in the best interests of the Class. Foodliner expressly and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Litigation. Foodliner settled the Litigation in order to avoid costly, disruptive, and time-consuming litigation.

On [**date of preliminary approval order**], the Court gave preliminary approval to the Settlement and conditionally certified the settlement Class for settlement purposes only. The Court was not asked to make and did not make any ruling as to whether any violations by Foodliner had occurred.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. **What Are the Terms of the Settlement?**

Foodliner has agreed to pay \$1,200,000.00 to settle the Litigation ("**Gross Settlement Amount**"). The Gross Settlement Amount includes attorneys' fees and costs, costs of settlement administration, the Labor and Workforce Development Agency's ("**LWDA's**") portion of PAGA penalties, and the Class Representative Service Payments. Foodliner will pay the employer's share of any payroll taxes separately from the Gross Settlement Amount.

The "**Net Settlement Fund**" is the remainder of the Gross Settlement Amount after the deductions have been made for the following items: (1) up to \$ 399,960.00 (33.33% of the Gross Settlement Amount) for Class Counsel's attorneys' fees; (2) Class Counsel's actual litigation costs; (3) the costs of settlement administration; (4) a payment of \$61,053.75

to the LWDA for its portion of PAGA penalties, and (5) up to \$10,000.00 to Plaintiff Austin and up to \$7,500 to each of the other Plaintiffs for serving as Class Representatives.

B. Who is Included in the Settlement?

Included in the Settlement are all truck drivers employed by Foodliner in the State of California between November 3, 2012, and **[date of preliminary approval order]**.

C. How Are Settlement Payments Calculated?

There are approximately 181 Class Members. Any Class Member who does not submit a written request to be excluded from the Settlement will have his or her "Settlement Payment" calculated as follows:

a. All Participating Class Members: The Net Settlement Fund shall be divided among all Participating Class Members. Each Participating Class Member shall receive a proportionate share that is equal to (i) the number of workweeks he or she worked during the time period from November 3, 2012, through **[date of preliminary approval order]**, divided by (ii) the total number of workweeks worked by all Participating Class Members during the time period from November 3, 2012, through the date of Preliminary Approval of the Settlement.

b. PAGA Subclass: From the \$81,405.00 allocated to PAGA penalties, one-quarter (25%) (\$20,351.25) shall be distributed to the PAGA Subclass, which shall consist of all Class Members who were employed at any time during the time period from October 31, 2015, through **[date of preliminary approval order]** ("PAGA Period"). Each Participating Class Member who is a member of the PAGA Subclass will receive a proportionate share of money allocated to that subclass that is equal to (i) the number of workweeks he or she worked during PAGA Period, divided by (ii) the total number of workweeks worked by all Participating Class Members who are members of the PAGA Subclass during the PAGA Period.

c. Tax Treatment of Settlement Payments: Thirty-three percent (33%) of each Settlement Payment will be designated as wages, for which you will receive a W-2 form. The remaining seventy-five percent (67%) of each Settlement Payment will be allocated to penalties, interest, and unreimbursed expenses, for which you will receive a 1099 form.

D. Your Settlement Calculation.

Your Settlement Payment is estimated to be \$**[amount]**, based on the following dates of employment as reflected in Foodliner's records:

[insert start date(s) and end date(s) of employment]

If you wish to dispute the number of workweeks, you must bring the dispute to the attention of the Settlement Administrator at **[ADDRESS]** in writing by **[45 days from the date of notice]**. In your written notice of dispute, please provide what you believe to be the correct information along with supporting documentation, if available, to show the changes you are seeking.

Your check will be void if you do not cash or deposit your check within 180 days following the issuance of the check. Whether or not you cash or deposit your check, you will be bound by the Settlement and will be deemed to have waived irrevocably any right or claim to your Settlement share and/or to appeal the approval of the Settlement. After the expiration of 180 days, the sum of any uncashed/undeposited checks shall be donated to the Legal Aid at Work, which the Parties have selected, and the Court has approved, as a *cy pres* beneficiary.

E. Release of Claims Against Foodliner.

Upon the Final Approval of the Settlement by the Court, the Plaintiffs and all members of the Settlement Class who do not submit timely requests for exclusion (described below) will be deemed to have fully released and discharged Foodliner from all claims that were asserted or that could have been asserted, based upon the facts and allegations alleged in the Litigation, from November 2, 2012, to **[date of Preliminary Approval]**.

The released claims include all claims that were plead in the Action, including the Operative Complaint, or that could have been plead based on the facts alleged in the Action, including but not limited to claims arising under California Labor Code sections 226, 226.2, 226.7, 510, 512, 558, 1182.11-1182.13, 1194, 1194.2, 1197, 1198, 2802, and claims plead under California Labor Code sections 2698 and 2699, as well as California Business and Professions Code section 17200.

These claims are referred to in this Notice as the “**Released Claims.**” For more information regarding the scope of the release, please read the Settlement Agreement available at [Administrator website].

III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

A. **Option 1: Do Nothing and Receive a Settlement Payment.**

You do not need to do anything in order to receive a Settlement Payment. If you do nothing, you will automatically be included in the Settlement and will receive a Settlement Payment so long as the Settlement is approved and becomes Final. As set forth above, your Settlement Payment will be based upon whether or not you worked during the Class Period and, if so, the amount of workweeks you worked during the Class Period.

Please keep your address current! To assist the Court and the parties in maintaining accurate lists of Class Members, please mail notice of any change in your address to the Settlement Administrator [ADDRESS], or call [Administrator 800 number]. *Please say that you are a part of the Foodliner Settlement Class.*

B. **Option 2: Exclude Yourself from the Settlement.**

IMPORTANT: You will be bound by the terms of the Settlement unless you submit a timely and signed written request to be excluded from the Settlement. To exclude yourself from the Settlement, you must mail your request for exclusion, postmarked no later than [45 days after notice date], to:

[SETTLEMENT ADMINISTRATOR]
[ADDRESS]

Your request for exclusion must contain your full name and a statement that you wish to be excluded. Your request for exclusion must be returned by mail to the Settlement Administrator at the address above, must be postmarked on or before [45 days after notice date], and it must say “I request to be excluded from the settlement in *Austin, et al. v. Foodliner, Inc.*, Case No. 4:16-cv-07185-HSG” or words to that effect.

C. **Option 3: Object to the Settlement.**

Any Settlement Class member who has not submitted a request for exclusion may object to the terms of the Settlement. You may object to the proposed settlement in writing. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing should: (1) clearly identify the case name and number (*Austin, et al. v. Foodliner, Inc.*, Case No. 4:16-cv-07185-HSG); and (2) be mailed to the Settlement Administrator postmarked on or before [45 days after notice date]. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so.

YOU MAY OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OBJECTIONS, YOU WILL RECEIVE YOUR SHARE OF SETTLEMENT PROCEEDS.

NO MATTER WHICH OPTION YOU CHOOSE, FOODLINER WILL NOT RETALIATE AGAINST YOU.

IV. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on [FINAL APPROVAL HEARING], at [TIME], in Courtroom 2 - 4th Floor, 1301 Clay Street, Oakland, CA 94612, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be continued or rescheduled without further notice to Class Members. You can check whether the Final Approval Hearing has been continued or rescheduled by visiting [Administrator website].

You may attend the Final Approval Hearing but are not required to do so. Written objections will be considered at the Final Approval Hearing whether or not the person objecting appears at the hearing. If you object and wish to appear at the Final Approval Hearing, you may appear personally or through counsel hired at your own expense, as long as you provide the Court with timely notice of your intent to appear.

At no expense to you, Class Counsel will represent your interests as a Class Member. Or, you may hire your own lawyer at your own expense.

V. ADDITIONAL INFORMATION

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may read the detailed Settlement Agreement, which is available at [\[Administrator website\]](#). You may also access Plaintiffs' Motion for Preliminary Approval, Plaintiffs' Motion for Final Approval and Attorneys' Fees (when available), and other important documents related to this case, at the above website. If you have any questions regarding this Notice, the Settlement, or the Litigation, you may contact Class Counsel:

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The pleadings and other records in this Litigation, including the Settlement Agreement, also may be examined online by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

DO NOT TELEPHONE THE COURT OR DEFENSE COUNSEL