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9 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN FRANCISCO DIVISION**

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Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5802

12 LORETTA DOWNS and D'ANDRE PARKER,  
13 individually and on behalf of all others similarly  
situated,

14 Plaintiffs,

15 vs.

16 U.S. FOODSERVICE, INC.,

17 Defendant.  
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Case No.: C10-2163 EMC

The Honorable Edward M. Chen

**AMENDED STIPULATION FOR CLASS  
ACTION SETTLEMENT AND RELEASE**

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**CLASS ACTION SETTLEMENT AND RELEASE AGREEMENT**

1. This Amended Stipulation for Class Action Settlement and Release (“Stipulation”) is entered into by and among plaintiffs Loretta Downs, D’Andre Parker, Kirk Ramirez, Raul Roman, and Jason Wolterding (“Plaintiffs” or “Class Representatives”), on their own behalf and as representatives of a class, which is stipulated to and for purposes of this settlement only, by and through their attorneys, Goldstein, Demchak, Baller, Borgen & Dardarian, HammondLaw, PC, and Ackermann & Tilajef, P.C. (“Class Counsel”), and Defendant U.S. Foodservice, Inc. (“Defendant”) by and through its attorneys, Winston & Strawn LLP. Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

**RECITALS**

2. On April 9, 2010, Plaintiffs filed their Class Action Complaint, initiating a class action lawsuit against Defendant in the Superior Court for the State of California, County of Alameda, entitled *Loretta Downs and D’Andre Parker vs. U.S. Foodservice, Inc.*, Case No. RG10508808. Plaintiffs alleged claims for (i) failure to provide timely meal and rest periods and/or pay missed meal and rest premium pay (Cal. Labor Code sections 226.7, 512 and IWC Wage Order No. 7); (ii) failure to pay wages due/illegal deductions from wages (Cal. Labor Code sections 1194, 1194.2, 204, 218, 1197, 1198, and 221); (iii) failure to pay compensation due upon termination (Cal. Labor Code sections 201-203); (iv) failure to provide accurate itemized wage statements (Cal. Labor Code sections 226, 226.3); and (v) unfair/unlawful/fraudulent business practices (Cal. Bus. & Prof. Code, section 17200). Plaintiffs sought to represent a class consisting of “all current and former truck drivers employed by U.S. Foodservice, Inc. whose job responsibilities included driving trucks on routes within California in the time period from April 9, 2006 through the present (the “Class Period”).”

3. On May 19, 2010, Defendant filed a notice of removal, asserting jurisdiction under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d)(2). The case was removed to the United States District Court, Northern District of California, San Francisco Division, and was assigned to Judge Edward M. Chen as Case No. C10-2163 EMC.

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1 4. On August 17, 2011, the Parties participated in a mediation before Jeffrey Ross, a  
2 neutral and well-respected mediator. That effort was productive, and the Parties began negotiating  
3 the groundwork to the agreement reflected in this Stipulation. At all times, the Parties' negotiations  
4 were adversarial, non-collusive, and at an arm's length.

5 5. The Parties have stipulated that Plaintiffs may be allowed to file an Amended  
6 Complaint, adding Kirk Ramirez, Raul Roman, and Jason Wolterding as Class Representatives, and  
7 adding a sixth cause of action for penalties pursuant to Labor Code section 2699 *et seq.* Pursuant to  
8 the Parties' stipulation, and with leave of the Court, the First Amended Complaint shall be filed  
9 within ten (10) days after the date of this Agreement.

10 6. Plaintiff Downs is a former driver, based out of the Corona distribution center, who  
11 was employed by Defendant from May 2006 through August 2006. Plaintiff Downs was employed  
12 for a period of time during the Class Period and is a Class Representative for purposes of this  
13 Stipulation.

14 7. Plaintiff Parker is a current driver, based out of the Corona distribution center, who  
15 has been employed by Defendant from October 2005 through the present. Plaintiff Parker has been  
16 employed throughout the Class Period and is a Class Representative for purposes of this Stipulation.

17 8. Plaintiff Kirk Ramirez is a current driver, based out of the La Mirada distribution  
18 center, who has been employed by Defendant from June 1999 through the present. Plaintiff Ramirez  
19 has been employed throughout the Class Period and is a Class Representative for purposes of this  
20 Stipulation.

21 9. Plaintiff Raul Roman is a current driver, based out of the Vista distribution center,  
22 who has been employed by Defendant from November 1999 through the present. Plaintiff Roman  
23 has been employed throughout the Class Period and is a Class Representative for purposes of this  
24 Stipulation.

25 10. Plaintiff Jason Wolterding is a current driver, based out of the Livermore distribution  
26 center, who has been employed by Defendant from January 2007 through the present. Plaintiff  
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1 Wolterding has been employed during the Class Period and is a Class Representative for purposes of  
2 this Stipulation.

3 11. This Stipulation applies only to individuals who satisfy the Class Definition.

4 12. The Parties are represented by competent counsel and have had the opportunity to  
5 consult with counsel prior to the submission of this Stipulation to the Court.

6 13. The Parties expressly acknowledge that nothing in this Stipulation, nor the fact of the  
7 Stipulation itself, shall be construed or deemed an admission of liability, culpability, negligence or  
8 wrongdoing of any kind by Defendant, nor shall it constitute an admission on behalf of Defendant of  
9 any fact or allegation against it, including any allegation that this matter is suitable for class  
10 treatment. Defendant specifically denies any liability.

11 14. Defendant denies all the claims and contentions alleged by Plaintiffs in the Action.  
12 Nonetheless, Defendant has concluded that further litigation of the Released Claims encompassed by  
13 this Stipulation would be protracted and expensive, and would also divert management and  
14 employee time. Defendant has taken into account the uncertainty and risks inherent in litigation.  
15 Defendant has therefore concluded that it is desirable that the Action be settled in the manner and  
16 upon the terms and conditions set forth in this Stipulation.

17 15. The Class Representatives and Class Counsel believe that the claims asserted in this  
18 Action have merit. The Class Representatives and Class Counsel, however, recognize and  
19 acknowledge the significant expense and length of continued proceedings necessary to prosecute the  
20 litigation of the Released Claims against Defendant through trials and through appeals. The Class  
21 Representatives and Class Counsel are also mindful of the inherent problems of proof and possible  
22 defenses to the Released Claims and to class certification. After careful consideration and  
23 mediation, the Class Representatives and Class Counsel have concluded that it is desirable that this  
24 Action be settled in the manner and upon the terms and conditions set forth in this Stipulation. Both  
25 the Class Representatives and Class Counsel believe that the settlement set forth in this Stipulation is  
26 fair, reasonable and adequate, and confers substantial benefits upon the Class.

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1           16.     The Parties recognize the inherent risk in proceeding with wage and hour class action  
2 litigation based on the current uncertainty of California jurisprudence in wage and hour law. Both  
3 Parties agree that the settlement set forth herein adequately balances the risk of proceeding with the  
4 Action against any potential recovery for the Class Members, and therefore the Stipulation  
5 represents a fair and just compromise of the Released Claims.

6           17.     Pursuant to Federal Rules of Evidence Rule 408 and California Evidence Code  
7 sections 1152 and 1154, this Stipulation and any related documents filed or created in connection  
8 with it shall be inadmissible in evidence in any proceeding, except as necessary to approve, interpret  
9 or enforce this Stipulation.

10          18.     The Parties and their respective counsel of record deem the Stipulation to be fair and  
11 reasonable and have arrived at the Stipulation in arms-length negotiations taking into account all  
12 relevant factors, present or potential.

**DEFINITIONS**

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14          19.     The following definitions are applicable to this Stipulation. Definitions contained  
15 elsewhere in this Stipulation also shall be effective.

16          20.     "Action" means *Loretta Downs and D'Andre Parker v. U.S. Foodservice*, United  
17 States District Court, Northern District of California, San Francisco Division, Case  
18 No. C10:2163 EMC.

19          21.     "Actual Costs" means any actual costs and expenses associated with Class Counsel's  
20 litigation and settlement of the Released Claims, the amount of which is not to exceed Fifteen  
21 Thousand dollars (\$15,000).

22          22.     "Alleged Claims" means the claims asserted in Plaintiffs' Original Complaint and the  
23 First Amended Complaint to be filed in the Action.

24          23.     "Claims Administrator" means the third-party class action settlement claims  
25 administrator agreed to by the Parties and approved by the Court for the purpose of administering  
26 this Stipulation.

1           24.    “Claims Administration Costs” means the cost payable from the Gross Settlement  
2 Amount to the Claims Administrator for its actual costs of administering this Stipulation, up to a  
3 maximum of \$27,000, including but not limited to, the following: locating Class Members; printing  
4 and distributing Notices of Class Action Settlement; tracking and processing Request for Exclusion  
5 received from Class Members; calculating withholdings and taxes; tracking and processing Claim  
6 Forms received from Class Members; calculating, administering and distributing Individual  
7 Settlement Payments and Class Representative Enhancement Awards, the Class Counsel Award, and  
8 the Reserve Fund/Cy Pres Fund; responding to inquiries from Class Members; and providing  
9 necessary reports and declarations, as requested by the Parties. The Claims Administration Costs are  
10 presently estimated to be \$27,000.

11           25.    “Class Counsel” are Goldstein, Demchak, Baller, Borgen & Dardarian,  
12 HammondLaw, PC, and Ackermann & Tilajef, P.C.

13           26.    “Class Counsel Award” means attorneys’ fees requested by Class Counsel and  
14 approved by the Court for Class Counsel’s litigation and resolution of the Released Claims. Subject  
15 to the Court granting Final Approval of this Stipulation, and subject to the exhaustion of any and all  
16 appeals, Defendant will not contest a Class Counsel Award of up to thirty percent (30%) of the  
17 Gross Settlement Amount (i.e., up to \$900,000), plus the reimbursement of any Actual Costs.

18           27.    “Class List” means a list of Class Members and their addresses, contact information,  
19 and dates of employment in Class Member jobs during the Class Period, that Defendant will compile  
20 from its electronic business records and provide to the Claims Administrator within fourteen (14)  
21 calendar days after Preliminary Approval of this Stipulation.

22           28.    “Class Members” and “Class Definition” means all current and former truck drivers  
23 employed by U.S. Foodservice, Inc. whose regular job responsibilities include(d) driving trucks on  
24 routes within California during the Class Period. This includes drivers based in Reno, Nevada and  
25 Phoenix, Arizona who drive regular routes in California. The class members consist of (a) the 830  
26 drivers identified by Defendant on October 10, 2010, (b) the Nevada/Arizona drivers; and any (c)  
27 Newly Identified Drivers.

1 29. "Class Period" means the period from April 9, 2006 to the date of Preliminary  
2 Approval.

3 30. "Class Representatives" means Loretta Downs, D'Andre Parker, Kirk Ramirez, Raul  
4 Roman, and Jason Wolterding.

5 31. "Compensable Workweeks" means each week during the Class Period that a Class  
6 Member was employed by U.S. Foodservice, Inc. as a truck driver to regularly drive routes in  
7 California.

8 32. "Complaint" means the operative complaint in the Action.

9 33. "Court" means the United States District Court, Northern District of California, San  
10 Francisco Division, or any other court having jurisdiction over the litigation.

11 34. "Defendant" means US Foods, U.S. Foodservice, Inc., including their present and  
12 former parent companies, subsidiary companies, related or affiliated companies, predecessors,  
13 fiduciaries, shareholders, partners, owners, officers, directors, employees, agents, managers,  
14 including their office, branch, district, and division managers and their assistant managers, attorneys,  
15 insurers, successors and assigns, and any individual or entity which could be jointly liable with  
16 Defendant or any of them.

17 35. "Defendant's Counsel" means Winston & Strawn LLP.

18 36. "Effective Date" means: (i) the date after the Court grants Final Approval when the  
19 statute of limitations for appeal or review of Final Approval expires and no appeal has been filed; or  
20 (ii) if any appeal is filed and not dismissed, when the Final Approval order is upheld on appeal in all  
21 material respects and is no longer subject to review upon appeal or review by writ of certiorari.

22 37. "Enhancement Award" means the amount to be paid to the Class Representatives in  
23 recognition of their efforts and work in prosecuting the Released Claims on behalf of Class  
24 Members, as described more fully below in paragraph 82.

25 38. "Request for Exclusion" means the written statement requesting exclusion from this  
26 Stipulation to be submitted by Class Members who wish to Opt-Out.

1 39. "Final Approval" means final approval of the Stipulation by the Court or, if the  
2 District Court's order granting Final Approval is appealed, the final order of any appellate court  
3 affirming or upholding the Court's Final Approval order in all material respects.

4 40. "Final Approval Hearing" means the hearing at which the Court considers whether to  
5 grant Final Approval of the Stipulation.

6 41. "Former Drivers" means Participating Class Members whose employment with  
7 Defendant ended prior to the date of Preliminary Approval and who were among the 830 drivers  
8 identified by Defendant in October 2010.

9 42. "Gross Settlement Amount" means the total amount of Three Million dollars  
10 (\$3,000,000) that Defendant is required to pay by this Stipulation (subject to Final Approval and  
11 exhaustion of any and all appeals) to satisfy the Individual Settlement Payments to Participating  
12 Class Members, the Class Representatives Enhancement Awards, the Claims Administration Costs,  
13 the Class Counsel Award, Actual Costs, payments on the PAGA Claim to the California Labor and  
14 Workforce Development Agency, and any other obligations of the Parties under this Stipulation.

15 43. "Individual Settlement Payment" means each Participating Class Member's share of  
16 the Net Settlement Amount, less any applicable taxes or withholdings, as calculated by the Claims  
17 Administrator in accordance with the terms of the Stipulation.

18 44. "Initial Mailing" means the Claims Administrator's sending of the Notice of Class  
19 Action Settlement via U.S. Mail to each Class Member, which is required within seven (7) business  
20 days following receipt of the Class List from Defendant.

21 45. "LWDA" means California's Labor Workforce Development Agency.

22 46. "Net Settlement Amount" means the amount of the Gross Settlement Amount  
23 available for distribution to Participating Class Members after subtracting the Class Representatives  
24 Enhancement Awards, the Claims Administration Costs, the Class Counsel Award, Actual Costs,  
25 and payment to the California Labor and Workforce Development Agency, and any other obligations  
26 of the Parties under this Stipulation.



1 47. "Nevada/Arizona Drivers" means Participating Class Members who are or were  
2 based in Reno, Nevada or Phoenix, Arizona and regularly drive or drove routes in California.

3 48. "Newly Identified Drivers" means Participating Class Members who were not among  
4 the 830 drivers identified by Defendant in October 2010, including the Nevada/Arizona drivers.

5 49. "Notice of Class Action Settlement" means the notice advising Class Members of  
6 their rights under this Stipulation. Each Class Members' Notice of Class Action Settlement will  
7 include, without limitation: (1) on an enclosed Estimated Payment Form, the Class Member's  
8 Individual Settlement Payment; (2) the Opt-Out Deadline; (3) information regarding the procedure  
9 for opting-out; and, (4) for formerly employed Class Members, a Claim Form (collectively, the  
10 "Notice of Class Action Settlement").

11 50. "Notice of Objection" means the notice a Class Member must timely file with the  
12 Court to have his/her objection heard by the Court at the Final Approval Hearing.

13 51. "Opt-Out" means to be excluded from this Stipulation by submitting a written  
14 statement requesting exclusion from this Stipulation on or before the Opt-Out Deadline.

15 52. "Opt-Out Deadline" means the deadline by which Class Members must mail a written  
16 statement requesting exclusion from this Stipulation to the Claims Administrator.

17 53. "PAGA Claim" means the cause of action for penalties pursuant to California Labor  
18 Code section 2699 *et seq.*

19 54. "Participating Class Members" means all Class Members who do not submit timely  
20 and valid request for exclusion from this Stipulation by the Opt-Out Deadline.

21 55. "Parties" means Plaintiffs Loretta Downs, D'Andre Parker, Rick Ramirez, Raul  
22 Roman, Jason Wolterding, and Defendant U.S. Foodservice, Inc., collectively.

23 56. "Preliminary Approval" means the Court order granting Preliminary Approval of the  
24 Stipulation.

25 57. "Release" and "Released Claims" shall have the meaning set forth in Paragraph 78.

26 58. "Released Parties" means US Foods, U.S. Foodservice, Inc., including its present and  
27 former parent companies, subsidiary companies, related or affiliated companies, predecessors,  
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1 fiduciaries, shareholders, partners, owners, officers, directors, employees, agents, managers,  
2 including their office, branch, district, and division managers and their assistant managers, attorneys,  
3 insurers, successors and assigns, and any individual or entity which could be jointly liable with  
4 Defendant or any of them.

5 59. "Stipulation" means this Stipulation for Class Action Settlement and Release, which  
6 is made and entered into by and between Plaintiffs Loretta Downs, D'Andre Parker, Rick Ramirez,  
7 Raul Roman, and Jason Wolterding, individually and on behalf of all others similarly situated, and  
8 Defendant.

9 60. "Unknown Claims" means any Released Claims which the Class Member does not  
10 know or suspect to exist in his or her favor at the time of the Released Claims which, if known by  
11 him or her, might have affected his or her decision to enter into this Stipulation with and Release of  
12 the Released Parties or might have affected his or her decision not to object to this Settlement.

13 61. "830 Drivers Group" means Participating Class Members who are currently  
14 employed with Defendant, as of the date of Preliminary Approval, and who were among the 830  
15 drivers identified by Defendant in October 2010.

16 **TERMS OF AGREEMENT**

17 62. The Parties stipulate and agree that subject to the conditions precedent set forth in this  
18 Stipulation, the Released Claims shall be finally and fully compromised, released, resolved,  
19 relinquished, discharged and settled, and without any adverse findings or conclusions against  
20 Defendant or anyone else, upon and subject to the terms and conditions of this Stipulation.

21 63. Conditions Precedent to Effectiveness of Stipulation. The Parties enter into this  
22 Stipulation on a conditional basis. This Stipulation will become final and effective only upon the  
23 occurrence of all of the following events: (i) the Court enters an order granting Preliminary Approval  
24 of the Stipulation for Class Action Settlement and Release; (ii) the Court enters an order granting  
25 Final Approval of the Stipulation for Class Action Settlement and Release; and (iii) the Effective  
26 Date occurs. Unless the Court orders otherwise, this Stipulation shall be deemed null and void *ab*  
27 *initio* upon the failure of any of these three conditions to occur.

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64. Conditional Class Certification.

64.1 The Parties stipulate to class certification for purposes of this Stipulation only. The Class Representatives and Class Counsel shall apply to the Court for approval of the Stipulation and for class certification of the Class only for purposes of effectuating this Stipulation. If the Court does not grant Preliminary Approval or Final Approval, the Parties agree that class certification will automatically be deemed not to have been granted.

64.2 The Parties further agree that class certification for purposes of this Stipulation is not an admission that class certification is proper under the standard applied to contested certification motions and that other than according to the terms of the Stipulation, the Stipulation will not be admissible in this or any other process as evidence that (i) a class should be certified or (ii) Defendant is liable in any way. Defendant expressly reserves its rights to oppose class certification of any purported class should this Stipulation not become final and effective.

65. Settlement Consideration. Subject to the notice procedures set forth below and Final Approval by the Court, Defendant agrees to pay each Participating Class Member his or her Individual Settlement Payment as consideration for settlement of the Released Claims. The Gross Settlement shall not exceed the aggregate sum of Three Million dollars (\$3,000,000). The Gross Settlement Amount shall be allocated as follows, subject to Final Approval by the Court: (i) up to Nine Hundred Thousand dollars (\$900,000) for an award of attorneys' fees; (ii) up to Fifteen Thousand dollars (\$15,000) for reimbursement of any Actual Costs associated with Class Counsel's litigation and settlement of the Released Claims; (iii) up to Seven Thousand Five Hundred dollars (\$7,500) as the portion due to the LWDA to settle the PAGA Claim; (iv) up to Thirty-Five Thousand dollars (\$35,000) for Class Representative Enhancement Awards; (v) up to \$27,000 for Claims Administration Costs; (vi) Fifty Thousand dollars (\$50,000) to be placed in a Reserve Fund for purposes provided for in subsection 76 below; and (vii) any other obligations of the Parties under this Stipulation. The employer's share of any payroll taxes on wage payments made pursuant to paragraph 67 of this Stipulation shall be separate and apart from the Gross Settlement Amount.

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65.1 After deduction of the amounts enumerated above, the remaining sum shall constitute the Net Settlement Amount, which shall be used to make Individual Settlement Payments to Participating Class Members.

65.2 Notwithstanding any other provision in this Stipulation (with the exception of payment of the employer's share of payroll taxes as specified in paragraph 67 below, in no event will Defendant be obligated to pay more than the Gross Settlement Amount as consideration for settlement of the Released Claims, including all Individual Settlement Payments, Claims Administration Costs, Class Representative Enhancement Awards, Class Counsel Award, Actual Costs, payments to the California Labor and Workforce Development Agency, and any other obligations of the Parties under this Stipulation.

65.3 Payment to the LWDA. To implement the terms of this Stipulation and to settle the PAGA Claim, the Parties allocate the sum of Ten Thousand dollars (\$10,000) from the Gross Settlement Amount. Pursuant to California Labor Code section 2699(i), the parties agree that Seven Thousand, Five Hundred dollars (\$7,500) shall be paid to the LWDA from the Gross Settlement Amount by the Claims Administrator. Each Participating Class Members shall receive a pro rata share of the remaining Two Thousand, Five Hundred dollars (\$2,500) based on his or her number of Compensable Workweeks as part of his or her Individual Settlement Payment.

65.4 The Net Settlement Amount shall be divided into two funds.

65.4.1 Eighty-five percent (85%) of the Net Settlement Amount shall be used to create a non-reversionary fund, from which Individual Settlement Payments will be made to Participating Class Members who are currently employed with Defendant, as of the date of Preliminary Approval, and who were among the 830 drivers identified by Defendant in October 2010 ("830 Drivers Group").

65.4.2 Fifteen percent (15%) of the Net Settlement Amount shall be used to create a reversionary fund, from which Individual Settlement Payments will be made

1 to (1) Former Drivers, (2) Newly Identified Drivers; and (3) Nevada/Arizona Drivers  
2 as specified in this Agreement.

3 65.4.3 To the extent that the reversionary fund is insufficient to satisfy all  
4 payments, the amount per class week will be adjusted so as to ensure the net  
5 settlement amount is sufficient to cover all class payments, but in no event will  
6 Defendant be obligated to pay more than the Gross Settlement Amount.

7 65.4.4 Newly Identified Drivers and Nevada/Arizona Drivers shall be paid  
8 from funds allocated to, but not claimed by, the Former Drivers who fail to submit  
9 claims.

10 65.4.5 The portion of the reversionary fund not claimed by Former Drivers by  
11 virtue of completing a claim form shall first be used to satisfy any payment due to  
12 Newly Identified Drivers and Nevada/Arizona Drivers, and shall then revert back to  
13 Defendant.

14 65.4.6 Compensable Workweeks of Nevada/Arizona Drivers shall include  
15 only those weeks when they regularly drove routes primarily in California.

16 66. Each Participating Class Member shall receive an Individual Settlement Payment,  
17 which is based on his or her number of Compensable Workweeks as a percentage of the total  
18 number of Compensable Workweeks of the Class during the Class Period. Such payment shall be  
19 made from the Reversionary and Non-Reversionary funds as specified in this Agreement.

20 67. Tax Treatment of Individual Settlement Payments. Defendant shall be responsible for  
21 paying the employer's share of any applicable payroll taxes separate and apart from, and in addition  
22 to, the Gross Settlement Amount. If Defendant elects to make the tax payments itself, proof of same  
23 shall be provided to the Settlement Administrator.

24 67.1 For the purpose of calculating applicable taxes, the Parties agree that sixty  
25 percent (60%) of each Individual Settlement Payment constitutes wages and forty percent  
26 (40%) of each Individual Settlement Payment constitutes interest and penalties.

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1           67.2 The Claims Administrator shall issue an IRS Form W-2 to each Participating  
2 Class Member for the portion of the payment that constitutes wages, and shall issue an IRS  
3 Form 1099 to each Participating Class Member for the portion of the payment that constitutes  
4 interest and penalties. Defendant shall not be responsible for making payroll tax payments  
5 on any portion of the Gross Settlement Amount that is attributable to attorneys' fees, costs,  
6 penalties, interest, or Enhancement Awards. The Claims Administrator shall be responsible  
7 for determining the employer share of any applicable standard tax deductions and  
8 withholdings attributable to each Individual Settlement Payment, after which Defendant shall  
9 – either, at Defendant's option, directly or through the Class Administrator – remit this  
10 money, along with the appropriate documentation, to the relevant taxing agencies in  
11 accordance with applicable laws and regulations. Defendant shall provide the Claims  
12 Administrator with any information reasonably necessary to perform the calculations  
13 discussed in this paragraph.

14           67.3 Released Parties make no warranty as to any tax consequences of any amount  
15 paid hereunder to the Participating Class Members. Any determination of the tax  
16 consequences of those payments is the sole responsibility of the Participating Class Member.  
17 Class Members who receive an Individual Settlement Payment pursuant to this Stipulation  
18 shall be responsible for correctly characterizing such amounts for tax reporting purposes and  
19 solely responsible for any and all tax obligations associated with such receipt, except as may  
20 be specifically set forth in this Section. All Participating Class Members agree to indemnify,  
21 defend, and hold Released Parties harmless from any taxes, assessments, penalties or interest  
22 payments that may at any time incur by reason of any demand, proceeding, action or suit  
23 brought against Released Parties arising out of or in any manner related to any federal, state  
24 or any other taxes allegedly due from them in connection with this Stipulation.

25           67.4 Payments pursuant to this Stipulation are not and shall not be deemed to  
26 constitute an addition to, a modification of, or a change in any previously credited hours of  
27 service, compensation, or wages under any employee benefit plan or employment policy of,  
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1 or sponsored by, Defendant or any of its present or former parent corporations or affiliates or  
2 any jointly trustee benefit plans. Payments pursuant to this Stipulation shall not be deemed  
3 to form the basis for any additional contributions to, additional benefits under, or any other  
4 additional entitlements under any employee benefit plan or employment policy of, or  
5 sponsored by, Defendant or any of its present or former parent corporations or affiliates or  
6 any jointly trustee benefit plans.

7 68. It is understood that no party, nor attorney for any party, makes any representation or  
8 warranty regarding taxability of said payments to Participating Class Members. The Parties  
9 represent and agree that none of them has received and/or relied upon any advice and/or  
10 representations from the other party and/or its attorneys as to the necessity for withholding or the  
11 taxability of the consideration paid pursuant to this Stipulation, whether pursuant to federal, state or  
12 local income tax statutes or otherwise. Participating Class Member are responsible for payment of  
13 appropriate taxes due.

14 69. Claims Administrator. The Parties designate Rust Consulting as the Claims  
15 Administrator. The Parties each represent that they do not have any financial interest in the Claims  
16 Administrator or otherwise have a relationship with the Claims Administrator that could create a  
17 conflict of interest. Claims Administration Costs will be paid from the Gross Settlement Amount. If  
18 required by the Claims Administrator, up to \$27,000 of the Claims Administration Costs will be  
19 advanced to the Claims Administrator by Defendant within 10 days of the entry of an Order granting  
20 Preliminary Approval. The Claims Administrator shall agree to indemnify the parties for any losses  
21 and/or fees incurred by the negligence of the Claims Administrator.

22 69.1 Responsibilities of Claims Administrator. The Claims Administrator will be  
23 responsible for administering this Stipulation, including but not limited to, the following:  
24 locating Class Members; printing and distributing Notices of Class Action Settlement;  
25 tracking and processing Request for Exclusions and Claim Forms received from Class  
26 Members; calculating withholdings and taxes; calculating, administering and distributing  
27 Individual Settlement Payments, Class Representative Enhancement Awards, Class Counsel

1 Award, and any other obligations of the Parties under this Stipulation; responding to inquiries  
2 from Class Members; maintaining and disbursing the Reserve Fund provided for in  
3 paragraph 76 of this Agreement; and providing necessary reports and declarations, as  
4 requested by the Parties. At least every seven (7) calendar days during the administration of  
5 the Stipulation, the Claims Administrator will provide written notice to counsel for all Parties  
6 concerning its progress with respect to all of its responsibilities, and a summary of any  
7 responses and/or questions provided by Class Members. Included in that information shall  
8 be a weekly report to the parties by email including information about numbers of opt-outs,  
9 claims filed, and an estimate of the total percentage of the settlement fund that will be paid  
10 out based on the settlement terms and the claims submitted. The Claims Administrator will  
11 also be responsible for resolving any disputes regarding claims by Class Members.

12 69.2 Class List. Not later than fourteen (14) calendar days following the date of  
13 Preliminary Approval, Defendant will provide to the Claims Administrator, but not Class  
14 Counsel, the Class List and information about each class members' Compensable  
15 Workweeks and the total Compensable Workweeks of all class members. The Claims  
16 Administrator shall keep all information contained in the Class List completely confidential,  
17 shall not share such information with any other person or entity, and shall not use such  
18 information for any purposes other than those expressly described in this Stipulation.

19 69.3 Reasonable Address Verification Measure. Immediately upon receipt of the  
20 Class List, the Claims Administrator shall undertake reasonable measures to ascertain the  
21 accuracy of the last known address for each Class Member by utilizing the National Change  
22 of Address Database maintained by the U.S. Postal Service to review the accuracy of and, if  
23 possible, update a mailing address. To the extent that this process yields an updated address,  
24 that updated address shall replace the last known address and be treated by the Claims  
25 Administrator as the new last known address.

26 69.4 Mailing of Notice of Class Action Settlement. Not later than seven (7)  
27 calendar days following receipt of the Class List, the Claims Administrator shall send the  
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1 Notice of Class Action Settlement, via U.S. Mail, to each of the Class Members. The Notice  
2 of Class Action Settlement shall advise class members of the terms of the settlement, and  
3 shall also contain an Estimated Payment Form showing the estimated amount of each class  
4 members' settlement award based on a 100% participation rate, the number of Compensable  
5 Workweeks worked by each class member during the class period, and information about  
6 how to challenge Compensable Workweeks worked, among other things." Copies of the  
7 form of Notice and an Estimated Payment Form to be sent to class members are attached as  
8 Exhibits A and B to this Agreement.

9 69.5 In addition to Exhibits A and B, the Notice of Class Action Settlement that is  
10 sent to Class Members who are required to file claims in order to participate in the monetary  
11 payments (i.e., drivers who are past employees, Nevada and Arizona drivers with routes in  
12 California, and drivers outside the 830 Class Members referred to in paragraph 61 of this  
13 Stipulation) shall be sent a copy of a Claim Form in the form of Exhibit C to this Agreement.

14 69.6 Re-Mailing of Notice of Class Action Settlement Unless a Notice of Class  
15 Action Settlement is returned as undeliverable to the Claims Administrator from the U.S.  
16 Postal Service, or the Class Member directly or through Class Counsel informs the Claims  
17 Administrator of a current or corrected mailing address, the Notice of Class Action  
18 Settlement shall be deemed mailed and received by the Class Member to whom it was sent.

19 69.7 In the event that a Notice of Class Action Settlement is returned to the Claims  
20 Administrator with a forwarding address, the Claims Administrator will re-send the Notice of  
21 Class Action Settlement to the forwarding address affixed thereto, and the forwarding  
22 address will be deemed the last known address for that Class Member.

23 69.8 In the event that the first mailing of the Notice of Class Action Settlement is  
24 returned without a forwarding address, the Claims Administrator will immediately conduct a  
25 standard skip trace in an effort to ascertain the current address for the particular Class  
26 Member in question. If a more recent or accurate address is found by this method, the  
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1 Claims Administrator will resend the Notice of Class Action Settlement to the new address  
2 within three (3) calendar days of identifying the new address information.

3 69.9 If no new information is ascertained by means of a skip trace, or if the Notice  
4 of Class Action Settlement is returned to the Claims Administrator after using an address  
5 obtained from a standard skip trace, the Claims Administrator will immediately perform a  
6 manual "in-depth skip trace" to locate a more recent or accurate address. If a more recent or  
7 accurate address is found by this method, the Claims Administrator will resend the Notice of  
8 Class Action Settlement to the new address within three (3) calendar days of identifying the  
9 new address information.

10 69.10 Re-mailing of the Notice of Class Action Settlements does not extend the Opt-  
11 Out Deadline for any Class Member.

12 69.11 All of the costs incurred relating to the skip traces described above shall fall  
13 within the definition of Claims Administration Costs.

14 70. In the event that the procedures set forth herein are followed and the intended  
15 recipient of a Notice of Class Action Settlement still does not receive the Notice of Class Action  
16 Settlement, or any portion thereof, and does not submit a timely and valid Form, the intended  
17 recipient will nevertheless be deemed a Participating Class Member and will be bound by this  
18 Stipulation and the order of Final Approval entered by the Court.

19 71. Exclusion ("Opting-Out") From Stipulation.

20 71.1 Procedure for Exclusion. The Notice of Class Action Settlement shall provide  
21 Class Members with instructions on how to exclude themselves from this Stipulation. Class  
22 Members may exclude themselves by signing and mailing to the Claims Administrator a  
23 statement containing their name, address, and telephone number, and requesting exclusion  
24 from the settlement. Class Counsel will recommend participation in the Stipulation to the  
25 Class and any Class Member that they represent.

26 71.2 Deadline to Request Exclusion From Settlement. To be valid, the statement  
27 requesting exclusion must be mailed to the Claims Administrator by the Opt-Out Deadline,  
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1 which, subject to Court approval, shall be sixty (60) calendar days after the Initial Mailing of  
2 the Notice of Class Action Settlement. The date of mailing of the written statement  
3 requesting exclusion from this Stipulation is deemed to be the date the statement is deposited  
4 in the U.S. Mail, postage prepaid, as evidenced by the postmark. If the last day of the Notice  
5 Period falls on a Sunday or legal holiday, the Opt-Out Deadline will be extended to the next  
6 day on which the U.S. Postal Service is open. Class Members who do not properly and/or  
7 timely submit the request for exclusion become Participating Class Members and shall be  
8 bound by the terms of this Stipulation. Class Members who submit a timely and valid  
9 Request of Exclusion from this Stipulation shall receive no settlement payment under this  
10 Stipulation.

11 71.3 Notification of Opt-Outs. Within five (5) calendar days after the expiration of  
12 the Notice Period, the Claims Administrator shall notify Class Counsel and Defendant's  
13 Counsel of the Class Members (by name and employee identification number only) who have  
14 opted out of the Stipulation. No party or their counsel shall advise or attempt to persuade any  
15 Class Member to rescind a decision to opt out of the Stipulation.

16 71.4 Defendant's Option to Terminate Stipulation. If five percent (5%) or more of  
17 the Class Members Opt-Out of the Stipulation, then Defendant shall have the right, in its sole  
18 discretion, to rescind the Stipulation and revoke conditional class certification. Defendant  
19 must exercise its right to rescind in writing to Class Counsel within twenty (20) calendar  
20 days after receipt of notification of Opt-Outs from the Claims Administrator.

21 72. Objections to Stipulation.

22 72.1 Procedure for Objection to the Stipulation. A Class Member may object to  
23 this Stipulation. To object to the Stipulation, a Class Member must file with the Settlement  
24 Administrator a notice of objection, signed by the Class Member, stating: (i) the Class  
25 Member's name; (ii) current address; (iii) telephone number; (iv) last 4-digits of his or her  
26 social security number; and (v) the basis of the objection ("Notice of Objection"). The Class  
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1 Member must serve a copy of his or her objection on Counsel for the Parties by the Opt-Out  
2 Deadline.

3 72.2 Deadline to Submit Objection. The Notice of Objection must be filed and  
4 served by mail no later than sixty (60) calendar days after the Initial Mailing of the Notice of  
5 Class Action Settlement. The date of filing and service of the Notice of Objection is deemed  
6 to be the date it is deposited in the U.S. Mail, postage pre-paid, as evidenced by the  
7 postmark. Class Members who fail to file and serve a Notice of Objection in the manner  
8 specified above shall be deemed to have waived any objections and shall be foreclosed from  
9 making any objections (whether by appeal or otherwise) to the Stipulation. Class Members  
10 who timely file and serve a Notice of Objection will have a right to appear at the Final  
11 Approval Hearing to have their objections heard by the Court.

12 72.3 At no time shall any of the Parties or their counsel seek to solicit or otherwise  
13 encourage Class Members to submit a Notice of Objection to the Stipulation or appeal from  
14 the order of Final Approval. Class Counsel shall not represent any Class Members with  
15 respect to any such objections to this Stipulation.

16 72.4 Notification of Objections. Within five (5) calendar days after the expiration  
17 of the Notice Period, the Settlement Administrator shall notify Class Counsel and  
18 Defendant's Counsel of the Class Members (by name and employee identification number  
19 only) who have objected to the settlement, and of any statements or information provided by  
20 the objecting Class Member(s).

21 73. Payment Procedure. The Claims Administrator, on Defendant's behalf, shall have the  
22 authority and obligation to make all payments, credits and disbursements, calculated in accordance  
23 with the methodology set out in this Stipulation and by Final Approval order of the Court. The  
24 Claims Administrator's duties will include reporting payment of the Individual Settlement Payment  
25 to all required taxing and other authorities, paying all employer taxes, and issuing IRS Forms W-2  
26 and 1099. No person shall have any claim against Released Parties, Plaintiffs, Class Members, Class  
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1 Counsel or the Claims Administrator based on distributions and payments made in accordance with  
2 this Stipulation.

3           73.1 Creation of Gross Settlement Amount Fund. Within thirty (30) calendar days  
4 of the Effective Date, Defendant will wire or deposit the Gross Settlement Amount into an  
5 interest-bearing account created by the Claims Administrator. In the event that any interest is  
6 earned on any portion of the Gross Settlement Amount prior to distribution to Participating  
7 Class Members, Class Counsel, the Class Representatives, and/or the Claims Administrator,  
8 such interest shall revert to Defendant and shall not be included in the Gross Settlement  
9 Amount. In the event of a timely appeal from an order of Final Approval, the Final Approval  
10 will be stayed and all payments required under this Stipulation will not be paid pending the  
11 completion and final resolution of the appeal, and any payments thereafter will: (i) only  
12 occur if the order of Final Approval is upheld after all appeals, and (ii) be distributed in a  
13 manner that is provided for in this Stipulation and in the order of Final Approval.

14           73.2 Individual Settlement Payment to Currently Employed Class Members. Class  
15 Members employed by Defendant as of the date of Preliminary Approval who do not Opt-  
16 Out or file and serve a Notice of Objection to the Stipulation upon receiving a Notice of  
17 Class Action Settlement, and thus become Participating Class Members, will automatically  
18 receive their Individual Settlement Payment after the Court grants Final Approval or, if there  
19 is an appeal, after Final Approval is affirmed on appeal.

20           73.3 Individual Settlement Payment to Formerly Employed Class Members. Class  
21 Members not employed by Defendant as of the date of Preliminary Approval shall be  
22 considered formerly employed Class Members. Formerly employed Class Members who do  
23 not Opt-Out or timely file and serve a Notice of Objection to the Stipulation, must complete  
24 and return a Claim Form within sixty (60) days of being issued a Notice of Class Action  
25 Settlement to receive their Individual Settlement Payment after the Court grants Final  
26 Approval or, if there is an appeal, after Final Approval is affirmed on appeal. Named  
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1 Plaintiffs/Class Representatives who are former employees of Defendant need not submit a  
2 claim form to receive all payments due to them under this Agreement.

3 74. Mailing of Individual Settlement Payment Checks. The Claims Administrator shall  
4 be responsible for calculating and mailing Individual Settlement Payments to Participating Class  
5 Members. Not later than forty-five (45) calendar days following the Effective Date, the Claims  
6 Administrator shall mail to each Participating Class Member a check in the amount of his or her  
7 Individual Settlement Payment, less any applicable taxes or withholdings as set forth in Paragraphs  
8 67.1-67.2 above regarding Tax Treatment of Individual Settlement Payments. A release of all  
9 claims against the Released Parties will be incorporated into a restrictive endorsement on the back of  
10 all Individual Settlement Payments checks. That restrictive endorsement shall read as follows:  
11 "This check is issued in full and final settlement of all claims made by the plaintiffs on behalf of  
12 themselves and a class of similarly situated persons in Downs, et al. v. U.S. Foodservice, Inc., Case  
13 No.C10-2163 EMC, U.S. District Court for the Northern District of California. By endorsing or  
14 otherwise negotiating this check, the payee hereby releases U.S. Foodservice, Inc. and the Released  
15 Parties identified in the Settlement Agreement in that case, from all claims released in that  
16 Settlement Agreement as further specified in that Agreement." The claims referenced by the  
17 foregoing endorsement language are those specified in paragraph 78 of this Agreement.

18 75. Returned Settlement Checks. In the event that an Individual Settlement Payment  
19 check is returned to the Claims Administrator with a forwarding address, the Individual Settlement  
20 Payment check will be forwarded to the forwarding address. In the event an Individual Settlement  
21 Payment check is returned to the Claims Administrator without a forwarding address or is otherwise  
22 undeliverable, the Claims Administrator will conduct a standard search and re-mail the returned  
23 Individual Settlement Payment check, and the expense of such search shall be part of the Claims  
24 Administration Costs. If within the ninety (90) calendar day period the Participating Class Member  
25 contacts the Claims Administrator or counsel for either Party with a new address, the Individual  
26 Settlement Payment check will be reissued and mailed to the new address provided. Any such  
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1 reissued Individual Settlement Payment check will indicate on its face that it is void if not negotiated  
2 within ninety (90) calendar days of its issuance.

3 76. The Settlement Administrator shall, set aside from the Settlement Fund a "Reserve  
4 Fund" in the amount of \$50,000, to be available to pay any late or disputed payments approved by  
5 the Settlement Administrator within one year after the entry of the Court's order granting final  
6 approval of the Settlement. The Settlement Administrator shall hold the Reserve Fund in an interest-  
7 bearing account. All interest accrued shall remain in the Reserve Account unless and until expended  
8 for such late or disputed payments pursuant to this Settlement Agreement, and any remaining funds  
9 not so expended shall be paid to the court-approved *cy pres* beneficiary(ies) as provided in the next  
10 paragraph.

11 77. Disposition of Funds From Uncashed Individual Settlement Payment Checks.  
12 Individual Settlement Payment checks shall be negotiable for not less than ninety (90) calendar days  
13 from issuance. All Individual Settlement Payment checks will indicate on their face that they are  
14 void if not negotiated within ninety (90) calendar days of issuance. Those funds represented by  
15 Individual Settlement Payment checks returned as undeliverable and those Individual Settlement  
16 Payment checks remaining uncashed for more than ninety (90) calendar days after issuance shall be  
17 paid to a *cy pres* beneficiary(-ies) to be selected by the Defendant, subject to approval by the Court.

18 78. Release of Claims.

19 78.1 Terms of Release. In consideration of the mutual promises contained herein,  
20 the Class Representatives, on behalf of themselves, and each of their heirs, representatives,  
21 successors, assigns, and attorneys, specifically agree to forever fully and finally release,  
22 waive, acquit and discharge, to the fullest extent permitted by law, all claims, charges,  
23 complaints, liens, demands, causes of action, obligations, damages and liabilities, whether  
24 known or unknown, including but not limited to all claims delineated in the subsequent  
25 section below. Further, Class Representatives agree to sign this Stipulation and to be bound  
26 by the terms herein stated, and further agree not to request to be excluded from the  
27 Stipulation and agree not to object to any of the terms of the Stipulation. Any such request

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1 for exclusion or objection by a Class Representative shall therefore be void and of no force or  
2 effect.

3 78.2 Released Claims. Upon the Effective Date, Class Members who do not Opt-  
4 Out during the Notice Period, on behalf of themselves, and each of their heirs,  
5 representatives, successors, assigns, and attorneys, agree to compromise, release, resolve,  
6 relinquish, discharge and settle each and all of the Released Parties from each of the Alleged  
7 Claims and/or any claims related to or arising out of the same factual predicate of this  
8 Action, the Complaint, or the Amended Complaint, whether known or unknown, that exist in  
9 their favor through the date of Final Approval. Collectively, the claims released by the Class  
10 Members shall be known as the "Released Claims."

11 78.3 The Released Claims include all claims asserted or unasserted, by Class  
12 Members arising before or during the Class Period, whether in the nature of claims for  
13 damages, liquidated damages, punitive damages, unpaid wages and/or overtime pay,  
14 premium pay, pay for non-compliant meal or rest periods, waiting-time penalties, wage  
15 statement penalties, interest, attorney's fees, costs or injunctive relief or other penalties or  
16 remedies that were or could have been asserted out of, relating to, or in connection with any  
17 type of actual or alleged violation of any wage and hour laws asserted in the Action, the  
18 Complaint, or the First Amended Complaint or that arise from the same factual predicate of  
19 the Action, the Complaint, the Amended Complaint, whether known or unknown, including  
20 but not limited to claims for unpaid wages, overtime, non-compliant meal periods, non-  
21 compliant rest periods, waiting time penalties, and wage statement penalties. The Released  
22 Claims include all claims that were or could have been alleged in this Action, the Complaint,  
23 or the First Amended Complaint, including but not limited to claims for (i) failure to provide  
24 timely meal and rest periods and/or pay missed meal and rest premium pay in violation of  
25 California Labor Code sections 226.7, 512 and IWC Wage Order No. 7 or any other law, rule  
26 or ordinance; (ii) failure to pay wages when due and/or made illegal deductions from wages  
27 in violation of California Labor Code sections 1194, 1194.2, 204, 218, 1197, 1198, and 221



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1 or any other law, rule or ordinance; (iii) failure to pay compensation due upon termination in  
2 violation of California Labor Code sections 201, 202 and 203 or any other law, rule or  
3 ordinance; (iv) failure to provide accurate itemized wage statements in violation of California  
4 Labor Code sections 226, 226.3, or any other law, rule or ordinance; (v) failure to comply  
5 with California Business & Professions Code sections 17200 et seq.; (vi) penalties pursuant  
6 to Labor Code section 2699 et. seq., and any claims for interest or penalties arising  
7 therefrom; (vii) any claims that could have been brought under the California Labor Code,  
8 including, without limitation, Sections 210, 216, 218.5, 225.5, 558, and 1197.1, (vii) any  
9 claims that could have been brought under the Fair Labor Standards Act or similar federal or  
10 state governmental agencies regulating wage and hour or labor and employment laws, and  
11 (ix) any claims that could have been brought under the Industrial Welfare Commission Wage  
12 Orders.

13 78.4 With respect to any and all Released Claims, the Parties stipulate and agree  
14 that, upon the Effective Date, the Class Members shall and have, by operation of the  
15 judgment, waived and relinquished, to the fullest extent permitted by law, the provisions,  
16 rights, and benefits of § 1542 of the California Civil Code, which provides:

17 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
18 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
19 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
20 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**  
21 **OR HER SETTLEMENT WITH THE DEBTOR.”**

22 Class Members agree that each shall and has, upon the Effective Date and by operation of the  
23 Judgment, waived any and all provisions, rights and benefits conferred by any law of any  
24 state or territory of the United States, or principal of common law which is similar,  
25 comparable or equivalent to § 1542 of the California Civil Code with respect to the Released  
26 Claims. Class Members may thereafter discover facts in addition to or different from those  
27 which he or she now knows or believes to be true with respect to the subject matter of the  
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Released Claims, but each stipulates and agrees to, upon the Effective Date, fully, finally and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule without regard to the subsequent discovery or existence of such different or additional facts.

78.5 Each Participating Class Member, regardless of whether they submitted a timely claim, will be deemed to have released the Released Parties from the Released Claims, and covenants not to sue any of the Released Parties for any Released Claims.

78.6 California Labor Code Section 206.5. In connection with the above Release, and in consideration of Defendant's payments of the sums provided herein, each and every Participating Class Member will be deemed also to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Parties hereto or the Participating Class Members because there is a good faith dispute as to whether any wages are due at all to any Class Member. California Labor Code Section 206.5 provides in pertinent part as follows:

**"AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION OF A RELEASE OF A CLAIM OR RIGHT ON ACCOUNT OF WAGES DUE, OR TO BECOME DUE, OR MADE AS AN ADVANCE ON WAGES TO BE EARNED, UNLESS PAYMENT OF THOSE WAGES HAS BEEN MADE."**

78.7 Previously Released Claims. To the extent a Class Member previously settled or released claims covered by this Stipulation (e.g., as part of a separation agreement), after the filing of the Action, this Stipulation shall not impair the enforceability of such release, and the amount of the Individual Settlement Payment otherwise payable to that individual shall be reduced by the amount of consideration received by the individual in exchange for a release encompassing claims covered by this Stipulation.

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79. Motions for Court Approval.

79.1 Preliminary Approval. Within fourteen (14) calendar days after the execution of this Stipulation, the Class Representatives and Class Counsel shall submit to the Court: (i) a fully executed copy of this Stipulation; (ii) a noticed motion seeking the Court's Preliminary Approval of this Stipulation; (iii) a proposed order granting such Preliminary Approval; (iv) the proposed Notices of Class Action Settlement; and (v) any other documents consistent with the Stipulation reasonably necessary to obtain the Court's approval of the Stipulation. The Class Representatives and Class Counsel will ask the Court to maintain jurisdiction of this matter for the purpose of monitoring compliance with and performance under this Stipulation and any and all orders and judgments, including the Judgment, entered by the Court.

79.2 Final Approval. The Class Representatives and Class Counsel shall request that a Final Approval hearing be set within a reasonable time after the Opt-Out Deadline expires. No later than twenty (20) calendar days before the Final Approval hearing, the Claims Administrator shall provide Class Counsel and Defendant's with a "declaration of compliance" with this Stipulation to be filed with the Court by Class Counsel. No later than fourteen (14) calendar days before the Final Approval hearing, the Class Representatives and Class Counsel shall file a Motion for Final Approval, Memorandum of Points and Authorities in Support of the Stipulation, and Motion for Attorney's Fees, Actual Costs and Class Representative Enhancement Awards, and any other documents reasonably necessary to obtain the Court's Final Approval.

80. Class Counsel Award. Class Counsel will submit an application for an award of attorneys' fees of up to Nine Hundred Thousand dollars (\$900,000), and an application for reimbursement of any Actual Costs associated with Class Counsel's litigation and settlement of the Released Claims not to exceed Fifteen Thousand dollars (\$15,000). The Court shall determine the amount of costs and attorneys' fees to be paid to Class Counsel (the "Class Counsel Award"). Not

1 later than ten (10) calendar days following the Effective Date, the Claims Administrator shall convey  
2 the Class Counsel Award to Class Counsel.

3 81. Each Party to Bear Own Costs. Except as is specifically provided herein, the Parties  
4 hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred  
5 by them or arising out of this Action, and will not seek reimbursement thereof from any Party to this  
6 Stipulation.

7 82. Enhancement Award. Class Counsel will submit applications for Plaintiffs Downs,  
8 Parker, and Ramirez for Ten Thousand dollars (\$10,000) each as an Enhancement Award for their  
9 time, effort and participation in this Action Class Representatives. Class Counsel will also submit  
10 applications for Plaintiffs Roman and Wolterding for Two Thousand, Five Hundred dollars (\$2,500)  
11 each as an Enhancement Award for their time, effort and participation in this Action as a Class  
12 Representative. Defendant will not oppose a motion for approval of such Enhancement Awards.  
13 Any portion of an Enhancement Award that is not awarded to a Class Representative will not revert  
14 to Defendant, but instead shall be added to the Net Settlement Amount for distribution to  
15 Participating Class Members. Not later than ten (10) calendar days following the Effective Date, the  
16 Claims Administrator shall issue and mail a check in the amount of the Enhancement Award to each  
17 Class Representative.

18 83. Severability. If any of the above provisions are found null, void, or inoperative, for  
19 any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the  
20 invalidation of any material term of this Stipulation, including but not limited to all the terms and  
21 provisions specified in the Release of Claims, will invalidate this Stipulation in its entirety unless the  
22 Parties subsequently agree in writing that the remaining provisions will remain in force and effect.

23 84. Headings. The descriptive headings of any paragraphs or sections of this Stipulation  
24 are inserted for convenience of reference only and do not constitute a part of this Agreement.

25 85. No Precedent. Neither the fact of this Stipulation, the existence of this Stipulation,  
26 the terms of this Stipulation, nor any order or action pursuant thereto may be referred to, relied upon,  
27 cited, or used as precedent in any case involving Defendant, the Class Representatives, or the Class

1 Members. Further, in the event that the terms of this Stipulation do not receive final approval from  
2 the Court (or if a final approval order is reversed on appeal), no part of this Stipulation nor any order  
3 or action pursuant thereto shall be operable or admissible for any purpose whatsoever in the Action  
4 or in any other action or proceeding.

5 86. Amendment or Modification. Unless otherwise provided herein, this Stipulation may  
6 be amended or modified only by a written instrument signed by counsel for all Parties or their  
7 successors-in-interest.

8 87. Entire Agreement. This Stipulation and any supplemental written agreement  
9 subsequently incorporated constitute the entire Stipulation among these Parties, and no oral or  
10 written representations, warranties or inducements have been made to any Party concerning this  
11 Stipulation other than the representations, warranties and covenants contained and memorialized  
12 herein. This Agreement, once it is fully executed, supersedes any and all prior agreements between  
13 the parties, whether written or verbal, including the parties' Memorandum of Understanding."

14 88. Authorization to Enter Into Stipulation. Each individual signing this Stipulation  
15 warrants that he or she has the authority and is expressly authorized to enter into this Stipulation on  
16 behalf of the party for which that individual signs.

17 89. Advice of Counsel. The parties to this Stipulation are represented by competent  
18 counsel, and they have had an opportunity to consult with counsel. The Parties to this Stipulation  
19 agree that it reflects their good faith compromise of the claims raised in this action, based upon their  
20 assessment of the mutual risks and costs of further litigation and the assessments of their respective  
21 counsel.

22 90. Binding on Successors and Assigns. This Stipulation shall be binding upon and inure  
23 to the benefit of the successors or assigns of the Parties hereto, as previously defined.

24 91. California Law Governs. All terms of this Stipulation and the exhibits hereto shall be  
25 governed by and interpreted according to the laws of the State of California.

26 92. Counterparts. This Stipulation may be executed in one or more counterparts. All  
27 executed counterparts and each of them shall be deemed to be one and the same instrument provided

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1 that counsel for the Parties to this Stipulation shall exchange among themselves original signed  
2 counterparts.

3 93. Class Representatives' Waiver of Right to be Excluded and Object. Class  
4 Representatives agree to sign this Stipulation and, by signing this Stipulation, are bound by the terms  
5 herein stated and further agree not to request to be excluded from the Stipulation and agree not to  
6 object to any of the terms of this Stipulation. Any such request for exclusion or objection by a Class  
7 Representative shall therefore be void and of no force or effect.

8 94. Waiver of Certain Appeals and Reservation of Certain Rights. The Parties agree to  
9 waive all appeals with two exceptions. First, either party may appeal any court order that materially  
10 alters the terms of this Stipulation. Second, if the Court awards less than the requested attorney's  
11 fees and/or costs, Class Counsel reserves the right to appeal that reduction. A denial of the requested  
12 fee amount shall not void this Stipulation.

13 95. Request for Dismissal. No later than fourteen (14) days following the Effective Date,  
14 the Class Representatives and Class Counsel shall dismiss the Action with prejudice by filing a  
15 request for dismissal with prejudice with the Court, subject to the Court's retention of jurisdiction to  
16 supervise or enforce the implantation of this Stipulation. Class Counsel shall provide Defendant's  
17 counsel with a conformed copy of the request for dismissal with prejudice within three (3) court days  
18 after the request is entered by the Court. Following dismissal, the Court shall retain jurisdiction to  
19 ensure the enforcement of the Settlement Agreement.

20 96. Cooperation. The Parties shall cooperate fully with one another in seeking approval  
21 of the Court of this Stipulation (including all exhibits thereto) and to use their respective best efforts  
22 to consummate the Stipulation and cause the Final Approval to be entered and to become final. No  
23 Party to this Stipulation shall seek to evade his, her or its good faith obligations to seek approval and  
24 implementation of the Stipulation by virtue of any ruling, order, or other development, whether in  
25 the Action, in any other litigation or otherwise that hereafter might occur and might be deemed to  
26 alter the relative strengths of the Parties with respect to any claims or defenses or their relative  
27 bargaining power with respect to negotiating.

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5802

1           97. Confidentiality. The Parties and their counsel agree that they will not issue any press  
2 releases or press statements, post any internet disclosures, have any communications with the press  
3 or media about this Stipulation, or otherwise publicize the terms of this Stipulation in any medium,  
4 including but not limited to internet blogs or chat rooms, Facebook, or a law firm website, prior to  
5 the entry by the Court of an Order granting Preliminary Approval. Thereafter, Plaintiffs and their  
6 counsel agree not to issue press releases, hold any press conferences, or otherwise actively publicize  
7 the settlement, but will be permitted to post a brief description of the case and/or class notice on their  
8 firms' web sites. Notwithstanding the foregoing, the Parties shall have the right to disclose this  
9 Stipulation as may be required under federal or state tax and/or securities laws or under generally  
10 accepted accounting principles, and may disclose in legal proceedings a summary of the terms of this  
11 Stipulation.

SIGNATURES

12  
13 Dated: February \_\_, 2012                                           LORETTA DOWNS  
14  
15 By: \_\_\_\_\_  
16 Loretta Downs  
17 Plaintiff

18 Dated: February \_\_, 2012                                           D'ANDRE PARKER  
19  
20 By: \_\_\_\_\_  
21 D'Andre Parker  
22 Plaintiff

23 Dated: February \_\_, 2012                                           KIRK RAMIREZ  
24  
25 By: \_\_\_\_\_  
26 Kirk Ramirez  
27 Plaintiff

28                                                                                                           31  
JOINT STIPULATION OF CLASS ACTION SETTLEMENT  
Case No. 08-03894-SI

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5802

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Dated: February \_\_, 2012

RAUL ROMAN

By: \_\_\_\_\_

Raul Roman  
Plaintiff

Dated: February \_\_, 2012

JASON WOLTERDING

By: \_\_\_\_\_

Jason Wolterding  
Plaintiff

Dated: ~~February \_\_, 2012~~

*March 30, 2012  
(as amended)*

GOLDSTEIN, DEMCHAK, BALLER, BORGAN &  
DARDARIAN

By: \_\_\_\_\_

*Morris J. Baller*  
Morris J. Baller  
Attorneys For Plaintiffs  
LORETTA DOWNS AND D'ANDRE PARKER

Dated: February \_\_, 2012

HAMMONDLAW, PC

By: \_\_\_\_\_

Julian Hammond  
Attorneys For Plaintiffs  
LORETTA DOWNS AND D'ANDRE PARKER

Dated: February \_\_, 2012

ACKERMANN & TILAJEF, P.C.

By: \_\_\_\_\_

Craig J. Ackermann  
Attorneys For Plaintiffs  
LORETTA DOWNS AND D'ANDRE PARKER



Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5802

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Dated: February \_\_, 2012

US FOODS

By: \_\_\_\_\_

On behalf of Defendant  
US FOODS

Dated: *March* February *3<sup>rd</sup>*, 2012

WINSTON & STRAWN LLP

*(As Amended)*

By: \_\_\_\_\_

Joan B. Tucker Fife  
Attorneys For Defendant  
U.S. FOODSERVICE, INC.

**Amended Exhibits A & B to  
Amended Stipulation for Class  
Action Settlement and Release**

# Exhibit A

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**TO: All current and former Drivers employed by USF whose regular job responsibilities include(d) driving trucks on routes within California ("Driver") at any time during the period from April 9, 2006 to [the date of preliminary approval], 2012 ("Class Period"). This includes drivers based in Reno, Nevada and Phoenix, Arizona who drive regular routes in California.**

*This Notice was authorized by the Court. This is not a solicitation from a lawyer.*

Description of Lawsuit for Which This Notice Is Being Sent

- Loretta Downs and D'Andre Parker ("Plaintiffs"), two Drivers who worked for U.S. Foodservice, Inc. ("USF") in California, brought a lawsuit alleging, among other things, that USF violated meal and rest period requirements of law, failed to pay for all hours worked based on the application of automatic meal break deductions, failed to provide accurate itemized wage statements, and failed to pay all wages due to former Drivers on their separation of employment. Based on these claims, they alleged that USF owes them and other Drivers additional wages and penalties.
- USF strongly denies all the claims and contentions alleged in the lawsuit and maintains it has fully complied with the law.
- The parties have reached a settlement to avoid the costs and risks of litigation. **READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>RECEIVE PAYMENT UNDER THE SETTLEMENT AGREEMENT</b>	<b>Current Drivers who wish to participate in the settlement:</b> You will receive payments automatically and <u>do not need to submit a claim form</u> or take any other action. <b>Former Drivers, Drivers hired since October 2010, and Drivers based in Nevada or Arizona who drove routes in California:</b> <u>must submit a claim form</u> in order to receive a settlement payment. A Claim Form and instructions on how to submit it are enclosed with this Notice.
<b>REQUEST EXCLUSION FROM THE SETTLEMENT</b>	If you wish to be excluded from the settlement, you must submit a request for exclusion according to the instructions contained in this Notice. If you submit a request for exclusion, you will not be bound by the settlement and you will not receive any settlement payment.
<b>DO NOTHING</b>	<b>Current Drivers who do nothing will automatically receive a settlement payment.</b> You will forfeit your right to bring or participate in any similar action that may be filed against USF. <b>Former Drivers, Drivers hired since October 2010, and Drivers based in Nevada or Arizona who drove routes in California, who do nothing will not receive a settlement payment.</b> If you are in this group, you will also lose your right to bring or participate in any similar action that may be filed against USF.

<b>OBJECT</b>	You have the right to object to the terms of the settlement. If you wish to object, you must provide the Settlement Administrator a written objection stating why you do not agree with the settlement, according to the instructions contained in this Notice.
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- **Your options are more fully explained in this notice below. The deadline to submit a claim, submit an objection, or request exclusion is [60 days from date of mailing].**

**1. Why did I receive this notice?**

USF's records show that you may be entitled to share in the funds to be made available for settlement of a class action. You are not being sued and you will not be individually responsible for any of the attorneys' fees or costs of the litigation as the settlement requires those amounts to be paid from the Settlement Fund paid by USF. However, your rights may be affected by the settlement agreement described in this Notice. This Notice tells of your rights to share in the settlement and, if you do not wish to participate in the settlement, your ability to instead "opt-out" of the settlement. It also tells you how to object to the settlement if you wish to do so.

The Plaintiffs and USF have entered into a Stipulation for Class Action Settlement and Release ("Settlement Agreement") that fully sets forth the details of the settlement. You may obtain a copy of the Settlement Agreement from either the Settlement Administrator or the Plaintiffs' counsel. (Details concerning where to get additional information, including a copy of the Agreement, are provided at the end of this Notice.) The proposed Settlement Agreement has been submitted to the Court, and has been preliminarily approved for settlement purposes only. The settlement class ("Settlement Class") preliminarily approved by the Court is defined as follows:

All current and former Drivers employed by USF whose regular job responsibilities include(d) driving trucks on routes within California during the Class Period at any time during the period from April 9, 2006 to [the date of preliminary approval], 2012. This includes drivers based in Reno, Nevada and Phoenix, Arizona who drive regular routes in California.

You have received this Notice because records indicate that you are a member of the Settlement Class. The Court must approve the terms of the settlement described below as fair and reasonable to the Settlement Class. The settlement will affect all members of the Settlement Class who do not exclude themselves from the settlement. If the Court approves the settlement, an Administrator that has been appointed by the Court will make the settlement payments that the settlement requires. Those settlement payments are described in this Notice.

**2. What is the case about?**

On April 9, 2010, Loretta Downs and D'Andre Parker, who were current or former Drivers, filed a class action in the Superior Court of California, County of Alameda. USF removed the case to Federal Court, which is now handling the settlement procedures. The Plaintiffs, individually and on behalf of all others similarly situated, alleged that USF violated meal and rest period laws, failed to pay wages due as a result of automatic lunch deductions, failed to provide accurate itemized wage statements, owes waiting time penalties pursuant to the California Labor Code and Wage Orders, engaged in unfair business practices in violation of Business & Professions Code §§ 17200 *et seq.*, and owes civil penalties pursuant to Labor

Code § 2698 *et seq.* for violations of the California Labor Code (the "Lawsuit"). Later in the case, three other Plaintiffs – Kirk Ramirez, Raul Roman, and Jason Wolterding, Sr. – joined in the Lawsuit. USF strongly denies all the claims and contentions alleged in the lawsuit and maintains it has fully complied with the law.

**3. What Are My Options?**

You may participate in the settlement, exclude yourself from it, or do nothing. In order to participate in the settlement, if you are not a currently employed Driver who was hired before October 2010, you must submit a Claim Form that is being sent to you along with this Notice. You also have a right to object to the settlement if you submit a Claim Form. The option you choose affects whether you receive a settlement payment and whether you give up certain rights. These options are also summarized in the chart on the first page of this Notice.

**a. Can you receive a settlement payment?**

**Current Drivers**

**Current Drivers who wish to receive a settlement payment do not need to take any action.** You will automatically receive your settlement payment when and if the Court gives final approval to the Settlement Agreement.

**Former Drivers, Drivers Hired After October 2010, or Drivers Based in Nevada or Arizona Who Drove Routes in California**

**Former Drivers, Drivers hired after October 2010, or Drivers based in Nevada or Arizona who drove routes in California and wish to receive payment, must submit a Claim Form on or before \_\_\_\_\_, 2012.** The Claim Form is attached to this Notice. You must complete, sign and date the Claim Form and return it, by First-Class U.S. Mail, to:

Rust Consulting, Inc.  
US Foods Settlement Administrator  
[Address]

The Claim Form must be postmarked no later than \_\_\_\_\_, 2012. If your Claim Form is not postmarked by \_\_\_\_\_, 2012, you will not receive any payment but you will be bound by the Release and all other terms of the Settlement. If the Claim Form is sent from within the United States, it must be sent through the United States Postal Service by First-Class Mail or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Claim Form. If you lose, misplace or need another Claim Form, you should contact the Claims Administrator immediately and request that another Claim Form be sent to you. **You are responsible for maintaining a photocopy of your fully completed Claim Form and record of proof of mailing.**

California law protects Class Members from retaliation based on their decision to participate in a class action settlement. Your decision to participate or not participate in this Settlement will not impact your employment with USF.

**b. Can you request to be excluded from the Settlement?**

If you exclude yourself from the settlement, you will not receive a settlement payment and will not be subject to the terms of the Agreement.

You may exclude yourself from the proposed settlement by taking the following steps.

- (1) You must complete and mail a statement containing your name, address and telephone number and requesting exclusion from the Settlement Agreement to the US Foods Settlement Administrator, whose name and address is listed above. The Request for Exclusion must be mailed to the same address listed above:
- (2) The request must be postmarked by [60 days after date of mailing of Notice].

You cannot both exclude yourself and obtain a settlement award or object to the settlement. If you exclude yourself from the settlement, you will not receive any settlement award, even if you also submit a Claim Form, unless you also rescind your Request for Exclusion by [60 days after date of mailing of Notice].

**c. What happens if I do nothing?**

If you are a current Driver and you do nothing, and the Settlement receives final approval from the Court, you will be included in the Settlement Class and you will automatically receive your settlement payment.

If you are a former Driver, a Driver hired after October 2011, or a Driver based in Nevada or Arizona who drove routes in California, and you do not timely submit a Claim Form or request exclusion from the settlement, and if the Settlement receives final approval from the Court, you will receive no money from this settlement, any legal claims you may have that are covered by the Settlement will be permanently given up.

**d. How do I object to the settlement?**

If you are satisfied with the proposed settlement, you do not need to express your views or appear at the hearing at which the Court will consider final approval of the settlement. However, if you wish to object to the proposed settlement you must take the following steps (your failure to do so will be deemed a waiver of your objections and you will not be permitted to appear at the hearing at which the Court will consider whether to grant final approval):

- (1) You must mail a written statement (a written letter is acceptable) to the Settlement Administrator listed above. The Settlement Administrator will send a copy of your objection to all parties involved in the case and to the Court.
- (2) The written statement **MUST** include: (i) a statement advising if you plan to address the Court at the hearing; (ii) a statement of your objections; and (iii) any other papers which you propose to submit to the Court, including any legal briefs or memoranda. You may appear personally, or through your own counsel, paid for at your expense.
- (3) The written statement must be postmarked by [60 days after mailing of Notice].

If you have satisfied the requirements set forth above, you have the right to address the Court at the hearing scheduled for [INSERT DATE OF THE HEARING] before the Honorable Edward Chen, United States District Court Judge, Northern District, Courtroom 5, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. For your objections to be considered, you must not also exclude yourself from the settlement.

4. **How much can I expect to receive if I submit a claim?**

a. **Summary of settlement**

The gross sum that USF will pay in connection with the settlement is Three Million Dollars (\$3,000,000) ("Gross Settlement Amount"). From the Gross Settlement Amount, payments will be made to Class Counsel for attorneys' fees and costs, to the Settlement Administrator for administration costs, to the California Labor and Workforce Development Commission for certain penalties owed to the State, and to a Reserve Fund established to provide for payments to certain Class Members who, through no fault of their own, cannot be located or fail to respond in a timely manner, and certain additional awards to the Plaintiffs for their representation of the Class. The amounts of those various payments are described in this Notice below. After deduction of those amounts, the remainder – the "Net Settlement Fund" – of approximately \$1,965,500, will be distributed to participating members of the Settlement Class. The maximum dollar amount that an individual Class Member can receive, assuming 100% participation, is estimated to be \$4,743. The average amount that individual class members will receive, assuming 100% participation, is estimated to be \$2,368.

Your individual settlement award will be based on the number of compensable workweeks you worked as a Driver for USF during the Class Period ("Compensable Workweeks"), as a pro-rata percentage of the total hours worked by all USF Drivers during the Class Period. Compensable Workweeks of Nevada/Arizona Drivers shall include only those weeks when they regularly drove routes primarily in California.

The Claims Administrator will pay settlement payments automatically to each Class Member who is a current USF Driver and who does not choose to opt out of the class.

The Claims Administrator will make settlement payments to each Class Member who is a former USF Driver, a Driver hired after October 2011, or a Driver based in Nevada or Arizona who drove routes in California and who submits a valid and timely Claim Form. All Claim Forms must be signed and completed in their entirety to be considered valid.

The enclosed Estimated Payment Form lists the amount you can expect to receive if you participate in the settlement based on USF's records of your Compensable Workweeks as a Driver during the Class Period. You have a right to challenge your Compensable Workweeks information by following the instructions on that enclosed Form. The estimated payment amount may be reduced or increased, however, based upon the information contained in the Estimated Payment Form, Claim Forms returned, such as challenges to hours worked, decisions of the Court regarding such challenges, the number of Claimants, the number of request[s] for exclusion submitted, whether additional class members are identified or come forward, the potential reallocation of some of the unclaimed funds to Claimants and the terms of the Court's final approval order.

(1) **Applicable Tax Withholding:**

Settlement payments to Class Members are allocated for tax purposes as follows: (1) 60% of each payment shall be deemed wages; and (2) 40% of the payment shall be treated as penalties and interest. In accordance with applicable tax laws, required tax withholdings will be taken out of from each Claimant's payment and remitted to the appropriate taxing authorities. Portions of any payments deemed to be wages will be subject to withholding for income taxes and the employee-paid portion of various employment-related taxes, including Social Security, FUTA, FICA, and Medicare taxes, and will be reported with an IRS Form W-2. USF will pay the employer's share of such taxes as required by applicable law. Portions



of any payment deemed to be non-wage payments not subject to withholding will be reported with an IRS Form 1099. Each Settlement Class member receiving a payment will receive appropriate documentation of deductions and withholdings. Settlement Class members shall be responsible for the tax consequences of all payments received by them, for filing returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. The parties to the case cannot provide and will not provide any advice regarding tax obligations. You should seek tax advice as to any amounts you receive pursuant to the Settlement from your own tax advisor.

(2) Claimed Settlement Amount; Unclaimed Amounts:

The Net Settlement Fund shall be divided into two separate funds: a) 85% of the Net Settlement Fund shall be used to make individual settlement payments to Class Members who are currently employed with USF, as of the date of Preliminary Approval, and who were among the 830 drivers identified by USF in October 2010 ("830 Drivers Group"); b) 15% of the Net Settlement Amount shall be used to create a reversionary fund, from which Individual Settlement Payments will be made to Participating Class Members (1) whose employment with USF ended prior to the date of Preliminary Approval and who were among the 830 drivers identified by USF in October 2010 ("Former Drivers"); (2) who were not among the 830 drivers identified by USF in October 2010 ("Newly Identified Drivers"); and (3) who are or were based in Reno, Nevada or Phoenix, Arizona and regularly drive or drove routes in California ("Nevada/Arizona Drivers"). Compensable Workweeks of Nevada/Arizona Drivers shall include only those weeks when they regularly drove routes primarily in California. For Former Drivers, Newly Identified Drivers, or Nevada/Arizona Drivers to receive payments, they must submit a Claim Form, and any amounts remaining that are not claimed will revert to USF.

b. Additional payments to the Named Plaintiffs

The Court will also be asked to award an incentive payment (also called an enhancement) to the Named Plaintiffs of \$35,000 (\$10,000 each to Downs, Parker, and Ramirez, and \$2,500 each to Roman and Wolterding). The incentive payments will be paid from the Gross Settlement Amount, which will reduce any payment made to you as a Settlement Class Member. This incentive payment is sought to compensate the Named Plaintiffs for their risk incurred and efforts in assisting with the prosecution of the Action on behalf of the Class Members and in return for executing a General Release of all Claims against the Released Parties, which is more broad than the release applicable to the Class Members who are not Named Plaintiffs. In exchange for this additional payment, the Named Plaintiffs are also giving up other rights in connection with their employment at USF.

c. Attorneys' Fees and Costs for the Class Counsel

You do not need to pay individually any portion of either the Class Counsel's or USF's attorneys' fees and costs. All payments for the Class Counsel's attorneys' fees and costs will be deducted from the Gross Settlement Amount, which will reduce any payment made to you as a Settlement Class Member. Class Counsel will apply to the court for approval of their attorneys' fees and costs. The attorneys for the Class will ask for reimbursement of their costs and will ask for fees of up to 30% of the Settlement Amount remaining after costs have been deducted (*i.e.*, the attorneys will request attorneys' fees up to \$900,000). The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable. The attorneys for the Class will also seek reimbursement of up to \$15,000.00 from the Gross Settlement Amount for their litigation costs incurred in bringing and mediating this case.

d. Settlement Administration Costs

Costs incurred by the Settlement Administrator in connection with providing Notice to the Class, receiving and determining challenges to estimated settlement payment amounts, receiving and forwarding

to the Court and the parties opt-out and objection letters received, if any, and calculating and distributing payments due to Class Members and others entitled to settlement payment under the terms of the Settlement Agreement as approved by the Court, will be paid from the Gross Settlement Amount up to a maximum of \$27,000.

**e. Penalty Payment to State**

A payment of \$7,500 of penalties due under the Settlement Agreement will be paid to the California Labor and Workforce Development Commission.

**f. All Payments Subject to Court Approval**

All of the payments listed above will be made if and only if the Court grants final approval to the Settlement Agreement based on its finding that the settlement is reasonable, fair and adequate for the Class. The amounts of those payments may be adjusted by the Court.

**5. What Will I Give Up if I Do Not Exclude Myself From the Settlement?**

The settlement relates to the time that you worked as a Driver for USF during the Class Period. If the proposed Settlement is approved, all Class Members who have not requested exclusion will have released the "Released Parties" from the "Released Claims" and will be permanently barred from suing or otherwise making a claim against any of the Released Parties that is in any way related to the Released Claims.

The Released Claims include all claims asserted or unasserted, by Class Members arising before or during the Class Period, whether in the nature of claims for damages, liquidated damages, punitive damages, unpaid wages and/or overtime pay, premium pay, pay for non-compliant meal or rest periods, waiting-time penalties, wage statement penalties, interest, attorney's fees, costs or injunctive relief or other penalties or remedies that were or could have been asserted out of, relating to, or in connection with any type of actual or alleged violation of any wage and hour laws asserted in the Action, the Complaint, or the First Amended Complaint or that arise from the same factual predicate of the Action, the Complaint, the Amended Complaint, whether known or unknown, including but not limited to claims for unpaid wages, overtime, non-compliant meal periods, non-compliant rest periods, waiting time penalties, and wage statement penalties. The Released Claims include all claims that were or could have been alleged in this Action, the Complaint, or the First Amended Complaint, including but not limited to claims for (i) failure to provide timely meal and rest periods and/or pay missed meal and rest premium pay in violation of California Labor Code sections 226.7, 512 and IWC Wage Order No. 7 or any other law, rule or ordinance; (ii) failure to pay wages when due and/or made illegal deductions from wages in violation of California Labor Code sections 1194, 1194.2, 204, 218, 1197, 1198, and 221 or any other law, rule or ordinance; (iii) failure to pay compensation due upon termination in violation of California Labor Code sections 201, 202 and 203 or any other law, rule or ordinance; (iv) failure to provide accurate itemized wage statements in violation of California Labor Code sections 226, 226.3, or any other law, rule or ordinance; (v) failure to comply with California Business & Professions Code sections 17200 et seq.; (vi) penalties pursuant to Labor Code section 2699 et. seq., and any claims for interest or penalties arising therefrom; (vii) any claims that could have been brought under the California Labor Code, including, without limitation, Sections 210, 216, 218.5, 225.5, 558, and 1197.1, (viii) any claims that could have been brought under the Fair Labor Standards Act or similar federal or state governmental agencies regulating wage and hour or labor and employment laws, and (ix) any claims that could have been brought under the Industrial Welfare Commission Wage Orders.

Settlement Class Members who do not exclude themselves from the settlement will be deemed to have fully and finally released USF, its present and former parent companies, subsidiary companies, related or affiliated companies, predecessors, fiduciaries, shareholders, partners, owners, officers, directors, employees, agents, managers, including their office, branch, district, and division managers and their assistant managers, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with USF or any of them ("Released Parties"), from the Released Claims.

**6. Will I be subject to discipline based on whether I receive payment or submit a claim?**

No. Whether you are a current or former USF Driver, your decision as to whether or not to submit a Claim Form or receive payment as part of the settlement will in no way affect your employment with USF. **USF is prohibited by law from retaliating in any way based on your decision whether or not to participate in the settlement.**

**7. What if I disagree with the stated number of Compensable Workweeks?**

The enclosed Estimated Payment Form contains information on how each Class Member's estimated settlement payment amount was calculated based on the number of Compensable Workweeks a Driver worked during the Class Period, and contains a form and instructions for disputing that information, if desired.

All challenges must be submitted by \_\_\_\_\_, 2012. All Compensable Workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision will be final and binding.

**8. Where can I get additional information?**

This Notice only summarizes this lawsuit, the Settlement, and related matters. For more information, you may find and review the Settlement Agreement and this Notice which are posted on the websites of the Settlement Administrator, [RUST WEB ADDRESS], or of the Class Counsel firm Goldstein, Demchak, Baller, Borgen & Dardarian, [www.gdblegal.com]. You may also inspect the Court files at the Clerk of the Court, United States District Court Judge, Northern District, San Francisco Courthouse, Courtroom 5, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, from 10:00 a.m. to 4:00 p.m., Monday through Friday, excluding any holidays or other days the Court may be closed. If you have questions about the settlement, you may also contact counsel for the class as follows:

**ACKERMANN & TILAJEF, P.C.**

Craig J. Ackerman, Esq.  
Tatiana Hernandez, Esq.  
1180 S. Beverly Drive, Suite 610  
Los Angeles, California 90035  
Telephone: 310-277-0614  
Facsimile: 310-277-0635  
cja@laborgators.com  
tatiana@laborgators.com

**GOLDSTEIN, DEMCHAK, BALLER,**

**BORGEN & DARDARIAN**  
Morris J. Baller, Esq.  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
Telephone: (510) 763-9800  
Facsimile: (510) 835-1417  
mballer@gdblegal.com

**HAMMONDLAW LLP**  
Julian Hammond, Esq.  
1180 South Beverly Drive, Suite 601  
Los Angeles, California 90035  
Telephone: (310) 601-6766  
Facsimile: (310) 295-2385  
[Hammond.julian@gmail.com](mailto:Hammond.julian@gmail.com)

You may also contact the claims administrator as follows:

**US Foods Settlement Administrator**  
c/o Rust, Inc.  
[Address]

**Toll free telephone number: (xxx) xxx-xxxx**

**PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE OFFICE OF THE  
CLERK (OTHER THAN TO INSPECT THE COURT FILES) FOR INFORMATION REGARDING  
THIS SETTLEMENT OR THE CLAIM PROCESS.**

# Exhibit B

**ESTIMATED PAYMENT FORM AND INSTRUCTIONS TO CHALLENGE  
DATES OF EMPLOYMENT**

*(Version 1 – For Class Members Currently Employed by US Foods who were  
Hired by Defendant Before October 2010)*

LORETTA DOWNS AND D'ANDRE PARKER ET AL VS. U.S.  
FOODSERVICE, INC., CASE NO. C10-2163 EMC, IN THE UNITED STATES  
DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

**Your estimated share of the settlement in this case is \$XXXXXX.  
This estimate is based on the dates of employment, excluding leaves  
of absence, as listed on page 2 of this form.**

**If you accept your dates of employment, you do not need to do  
anything to receive your share of the settlement (unless you also  
need to update or correct your mailing address).**

**If you wish to challenge the dates of employment listed on page 2,  
carefully follow the instructions on this form.**

**TO CHALLENGE THE ESTIMATED AMOUNT OF PAYMENT BASED ON  
THE DATES OF EMPLOYMENT AS A DRIVER, THIS FORM MUST BE  
SIGNED AND POSTMARKED OR FAXED NOT LATER THAN**

**\_\_\_\_\_**

**MAIL TO:  
CLAIMS ADMINISTRATOR  
c/o Rusl Consulting, Inc.  
[INSERT ADDRESS]**

**Important:**

1. You do NOT have to submit this form if you believe the dates of employment listed below are accurate.
2. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment.

3. If you change your mailing address, please send your new mailing address to the Administrator. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your settlement payment.

**EMPLOYMENT DATES AND CHALLENGE INFORMATION**

<<Name>>

<<Address>>

<<City>>, <<State> <Zip>>

(\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_  
Home Telephone Number

**Your Compensable Workweeks**

US Foodservice' records show that during the Class Period of April 9, 2006 through [INSERT DATE OF PRELIMINARY APPROVAL], you held the position of Driver in the following time periods:

<<Dates>>

During this time, you were on a leave of absence for \_\_\_ days. (or "N/A" if no leaves of absence noted)

Your total number of Compensable Workweeks is: <<number of workweeks>>

**Your Estimated Payment**

Based on the estimated share for each compensable workweek at an estimated amount per week worked of \$\_\_\_\_\_, your settlement share is currently estimated at \$\_\_\_\_\_, assuming that all Settlement Class Members identified to date participate in the Settlement (*i.e.*, can be located and do not opt out). This amount is subject to change, either up or down, depending on the number of Settlement Class Members who submit challenges to estimated amounts, the outcome of those challenges, the number of Class Members who opt out, and other possible factors.



**CHALLENGE**

*Check a box below ONLY if you wish to challenge the dates listed below. All Fields must be complete for your challenge to be accepted:*

- I wish to challenge the employment dates listed above. I have included a written statement detailing what I believe to be my correct dates of employment as a Driver with US Foods in California during the period from April 9, 2006 through [INSERT PRELIMINARY APPROVAL DATE]. I have also included information and/or documentary evidence that supports my challenge. I understand that, by submitting this challenge, I authorize the Administrator to review US Foods' records and determine the validity of my challenge based on US Foods' records as well as the dates, records and information that I am submitting. This includes information related to any possible Family Medical Leave Act (FMLA)/California Family Responsibility Act (CFRA) leave that I may have been on while employed by US Foods.

\_\_\_\_\_  
Signature

Name of Class Member \_\_\_\_\_ [preprinted]

Class Member ID Number (from address label):  
\_\_\_\_\_ [preprinted]

I believe that my correct dates of employment as a Driver for US Food during the class period are \_\_\_\_\_ to \_\_\_\_\_.

Statement of reasons and documentation of dates of employment according to Class Member: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[attach documentation and use separate page(s) as necessary]

**ESTIMATED PAYMENT FORM AND INSTRUCTIONS TO CHALLENGE  
DATES OF EMPLOYMENT**

*(Version 2, for Class Members formerly employed by U.S. Foods, those based in Nevada or Arizona who drove routes in California, and those hired after October 2010)*

LORETTA DOWNS AND D'ANDRE PARKER ET AL VS. U.S.  
FOODSERVICE, INC., CASE NO. C10-2163 EMC, IN THE UNITED STATES  
DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

**Your estimated share of the settlement in this case is \$XXXXXX. This estimate is based on the dates of employment, excluding leaves of absence, as listed on page 2 of this form.**

**You must file a Claim Form, which is also attached to the Notice, if you want to participate in the monetary payments under the settlement agreement.**

**If you accept your dates of employment, you do not need to do anything other than filing the Claim Form to receive your share of the settlement (unless you also need to update or correct your mailing address).**

**If you wish to challenge the dates of employment listed on page 2, carefully follow the instructions on this form.**

**TO CHALLENGE THE ESTIMATED AMOUNT OF PAYMENT BASED ON THE DATES OF EMPLOYMENT AS A DRIVER, THIS FORM MUST BE SIGNED AND POSTMARKED OR FAXED NOT LATER THAN**

\_\_\_\_\_.

<p>MAIL TO USE SETTLEMENT ADMINISTRATOR c/o Rust Consulting, Inc. [INSERT ADDRESS]</p>
----------------------------------------------------------------------------------------------------

**Important:**

1. You do NOT have to submit this form if you believe the dates of employment listed below are accurate. But you do have to submit a claim form in order to receive a payment.
2. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment.
3. If you change your mailing address, please send your new mailing address to the Administrator. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your settlement payment.

**EMPLOYMENT DATES AND CHALLENGE INFORMATION**

<<Name>>

\_\_\_\_\_  
<<Address>>

\_\_\_\_\_  
<<City>>, <<State> <Zip>>

\_\_\_\_\_  
(\_\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_  
Home Telephone Number

**Your Compensable Workweeks**

US Foodservice' records show that during the Class Period of April 9, 2006 through [INSERT DATE OF PRELIMINARY APPROVAL], you held the position of Driver in the following time periods:

<<Dates>>

During this time, you were on a leave of absence for \_\_\_\_ days. (or "N/A" if no leaves of absence noted)

Your total number of Compensable Workweeks is: <<number of workweeks>>

**Your Estimated Payment**

Based on the estimated share for each compensable workweek at an estimated amount per week worked of \$ \_\_\_\_\_, your settlement share is currently estimated at \$ \_\_\_\_\_, assuming that all Settlement Class Members identified to date participate in the Settlement (*i.e.*, can be located and do not opt out). This amount is subject to change, either up or down, depending on the number of Settlement Class Members who submit challenges to estimated amounts, the outcome of those challenges, the number of Class Members who opt out, and other possible factors.

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*Check a box below ONLY if you wish to challenge the dates listed below. All Fields must be complete for your challenge to be accepted:*

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\_\_\_\_\_  
Signature

Name of Class Member \_\_\_\_\_ [preprinted]

Class Member ID Number (from address label):  
\_\_\_\_\_ [preprinted]

I believe that my correct dates of employment as a Driver for US Food during the class period are \_\_\_\_\_ to \_\_\_\_\_.

Statement of reasons and documentation of dates of employment according to Class Member: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[attach documentation and use separate page(s) as necessary]