



10, *et seq.* (Dkt. No. 1-3 at 126) (for Plaintiff Mejias only).

4. On September 4, 2020, Defendant filed a Notice of Removal to the United States District Court for the District of New Jersey under the Class Action Fairness Act. (Dkt. No. 1).

5. On December 7, 2020, Plaintiffs filed a Second Amended Complaint (“SAC”) (Dkt. No. 34), and on September 7, 2021, Defendant filed a Motion to Dismiss the Second Amended Complaint (“Motion to Dismiss”). (Dkt. No. 52).

6. On February 18, 2022, the Court largely denied Defendant’s Motion to Dismiss, permitting all claims to proceed except for Plaintiff Mejias’ claims under New Jersey Law. (Dkt. No. 69). Plaintiff Mejias thus brings his claims individually under South Carolina law, while Plaintiffs Minter, Fuller and Pena bring their claims under New Jersey law on behalf of the Settlement Class.

7. The Parties completed extensive fact and expert discovery, exchanging several rounds of written discovery, taking twenty-three (23) depositions, briefing numerous motions before the court, and exchanging six (6) expert reports in advance of class certification. Class certification was fully briefed before the Court.

8. The Parties have engaged in an extensive alternative dispute resolution (“ADR”) process in this Litigation, which included, *inter alia*, the exchange of data regarding alleged hours worked and compensation for the proposed Settlement Class members.

9. The Parties’ ADR process further included three mediation sessions and a settlement conference: (1) an August 2020 mediation before an experienced wage and hour mediator, Hunter R. Hughes, Esq.; (2) a January 4, 2022 mediation before Hunter R. Hughes, Esq; (3) an October 6, 2022 settlement conference before Magistrate Judge José R. Almonte; and (4) a May 8, 2024 mediation before Hunter R. Hughes, Esq.

10. To appropriately inform the ADR process, the Parties conducted substantial discovery prior to and during this process. Specifically, Goya provided settlement payment information, deductions, and workweeks for all Settlement Class Members, as well as a sample of additional information for the Settlement Class members, which Class Counsel reviewed and analyzed. This exchange of information allowed the Parties to assess the potential liability and possible damages for the asserted claims by the Settlement Class, and to engage in informed, good faith, arms’-length settlement negotiations.

11. As a result of the ADR process described above, mediation, and subsequent settlement negotiations, the Parties have agreed fully and finally to resolve this Litigation on the terms and conditions described herein, subject to approval by the Court.

12. Class Counsel has made a thorough and independent investigation of the facts and law relating to the allegations in the Action. In agreeing to this Settlement Agreement, Plaintiffs have considered: (a) the facts developed during the Parties’ extensive fact and expert discovery periods that took place in the litigation, and during the ADR process described above, and the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged; and (c) the desirability of consummating this Settlement according to the

terms of this Settlement Agreement. Plaintiffs have concluded the terms of this Settlement are fair, reasonable, and adequate; and it is in the best interests of Plaintiffs and the Settlement Class as defined below to settle their claims against Defendant and the Released Parties defined below as set forth herein.

13. Defendant denies the allegations in the Action. The fact the Parties agreed to settle, this Settlement Agreement, and all related documents are not and shall not be construed as an admission by Defendant or any of the Released Parties (as defined below) of any fault, liability, or wrongdoing, which Defendant expressly denies.

14. The Parties stipulate and agree, for settlement purposes *only*, that the requirements for establishing class certification pursuant to FED. R. CIV. P. 23(a) and (b)(3) are met with respect to the Settlement Class. Should this Settlement not become Final, such stipulation to class certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not class certification would be appropriate in a non-settlement context. In the event this Settlement does not become Final, Defendant maintains all defenses it would otherwise have to class certification and to the merits.

15. In consideration of the foregoing good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, IT IS HEREBY AGREED, by and between the undersigned, subject to the final approval of the Court and the other conditions set forth herein, that Plaintiffs' and the Settlement Class Members' claims as described herein and set forth in the Complaint against Defendant shall be settled, compromised, and dismissed, on the merits and with prejudice, and that the Settling Class Members' Released Claims shall be finally and fully compromised, settled, and dismissed as to Defendant and Released Parties, in the manner and upon the terms and conditions set forth below.

### **DEFINITIONS**

16. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

a. "Action" or "Litigation," means *Mejias, et al., v. Goya Foods, Inc.*, No. 3:20-cv-12365-BRM-JRA (D.N.J.).

b. "Amendment" means the optional Amendment to the Independent Contractor's Service Agreement, which contains an Arbitration Agreement with a class action waiver, that will be presented to Current Drivers along with the Notice for their consideration, execution of which will entitle them to an additional \$2,500 of compensation separate and apart from their settlement share. The Amendment shall contain a carveout for this Action and shall not affect the Current Drivers' rights to participate in this Action either through Settlement or litigation should the Effective Date not occur.

c. "CAFA Notice" means the notice to be sent by Defendant to appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA"), within ten (10) days after the submission of this Settlement

Agreement to the Court. A copy of any CAFA Notice shall be provided to the Settlement Administrator and Class Counsel.

d. “Check Cashing Period” means the period of one-hundred eighty (180) days after settlement checks are initially issued by the Settlement Administrator to Eligible Class Members.

e. “Class Counsel” or “Plaintiffs’ Counsel” means Berger Montague PC and Vlasac & Shmaruk LLC.

f. “Court” means the United States District Court for the District of New Jersey.

g. “Current Driver” means Settlement Class Members who remained under an Independent Contractor’s Service Agreement as of May 8, 2024. Defendant has provided data showing that there are thirteen (13) Current Drivers in the Settlement Class, and Plaintiffs have relied on this representation in entering into this Settlement.

h. “Data Time Period” means the time period from July 18, 2013 to February 1, 2024.

i. “Defendant” means Goya Foods, Inc.

j. “Defendant’s Counsel” means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

k. “Eligible Class Member” or “Eligible Settlement Class Member” means Plaintiffs and Settlement Class Members who do not exclude themselves from the Settlement during the Notice Period and who are able to receive a Settlement Award payment at a physical address.

l. “Effective Date” means the first business day after the Court’s Final Approval Order has been entered and the last of one of the following events has occurred:

- i. if no appeal is filed, the date on which the time to appeal the Final Approval Order has expired (*i.e.*, thirty (30) days following the issuance of the Final Approval Order);
- ii. if an appeal of the Final Approval Order has been timely filed or other judicial review has been taken or sought, the date that Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review or the date the appeals or any other judicial review are finally dismissed with no possibility of subsequent appeal or other judicial review.
- iii. It is the intention of the Parties that the Settlement shall not become effective until the Court’s Final Approval Order has become completely final and there is no timely recourse by an appellant or objector who

seeks to contest the comprehensive settlement.

m. “Fee and Cost Payment” means the attorneys’ fees and costs to be paid to Class Counsel for the services they rendered to Plaintiffs and the Settlement Class Members in the Litigation, in the total amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount, plus out-of-pocket costs, all as approved by the Court.

n. “Final Approval” or “Final Approval Order” means the Court’s Final Approval Order approving the Settlement and entering judgment.

o. “Final Approval Hearing” means the hearing to be held by the Court to consider the final approval of the Settlement.

p. “Former Driver” means Settlement Class Members who ceased providing driving services to Goya prior to May 8, 2024.

q. “Gross Settlement Amount” means the amount of Five Million and One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$5,125,000.00) plus any interest earned on the Gross Settlement Amount from and after the date such amount is deposited in the interest-bearing account referred to in Paragraph 16(w) below (at the rate applicable to such account).

r. “Net Settlement Amount” means the Gross Settlement Amount less: (i) Fifteen Thousand Dollars (\$15,000) to each of the four Named Plaintiffs for their efforts in bringing and prosecuting this Litigation against Defendant and the Released Parties (“Service Awards”); (ii) Class Counsel’s attorneys’ fees and out-of-pocket costs as awarded by the Court; and (iii) the costs of notice and administration of the settlement as invoiced by the Settlement Administrator, not to exceed \$19,100.00, all as approved by the Court. All payments to Settlement Class Members shall be paid from the Net Settlement Amount.

s. “Notice Deadline” means the date sixty (60) days after the Settlement Notices are initially mailed by the Settlement Administrator as provided for in this Agreement. Except as otherwise provided in this Agreement, Settlement Class Members shall have until the Notice Deadline to object to or opt-out of the Settlement.

t. “Parties” means Plaintiffs and Defendant.

u. “Plaintiffs” or “Named Plaintiffs” mean Anibal Mejias, Dennis Minter, Jerry Fuller, and Jose Pena.

v. “Preliminary Approval” or “Preliminary Approval Order” means the Court’s Preliminary Approval Order preliminarily approving the terms and conditions of this Agreement.

w. “Qualified Settlement Fund” or “QSF” means an interest-bearing account held by the Settlement Administrator to effectuate the terms of the Agreement and the Orders of the Court, to be treated for federal income tax purposes pursuant to Treas. Reg. § 1.46B-1. All interest is for the benefit of the Settlement Class. Defendant shall pay the Gross Settlement Amount into the QSF within ten (10) business days of the Court’s Final Approval Order.

x. “Released Parties” mean Goya Foods, Inc. and each of its respective present and former affiliates, divisions, members, joint venture partners, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, employees, agents, attorneys, shareholders, successors, insurers or reinsurers, employee benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers and reinsurers of such plans), assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under, or in concert with any of them, and any individual or entity that could be jointly liable with any of them.

y. “Release Period” means July 18, 2013 through May 8, 2024.

z. “Settlement Administrator” means Atticus Administration LLC, a third-party independent company chosen by the Parties following a bidding process who will be presented to the Court for its approval in the Preliminary Approval Order to perform the notice and administration responsibilities assigned to the Settlement Administrator in this Settlement Agreement.

aa. “Settlement Award” means the payment that each Eligible Class Member is entitled to receive pursuant to the terms of this Agreement.

bb. “Settlement Class” or “Settlement Class Member” means all truck drivers who performed work for Goya in the State of New Jersey and who were designated as independent contractors or owner operators between July 18, 2013 and February 1, 2024. The Settlement Class excludes any truck drivers who executed Arbitration Agreements with Goya as of February 1, 2024. If someone who would otherwise be a Settlement Class Member is deceased, their estate is a Settlement Class Member. Defendant identified seventy-three (73) Settlement Class Members, including Plaintiffs, and Plaintiffs relied on this number in negotiating this Settlement.

cc. “Settlement Notice” or “Settlement Notices” mean the Notices of Class Action Settlement, substantially in the form as Exhibit A and Exhibit B attached hereto or as approved by the Court. The Settlement Notices and any reminder notices shall be translated by the Settlement Administrator into Spanish prior to mailing. Exhibit A shall be sent to Former Driver Settlement Class Members and Exhibit B shall be sent to Current Driver Settlement Class Members.

## **RELEASES**

17. **Eligible Settlement Class Members’ Released Claims.** Upon the mailing of a Settlement Award by the Settlement Administrator, Plaintiffs and all Eligible Settlement Class Members shall release and discharge all Released Parties, finally, forever and with prejudice, from any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, against the Released Parties that were or could have been asserted in the Complaint based on the facts alleged during the Release Period, for any and all damages (whether under federal, state, or local law or regulation, common law, contract or in equity) arising from or related to the alleged misclassification of Plaintiffs and the Settlement Class as independent contractors including, but not limited to, claims for alleged unpaid wages, unlawful deductions,

failure to pay minimum wages, overtime compensation, liquidated or other damages, unpaid costs or reimbursements for expenses (including, but not limited to, equipment, insurance, truck rentals, or any other cost or expense allegedly borne, arising from or related to the services rendered as described in the Complaint), restitution or other compensation or relief arising under the NJWPL, the NJWHL, and any other New Jersey state, county, or municipal laws, ordinances, or regulations regarding wages, wage payments, expense reimbursement, hours of work, wage and hour laws, city ordinances, or contract, state common law, or equity claims (including unjust enrichment or quantum meruit). The Parties acknowledge that Settlement Awards shall only be mailed to Eligible Class Members as defined in Paragraph 16(k).

18. **Named Plaintiff Mejias' Released Claims.** Upon the Effective Date, Plaintiff Mejias shall release and discharge all Released Parties, finally, forever and with prejudice, from any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, against the Released Parties that were or could have been asserted in the Complaint based on the facts alleged during the Release Period, for any and all damages (whether under federal, state, or local law or regulation, common law, contract or in equity) arising from or related to the alleged misclassification of Plaintiff as an independent contractor including, but not limited to, claims for alleged unpaid wages, unlawful deductions, failure to pay minimum wages, overtime compensation, liquidated or other damages, unpaid costs or reimbursements for expenses (including, but not limited to, equipment, insurance, uniforms, mileage, truck rental, or any other cost or expense allegedly borne, arising from or related to the services rendered as described in the Complaint), restitution or other compensation or relief arising under the South Carolina Payment of Wages Act, S.C. Code. § 41-10-10, *et seq.* ("SCPWA") and any other South Carolina state, county, or municipal laws, ordinances, or regulations regarding wages, wage payments, expense reimbursement, hours of work, wage and hour laws, city ordinances, or contract, state common law or equity claims (including unjust enrichment or quantum meruit).

### **CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION**

19. The Parties agree to the following procedures for obtaining Preliminary and Final Approval of the Settlement, certifying the Settlement Class, and notifying the Settlement Class Members of this Settlement:

a. **Request for Class Certification and Preliminary Approval Order.** Within twenty-one (21) days of executing this Agreement, the Parties will consent to jurisdiction before Magistrate Judge Jose R. Almonte for all purposes, including trial, and Plaintiffs will file a Motion for Preliminary Approval of Settlement Agreement, requesting that the Court certify the Settlement Class pursuant to FED. R. CIV. P. 23(a) and (b)(3) for the sole purpose of settlement; preliminarily approve the Settlement Agreement; approve the proposed Settlement Notice and find the proposed method of disseminating the Settlement Notices meet the requirements of due process and are the best notice practicable under the circumstances; set a date for Plaintiffs' Motion for Final Approval of the Settlement and Plaintiffs' Motion for Attorneys' Fees and Costs; and set a date for the Final Approval Hearing.

b. **Notice of Settlement.** The Settlement Administrator is responsible for preparing, printing, and mailing the Settlement Notices, in English and Spanish, to Plaintiffs and the Settlement Class. This includes a Settlement Notice to Former Driver Settlement Class

Members, which is attached hereto as Exhibit A, and a Settlement Notice to Current Driver Settlement Class Members, which also contains the optional Amendment and Arbitration Agreement and discussion of the same, which is attached hereto as Exhibit B.

c. Within three (3) business days after the day the Parties file their Motion for Preliminary Approval of the Settlement, Defendant shall provide to the Settlement Administrator a Microsoft Excel file containing the names, last known addresses, last known telephone numbers (including cell phone numbers), last known email addresses, Social Security Numbers or Tax ID numbers, and all information necessary to calculate the Settlement Awards of each Settlement Class Member (“Class List”). The Class List shall be provided to Class Counsel exclusive of the Settlement Class Members’ contact information.

d. At within two (2) business days after receipt of the Class List, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with estimated minimum settlement shares for each Settlement Class Member, assuming one hundred percent (100%) participation in the Settlement, and utilizing the procedure outlined in Paragraphs 31 and 32 below. The Parties shall review and approve the proposed settlement shares within two (2) business days of receipt.

e. In order to provide the best notice practicable, prior to mailing the Settlement Notice, the Settlement Administrator will conduct a search of the U.S. Postal Service’s National Change of Address database to locate updated addresses. The Settlement Administrator may also employ skip-tracing using the Settlement Class Member’s Social Security Number or Tax ID for this purpose. The Settlement Administrator shall provide a copy of any updated addresses to the Parties.

20. **Initial Mailing.** Within no later than ten (10) business days after the Court’s Order granting Preliminary Approval, the Settlement Administrator shall distribute the Settlement Notice to Settlement Class Members by U.S. First Class Mail, and email (to the extent email addresses are available). The Settlement Administrator shall notify Class Counsel and Defendant’s Counsel when the Settlement Notice has been mailed.

a. Any Notices returned as undeliverable shall, within three (3) business days, be skip-traced (using the person’s Social Security Number or Tax ID) to attempt to obtain a new address and shall be re-mailed by U.S. First Class Mail to any new addresses that are found.

b. Any Settlement Notice returned to the Settlement Administrator with a forwarding address shall be remailed within three (3) business days following receipt of the returned mail. If any Settlement Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts to search for the correct address, such as through calling the Settlement Class Member at their last known telephone number for an updated address, and shall promptly re-mail the Settlement Notice to any newly found addresses. In no circumstance shall such re-mailing extend the Notice Deadline, unless otherwise agreed by both Parties.

c. For those Settlement Class Members whose Notices are undeliverable, the Settlement Administrator shall also send a text message to Settlement Class Members (where



telephone numbers are available) with a QR Code and/or link that the Settlement Class Members can use to securely input updated contact information before the Notice Deadline.

d. Defendant and its employees agree that they will take no adverse action against any person on the grounds that they are eligible to participate or does participate in the Settlement. Defendant and Class Counsel will not discourage participation in this Settlement Agreement or encourage objections or opt-outs.

21. **Objections.** The Settlement Notices shall provide that Settlement Class Members who wish to object to the Settlement must, on or before the Notice Deadline, mail to the Settlement Administrator a written statement objecting to the Settlement. Such objection shall not be valid unless it includes the information specified in the Notices. Specifically, the objection must be signed personally by the objector, and must include the objector's name, address, telephone number, email address, the factual and legal grounds for the objection, and whether the objector intends to appear at the Final Approval Hearing. The Notices shall advise that objections shall only be considered if the Settlement Class Member has not opted out of the Settlement. No Settlement Class Member shall be heard at the Final Approval Hearing (whether individually or through counsel), unless written notice of the person's intention to appear at the Final Approval Hearing has been mailed to the Settlement Administrator on or before the Notice Deadline. The postmark date shall be the exclusive means for determining that an objection is timely. Persons who do not submit a timely objection in the manner specified above shall be deemed to have waived any objections to the Settlement's fairness, reasonableness, and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. None of the Parties, their counsel, nor any person acting on their behalf, shall seek to solicit or encourage anyone to object to the Settlement, or discourage participation in the Settlement. Settlement Class Members may withdraw an objection via written request prior to the Final Approval Hearing.

22. **Requests for Exclusion.** The Settlement Notice shall provide that Settlement Class Members who wish to exclude themselves from the Settlement ("opt-out") must mail or email to the Settlement Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written request for exclusion must contain the Settlement Class Member's full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Settlement Class Member. No opt-out request may be made on behalf of a group. Such written statement must be postmarked or emailed by the Notice Deadline. Settlement Class Members may withdraw a request for exclusion via written request prior to the Final Approval Hearing.

23. **Reporting by Settlement Administrator.** On a weekly basis, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with an accounting of the number of Notices mailed, returned as undeliverable and remailed; the number of requests for exclusion or objections received; and any other pertinent information. The Settlement Administrator shall also provide counsel for the Parties promptly with copies of any requests for exclusion or objections received, including their postmark date. The Settlement Administrator shall work with Class Counsel to provide a declaration for filing with the Motion for Final Approval of Class Action Settlement.

24. **Defendant's Option to Withdraw From Settlement.** If, within seven (7) days after the close of the Notice Period, more than ten percent (10%) of the Settlement Class have timely submitted otherwise valid requests for exclusion, Defendant may have the option to withdraw from and terminate the Settlement Agreement. Plaintiffs cannot opt out of or object to the Settlement Agreement. No party or counsel to any party may solicit Settlement Class Members to opt-out of or object to the Settlement. If Defendant exercises its option to terminate and withdraw from the Settlement Agreement for this reason, it shall be responsible for all costs of administration incurred up to the date of such revocation. In the event that Defendant withdraws from the settlement as provided in this paragraph or this Settlement Agreement otherwise becomes void or unenforceable, any monies in the Settlement Fund shall remain the property of and shall be returned to Defendant, except that Defendant shall be responsible for any Notice costs incurred by the Settlement Administrator as of the date Defendant elects to withdraw from the Settlement. Additionally, the Parties' litigation positions shall revert to the *status quo ante* prior to the execution of this Settlement Agreement, and the Parties will not be deemed to have waived, limited, or affected in any way any of their claims, defenses, or objections in the Action, including arguments for or against class certification and arbitration.

25. **Final Approval Hearing.** Plaintiffs shall request that the Court schedule the Final Approval Hearing no earlier than fifteen (15) business days after the Notice Deadline and no earlier than one hundred and twenty (120) days after the Preliminary Approval Order is issued to determine final approval of the settlement and to enter a Final Approval Order:

- a. Granting final class certification of the Settlement Class under FED. R. CIV. P. 23(a) and (b)(3) for purposes of settlement only;
- b. finding dissemination of the Settlement Notices were accomplished as directed and met the requirements of due process;
- c. finally approving this Settlement as fair, reasonable and adequate;
- d. directing that the Settlement funds be distributed in accordance with the terms of this Settlement Agreement; and
- e. directing that the Litigation be dismissed with prejudice upon the Effective Date in full and final discharge of the Released Claims.

26. **Final Approval Order.** Once the Settlement Agreement is fully and finally approved, the Court shall enter a Final Approval Order dismissing the case with prejudice.

#### **SETTLEMENT FUNDS AND AWARD CALCULATION**

27. **Gross Settlement Amount and Payroll Taxes.**

a. **Settlement Award Calculation.** Within ten (10) calendar days after the Final Approval Order, the Settlement Administrator shall provide the Parties with the final settlement calculations pursuant to the formula set forth in Paragraph 32, below. Class Counsel shall approve the Settlement Administrator's calculation of final settlement shares within five (5) business days of their receipt.

b. **Deposit.** By no later than ten (10) business days following the Court's Final Approval Order, Defendant shall electronically transfer the Gross Settlement Amount to the QSF set up by the Settlement Administrator. The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the QSF. At the same time, Defendant shall deposit any additional monies to be paid to Current Drivers who signed the Amendment and Arbitration Agreement during the Notice Period (\$2,500 per Current Driver who signed).

c. **Disbursement of Settlement Funds.** All disbursements to Plaintiffs and Eligible Settlement Class Members shall be made by the Settlement Administrator as soon as practicable after the Effective Date, and within thirty (30) calendar days.

28. **Payments.** Subject to the Court's Final Approval Order, the following amounts shall be paid by the Settlement Administrator from the Gross Settlement Amount:

a. **Service Awards.** Subject to the Court's approval, Plaintiffs shall each receive their Service Award in consideration for their efforts in bringing and prosecuting this Litigation. An IRS Form 1099-MISC shall be issued for these payments. These payments shall be made as soon as reasonably practicable after the Effective Date, but no later than the date on which the Settlement Awards are mailed to Eligible Settlement Class Members.

b. **Fee and Cost Payment.** Subject to the Court's approval, Class Counsel shall receive attorneys' fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount, which will compensate Class Counsel for all work performed in the Litigation as of the date of this Settlement Agreement, as well as all of the work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Litigation. In addition, Class Counsel shall, subject to Court approval, receive reimbursement of their out-of-pocket costs approved by the Court. These payments shall be made within three (3) business days after the Effective Date. The attorneys' fees and costs paid to Class Counsel pursuant to this Agreement shall constitute full satisfaction of Defendant's obligations to pay amounts to any person, attorney, or law firm for attorneys' fees or costs in this Litigation on behalf of Plaintiffs and/or any Settlement Class Member. The Settlement Administrator shall issue an IRS Form 1099-MISC to Class Counsel for the Fee and Cost Payment, following Class Counsel's transmittal of a W-9 and any other required documentation to process the payment. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

c. **Settlement Awards to Eligible Class Members.** Settlement Awards shall be made to Eligible Class Members as set forth below.

29. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, or Defendant's Counsel based on distributions or payments made in accordance with this Settlement Agreement.

**CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS  
TO ELIGIBLE CLASS MEMBERS**

30. **Confirmation of Undeliverable Notices.** Within five (5) business days of the Final Approval Order, the Settlement Administrator shall provide a list to Class Counsel and Defendant's Counsel containing the Settlement Class Members for whom contact could not be established as of that date (i.e. no updated address had been found or located). Class Counsel may use the list to attempt to contact the Settlement Class Members for whom contact could not be established by the Settlement Administrator. Settlement Award checks will only be sent to individuals where it is established that the person (or the person's estate) is capable of receiving a settlement award check at the address provided.

31. **Settlement Award Eligibility.** All Eligible Class Members shall be paid a Settlement Award by check. The Settlement Administrator shall be responsible for determining eligibility for, and the amount of, the Settlement Awards to be paid to Eligible Class Members as follows:

32. **Settlement Awards.** All Eligible Class Members shall receive a Settlement Award calculated from the Net Settlement Amount as follows:

a. The amount of \$5,000 per Eligible Settlement Class Member will be deducted from the Net Settlement Amount prior to the determination of *pro rata* individual settlement shares and allocated to each Eligible Settlement Class Member so that each Eligible Settlement Class Member receives at least \$5,000 in exchange for their release in this Settlement Agreement.

b. In addition to the \$5,000 payment set out in (a) above, the Eligible Settlement Class Members shall receive a *pro rata* portion of the remaining Net Settlement Amount (after the \$5,000 base payment awards above are first deducted) as follows. The Net Settlement Amount shall be divided proportionally between each Eligible Settlement Class Member based on the total amount of deductions incurred by each Eligible Settlement Class Member during the Data Time Period.

33. The Settlement Notice shall state the estimated minimum payment that each Settlement Class Member is expected to receive assuming full participation of all Settlement Class Members with no requests for exclusion.

34. The Settlement Administrator shall issue Settlement Award payments to any Eligible Class Member whose Settlement Notice was previously deemed undeliverable but who is subsequently located during the Notice Period within three (3) business days of confirming the Settlement Class Member's eligibility for participation. Eligible Class Members who are sent Settlement Awards pursuant to this Paragraph shall have 180 days to negotiate their payment.

35. All Settlement Awards shall be treated as non-employee compensation. The Settlement Administrator shall issue an IRS Form 1099-MISC for the Settlement Awards to each Eligible Class Member who contracted with Goya as an individual or whose corporate entity has dissolved. For Eligible Class Members who contracted with Goya through an LLC, S-or C-Corp,

and whose corporate entity is still active, no tax form will issue. The Settlement Administrator shall then provide written certification of mailing to Class Counsel and Defendant's Counsel within three (3) days of mailing.

36. Class Counsel and Defendant's Counsel do not intend for this Settlement Agreement to constitute legal advice relating to the tax liability of any Eligible Class Member. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state, or local tax issue, such advice is not written or intended to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

37. The Settlement Administrator shall provide Defendant with copies of all tax reporting and filings made for the Settlement Fund, including copies of the checks and the IRS Forms 1099 issued to Settlement Class Members, and any other documentation to show that the tax reporting and filings were timely transmitted to the Settlement Class Members and the applicable taxing authorities.

38. The Settlement Administrator shall pay any additional tax liabilities (including penalties and interest) that arise from the establishment and administration of the Settlement Fund solely from the assets of the Settlement Fund without any recourse against Defendant for additional monies.

39. The Settlement Administrator shall provide Defendant and Class Counsel with copies of all signed, dated, and cashed settlement checks and Amendments with the attached Arbitration Agreements.

40. In the event a Settlement Class Member disputes the accuracy of information upon which settlement payments are calculated, the Settlement Class Member shall provide documentation to support their calculations. The Settlement Administrator shall review any documentation submitted by a Settlement Class Member and consult with the Parties to determine whether an adjustment is warranted. There will be a presumption that Defendant's business records are correct as to the dates a Settlement Class Member was a driver, absent any evidence produced by the Settlement Class Member to the contrary.

41. Settlement Class Members will be responsible for reporting such amounts on their tax returns and paying all applicable taxes on such amounts. Settlement Class Members agree to indemnify and hold Class Counsel, Defendant, Defendant's Counsel, and the Settlement Administrator harmless from any and all liability that may result from, or arise in connection with their failure to file and pay such taxes on any amounts received pursuant to this settlement. No Settlement Funds shall be disbursed from the Settlement Fund until the Effective Date, except for costs payable to the Settlement Administrator for dissemination of Settlement Notice pursuant to the Notice Plan.

42. In the event the settlement does not become effective and the Court does not enter the Final Approval Order, all Settlement Funds shall be immediately returned to Defendant, except that Defendant shall be responsible for any Notice costs incurred by the Settlement Administrator as of the date the Settlement does not become effective.

43. All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. The Settlement Administrator shall send a reminder letter, in English and Spanish, via U.S. mail and email (to the extent email addresses and phone numbers are available) to those Eligible Class Members who have not yet cashed their settlement check after sixty (60) days, and the Settlement Administrator and/or Class Counsel will call those (to the extent phone numbers are available) who have still not cashed their check to remind them to do so within the last sixty (60) days of the check-cashing period. The Settlement Administrator may also use skip-tracing (using the person's social security number) for checks that are returned as undeliverable.

44. **Remaining Funds.** If at the conclusion of the Check Cashing Period, there any monies remaining from Eligible Class Members' uncashed checks, those monies shall be paid/distributed to the Parties' agreed upon *cy pres* recipient, Legal Services of New Jersey, subject to Court approval in the Final Approval Order. If at the conclusion of the Check Cashing Period, there are any monies remaining that are attributable to Settlement Class Members whose Notices were undeliverable and who could not be located subsequently, all of those monies shall be sent back to Goya, up to a maximum of 10% of the Net Settlement Amount, in recognition of the fact that Goya does not receive a release from those individuals.

45. **Cooperation.** The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this Agreement. The Parties will require the Settlement Administrator to indemnify and hold harmless the Parties for and against any claims or liabilities resulting from errors or omissions in its administration of the QSF.

46. **Implementation of Agreement.** The Parties represent and acknowledge that each intends to implement the Settlement Agreement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps to accomplish all required events on the schedule set by the Court in this Action, and shall use their best efforts to implement all terms and conditions of the Settlement Agreement.

## **MISCELLANEOUS**

47. **Execution of Agreement.** It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Settlement Notice will advise all Settlement Class Members of the binding nature of the Release, and Named Plaintiffs' signing of this Settlement Agreement, when approved by the Court and such approval has become final, fully effectuates the above releases on behalf of all Settlement Class Members. The checks issued to all Settlement Class Members shall also have appropriate agreed-upon release language on the back of each check as well as the statement: "This check cannot be negotiated without a signature."

48. **Enforcement Dispute.** In the event there is a dispute concerning the enforcement of the terms of this Settlement Agreement, the Parties agree to confer in good faith in an attempt to resolve any such dispute before initiating any subsequent enforcement action.

49. **Representation.** All the Parties acknowledge that they have been represented by

competent, experienced counsel throughout all arms-length negotiations which preceded the execution of this Settlement Agreement and that this Settlement Agreement is made with advice of counsel who have jointly prepared this Settlement Agreement.

50. **No Retaliation.** Defendant and its employees will not take any adverse action against any Settlement Class Member on the grounds that they are eligible to participate or do participate in the Settlement. Defendant and its employees will also not take any adverse action against any Current Driver Settlement Class Member who decides they do not want to sign the optional Amendment and Arbitration Agreement.

51. **No Admission of Liability.** This Settlement Agreement and all related documents are not and shall not be construed as an admission by Defendant or any of the Released Parties of any fault or liability or wrongdoing.

52. **Defendant's Legal Fees.** Defendant's legal fees and expenses in this Litigation shall be borne by Defendant.

53. **Nullification of the Settlement Agreement.** In the event: (a) the Court does not preliminarily or finally approve the Settlement as provided herein; (b) the Settlement does not become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to engage in follow up negotiations with the intent of resolving the issues that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then any Party may void this Agreement. At that point, the Parties agree that each shall return to their respective positions as existed on the day before this Agreement was executed, and this Agreement shall not be used in evidence or argument in any other aspect in the Litigation.

54. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Litigation, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence in this or any other proceeding, for any purpose adverse to any of the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.

55. **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by FED. R. CIV. P. 6(a)(6)), such time period shall be continued to the following business day. The term "days" shall mean calendar days unless otherwise noted.

56. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Litigation except such proceedings necessary to implement and complete the Settlement.

57. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest, and any material amendment or modification must be approved by the Court.

58. **Entire Agreement.** This Agreement with exhibits hereto constitutes the entire Agreement among the Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement other than those contained and memorialized in this Agreement. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that it has not relied on any promise, representation, or warranty, express or implied, not contained in this Agreement. No rights hereunder may be waived except in writing. Notwithstanding the foregoing, however, nothing in this Settlement Agreement shall otherwise affect or alter the rights and obligations of the Parties or Settlement Class Members, as set forth in their Independent Service Provider's Agreements.

59. **Authorization.** The signatories to this Agreement warrant and represent that they are authorized to enter into this Agreement and to take all appropriate action required or permitted to be taken to effectuate its terms.

60. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the Parties, the Eligible Class Members, and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. The Parties hereto represent, covenant, and warrant they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

61. **Counterparts.** This Agreement may be executed in one or more counterparts, including by email and electronic signature (*e.g.*, DocuSign). All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement and photocopies thereof (including copies transmitted by email or other electronic means) shall have the same force and effect as the original and shall be as legally binding and enforceable as the original.

62. **Severability.** Should any provision of this Agreement be declared wholly or partially illegal, invalid, or unenforceable, the offending provision shall be stricken, and all remaining provisions shall remain in full force and effect and shall be unaffected by such declaration.

63. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement and therefore the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to implement and support this Settlement



Agreement and the terms and conditions set forth herein. The Parties will cooperate to and exercise good faith in obtaining the most participation possible in the Settlement and to otherwise implement and support this Settlement Agreement and the terms and conditions set forth herein.

64. **Stay of Proceedings.** The Parties agree to a stay of all proceedings in this Action, except such proceedings as may be necessary to complete and implement the Settlement Agreement, pending Final Court Approval of the Settlement Agreement.

65. **Public Statements.** The signatories to this Agreement agree that the terms of this Settlement Agreement are confidential until it is filed with the Court. The Parties agree that unless required by the Court, they will not publicly disclose the individual Settlement Awards for each Eligible Class Member, except that Class Counsel may include the minimum, maximum, and average Settlement Award as part of the Settlement approval briefing process. The foregoing shall not prohibit or restrict such disclosure as is required by law or as may be necessary for the prosecution of claims relating to the performance or enforcement of this Settlement Agreement and shall not prohibit or restrict Class Counsel from responding to any inquiry about this Settlement Agreement or the Action or its underlying facts and circumstances by any governmental agency or any regulatory organization. Additionally, nothing in this Paragraph will affect the ability of Class Counsel to carry out their duties consistent with and as required by any other provision in this Settlement Agreement or by the Court or affect Class Counsel’s attorney-client communications with Plaintiffs. Finally, notwithstanding the foregoing, Defendant may disclose the specific financial terms of this Agreement for legal, accounting, and legitimate business purposes, in accordance with their usual business practice, and otherwise as required by law.

66. **Governing Law.** This Settlement Agreement shall be governed by New Jersey law.

67. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties, Eligible Class Members, and their Counsel submit to the jurisdiction of the Court for this purpose.

**IN WITNESS WHEREOF**, the Parties and their Counsel have executed this Settlement Agreement as follows:

**PLAINTIFF:** \_\_\_\_\_ Date: \_\_\_\_\_, 2024  
ANIBAL MEJIAS

**PLAINTIFF:** \_\_\_\_\_ Date: \_\_\_\_\_, 2024  
DENNIS MINTER

**PLAINTIFF:** \_\_\_\_\_ Date: \_\_\_\_\_, 2024  
JERRY FULLER

**PLAINTIFF:**

\_\_\_\_\_  
JOSE PENA

Date: \_\_\_\_\_, 2024

**APPROVED AS TO FORM BY PLAINTIFFS' COUNSEL:**

\_\_\_\_\_  
Shanon J. Carson  
Alexandra K. Piazza  
Julie Pollock  
BERGER MONTAGUE PC

Date: \_\_\_\_\_, 2024

\_\_\_\_\_  
David Cassidy  
Yelena Kofman-Delgado  
VLASAC & SHMARUK LLC

Date: \_\_\_\_\_, 2024

**DEFENDANT:**

\_\_\_\_\_  
GOYA FOODS, INC.

Date: \_\_\_\_\_, 2024

**APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:**

\_\_\_\_\_  
Kevin Hishta  
Margaret Santen  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

Date: \_\_\_\_\_, 2024