

**SETTLEMENT AGREEMENT AND RELEASE**

KENNETH DURHAM, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

BELL-CARTER FOODS, LLC

Defendant.

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Class Settlement Agreement and Release ("Settlement Agreement") is made and entered into by and among the following Settling Parties (as defined below): Plaintiff Kenneth Durham ("Representative Plaintiff"), individually and on behalf of the Settlement Class (as defined below), by and through their counsel Matthew R. Wilson and Michael J. Boyle, Jr. of MEYER WILSON CO., LPA, (collectively, "Representative Plaintiff's Counsel"); and (ii) Defendant BELL-CARTER FOODS, LLC ("Bell-Carter" or "Defendant"), by and through its counsel M. Ryan Pinkston of SEYFARTH & SHAW LLP ("Defendant's Counsel"). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions hereof.

This Settlement Agreement relates to a data security incident alleged to have occurred in Defendant's computer systems between approximately September 7, 2022 and September 13, 2022 (the "Incident").

Plaintiff, individually and on behalf of putative class, filed action against Defendant asserting various claims concerning the Incident in Superior Court, County of Contra Costa, which was removed to United States District Court for the Northern District of California. This action, and any subsequent action refiled in Contra Costa County Superior Court shall be referred to here as the “Litigation.”

On March 5, 2024, the Settling Parties engaged in an all-day, arms-length mediation before Art Eidelhoch. Pursuant to the terms agreed to and set out below, this Settlement Agreement resolves all actions, proceedings and claims against Bell-Carter and the Released Parties that are asserted in, arise from or relate to Plaintiff’s complaints filed in the Litigation as well as all other actions or claims by and on behalf of individuals or putative classes arising from the Incident or matters referenced in those complaints.

**I. CLAIMS OF REPRESENTATIVE PLAINTIFF AND BENEFITS OF THE CLASS SETTLEMENT**

Representative Plaintiff believes the claims asserted in the Litigation, as set forth in the complaints filed in the Litigation, have merit. However, Representative Plaintiff and Representative Plaintiff’s Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Bell-Carter and the Released Parties through motion practice, trial and potential appeals. They have also considered the uncertain outcome and risk of further litigation, particularly in an area that remains in a state of development and thus a level of uncertainty as well as the difficulties and delays inherent in such litigation. Representative Plaintiff’s Counsel are highly experienced in class action litigation, particularly in privacy litigation, and are knowledgeable regarding the relevant claims, remedies and defenses at issue generally in such litigation and in this Litigation. In addition, Defendant contends Plaintiff will face difficulties in certifying a class, proving liability and causation and

establishing compensable damages on a Class-wide basis. While Representative Plaintiff's Counsel believe Representative Plaintiff would prevail on class certification and liability issues as to Bell-Carter, they nevertheless acknowledge the risks involved in litigation and believe settlement is in the best interests of the Settlement Class. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable and adequate and in the best interests of Representative Plaintiff and the Settlement Class.

## **II. DENIAL OF WRONGDOING AND LIABILITY**

Defendant denies each and every claim and contention alleged against it in the Litigation and believes its defenses have merit. Defendant denies all charges of wrongdoing or liability as alleged, or which could be alleged or that it violated or breached any law, regulation or duty owed to the proposed Settlement Class. Defendant further denies that any individual suffered any actual harm caused by the Incident. Defendant also believes it would not be possible or feasible to certify a class for trial purposes as opposed to for settlement purposes. Nonetheless, Defendant has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Defendant also has considered the uncertainty and risks inherent in any litigation. Therefore, Defendant has determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

## **III. TERMS OF THE SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Representative Plaintiff, individually and on behalf of the Settlement Class, and Defendant that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and

fully compromised, settled and released, and the Litigation shall be dismissed with prejudice except as to those Settlement Class Members who timely opt out of the Settlement Agreement upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. **DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1** “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement Agreement to the Settlement Class, Claims Administration and otherwise administering and carrying out the terms of this Settlement Agreement.

**1.2** “Agreement,” “Settlement Agreement,” or “Class Settlement Agreement” means this Class Settlement Agreement and Release.

**1.3** “Approved Claims” means valid Settlement Claims approved by the Claims Administrator or found to be valid, as set forth below.

**1.4** “Attorneys’ Fees and Expenses Award” means such funds as may be awarded by the Court to Settlement Class Counsel to compensate Representative Plaintiff’s Counsel fully and completely for their fees, costs and expenses in connection with the Litigation.

**1.5** “Award” means the amount remitted by the Claims Administrator out of the Settlement Fund to Settlement Class Members, as provided in Paragraphs 2 and 7 of this Settlement Agreement.

**1.6** “Claims Administration” means the processing of Settlement Claims received from Settlement Class Members and the processing of payment of Approved Claims by the Claims Administrator.

**1.7** “Claims Administrator” means a company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation as may be jointly agreed upon by the Settling Parties and approved by the Court. The Claims Administrator may be replaced upon agreement of the Settling Parties or as directed by the Court.

**1.8** “Claims Filing Deadline” means the deadline by which Settlement Class Members must submit any valid Settlement Claims. The Claims Filing Deadline shall be set by the Court in the Preliminary Approval Order. The Settling Parties propose a Claims Filing Deadline that is 90 days after the Notice has been mailed by the Claims Administrator.

**1.9** “Claim Form” means the form approved by the Court that Settlement Class Members must submit to be eligible for relief under the terms of the Settlement Agreement.

**1.10** “Claims Period” means the time for Settlement Class Members to submit Settlement Claims running from the date of entry of the Preliminary Approval Order through the Claims Filing Deadline.

**1.11** “Class Notice” means the notice of settlement that is contemplated by this Settlement Agreement, and which shall include the Long Notice and Summary Notice approved by the Court.

**1.12** “Incident” means the data security incident alleged to have occurred from approximately September 7, 2022 and September 13, 2022, as alleged in the class action complaints filed by Representative Plaintiff, whereby unauthorized persons allegedly accessed Bell-Carter’s computer system.

**1.13** “Effective Date” means 5 days after entry of Final Approval Order or, if any appeal, writ or other appellate proceeding opposing the Court’s Final Approval Order has been filed, 5 business days after any appeal, writ or other appellate proceedings have been conclusively

dismissed.

**1.14** “Escrow Account” means a checking account established at a financial institution other than Defendant’s into which monies are to be deposited as set forth by this Agreement.

**1.15** “Extraordinary Losses” means the following types of expenses actually incurred that are fairly traceable to the Incident where: (i) the loss is an actual, documented, and unreimbursed monetary loss that is supported by third-party documentation, such as a police report; (ii) the loss was more likely than not caused by the Incident; (iii) the loss resulted in identity theft, fraud, or likely crime victimization; (iv) the loss occurred on or after September 7, 2022, and before 90 days from the date that notice is mailed to the Settlement Class; (v) the member made reasonable efforts to avoid, or seek and reimbursement for, the loss, including but not limited to exhaustion of all available credit-monitoring insurance, identity-theft insurance, or any other insurance available to them; (vi) the loss was not already covered by one or more of the normal reimbursement categories; (vii) the member provides an attestation, sworn upon penalty of perjury, to each of the foregoing that also includes a written description of how the loss came to be and a statement that the documents showing the loss are authentic; (viii) the Defendant has, if it chooses to do so, reviewed and approved the claim; and (ix) the Claims Administrator, after reviewing the claim and attestation for qualification, completeness, and plausibility, approves the loss as valid.

**1.16** “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court, (ii) the Court has entered a Final Approval Order and Judgment, and (iii) the time to appeal or seek permission to appeal from the Final Approval Order and Judgment has expired or, if appealed, the appeal has been dismissed in its entirety or the Final Approval Order and Judgment have been affirmed in their entirety by the Court of last resort to which such appeal may be taken and such dismissal or affirmance has

become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any Attorneys' Fees award or Service Award made in this case shall not affect whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

**1.17** "Final Approval Hearing" means the final hearing to be conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of this Settlement Agreement and the proposed settlement of the Litigation.

**1.18** "Final Approval Order" means the Court's Final Approval Order, which among other things, approves this Settlement Agreement and the settlement as fair, adequate and reasonable, enters the Judgment, dismisses the Litigation with prejudice and confirms the final certification of the Settlement Class.

**1.19** "Funding Date" means the date, which is no later than 10 days after the later of the Effective Date or the date which the Claims Administrator provides Bell-Carter the Payment Instructions, to which Bell-Carter provides the funds to pay all valid claims, Attorneys' Fees and Expenses, and the Service Awards.

**1.20** "Judgment" means a final judgment ordering and affirming the release set forth in Section 8 of this Settlement Agreement of the Released Claims against the Released Parties and the dismissal of the Litigation with prejudice.

**1.21** "Litigation" means both the currently pending action captioned *Durham v. Bell-Carter Foods, LLC*, No.3:23-cv-2456-SK (N.D.Cal.) and any subsequent litigation filed in the Superior Court of California, County of Contra Costa, with respect to the same subject matter.

**1.22** "Notice Program" means the notice program described in Paragraph 4.

**1.23** "Objection Deadline" means 90 days after the mailing of the Notice, or such other date set by the Court in the Preliminary Approval Order.

**1.24** “Opt-Out” means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion, (ii) who does not rescind that Request for Exclusion before the Opt-Out Deadline, and (iii) as to which there is not a successful challenge to the Request for Exclusion.

**1.25** “Opt-Out Deadline” means the date by which Settlement Class Members must mail their Request for Exclusion in order for it to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Deadline shall be 90 days after the mailing of the Notice or such other date set by the Court in the Preliminary Approval Order.

**1.26** “Ordinary Losses” means the following types of expenses actually incurred that are fairly traceable to the Incident where: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Incident; (iii) the loss occurred on or after September 7, 2022, and before 90 days from the date that notice is mailed to the Settlement Class; (iv) the member made reasonable efforts to avoid, or seek and reimbursement for, the loss, including but not limited to exhaustion of all available credit-monitoring insurance, identity-theft insurance, or any other insurance available to them; (v) the member provides third-party documents showing that the member suffered the loss; (vi) the member provides an attestation to each of the foregoing that also includes a written description of how the loss came to be and a statement that the documents showing the loss are authentic; and (vii) the Claims Administrator, after reviewing the claim and attestation for qualification, completeness, and plausibility, approves the loss as valid.

**1.27** “Payment Instructions” means: (a) written directions from the Claims Administrator for the payment of any amount, which shall specify: (i) as for any wire transfer payment; the routing, account number, bank name and address and any other pertinent details



required for the transfer, and (ii) as for any check payment; the payee of the check, and (b) a W-9 form for the Escrow Account. The Payment Instructions shall be confirmed by voice phone call by the Claims Administrator and must be approved by Settlement Class Counsel in writing.

**1.28** “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their respective spouses, heirs, affiliates, attorneys, predecessors, successors, representatives or assignees.

**1.29** “Personal Information” means information alleged to have been exposed, compromised, or accessed during the Incident, including names, dates of birth, healthcare ID numbers, medical information, Social Security numbers and Protected Health Information, as defined by the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”).

**1.30** “Preliminary Approval Order” means the Court’s order granting, among other things, conditional certification of the Settlement Class, preliminary approval of this Settlement Agreement and the settlement and approval of the form and method of Class Notice.

**1.31** “Released Claims” means any and all claims, causes of action of every kind and description, liabilities, rights, demands, suits, matters, obligations and damages, whether known or unknown and whether in law or in equity, that the Settlement Class Members and the respective heirs, administrators, representatives, attorneys, agents, officers, directors, employees, parents, subsidiaries, administrators, partners, predecessors, successors, assigns, subrogees, insurers, co-insurers, reinsurers and insurance brokers of each of Plaintiffs, Settlement Class Counsel and the Settlement Class Members and all other legal or natural persons who may claim by, through or under them who have not excluded themselves from the Settlement Class had, have or may have

against Bell-Carter or the Released Parties that arise out of the Incident. For the avoidance of doubt, Released Claims include all claims asserted or that could have been asserted in the Litigation or any other suit or pleading in any other court or forum arising out of the Incident, including any claims, actions, causes of action, demands, damages, penalties, losses or remedies arising out of the alleged theft, exposure or disclosure of Settlement Class Members' Personal Information, the maintenance and storage of Settlement Class Members' Personal Information, Bell-Carter's information security policies and practices and/or Bell-Carter's notice or alleged lack of timely notice of the Incident to Settlement Class Members. "Released Claims" do not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Settlement Agreement and shall not include any claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

**1.32** "Released Parties" means Bell-Carter, LLC, its officers and directors, predecessors, successors, assignees, creditors, agents, representatives and related entities. The Settling Parties expressly acknowledge that all Released Parties are intended beneficiaries of this Settlement Agreement.

**1.33** "Representative Plaintiff" means Kenneth Durham.

**1.34** "Request for Exclusion" means a fully completed and properly executed written request that is timely delivered to the Claims Administrator by a Settlement Class Member under Paragraph 5 of this Settlement Agreement and is postmarked on or before the Opt-Out Deadline. For a Request for Exclusion to be properly completed and executed, subject to approval by the Court, it must: (a) state the Settlement Class Member's full name, address and telephone number, (b) contain the Settlement Class Member's personal and original signature or the original signature of a person authorized by law to act on the Settlement Class Member's behalf with respect to a

claim or right such as those asserted in the Litigation, such as a trustee, guardian or person acting under a power of attorney and (c) state unequivocally the Settlement Class Member's intent to be excluded from the settlement. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member.

**1.35** "Service Award" means such funds as may be awarded by the Court to the Representative Plaintiff for their service as Representative Plaintiff.

**1.36** "Settlement Class" means all individuals within the United States whose Personal Information was alleged to be compromised in the Incident, including those who received notice of the breach. Excluded from the Settlement Class is any judge presiding over the Litigation and any members of their first-degree relatives, judicial staff and persons who timely and validly request exclusion from the Settlement Class.

**1.37** "Settlement Class Counsel" means Matthew R. Wilson and Michael J. Boyle, Jr. of MEYER WILSON CO., LPA.

**1.38** "Settlement Class Members" means members of the Settlement Class. There are approximately 2,000 Settlement Class Members.

**1.39** "Settlement Costs" means all costs of the settlement including the costs of carrying out the Notice Program, as set forth in Paragraph 4, Claims Administration, any Attorneys' Fees and Expenses Award, any Service Award to Representative Plaintiff and all other expenses or costs related to the settlement including the costs of serving notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and Award payments to the Settlement Class Members.

**1.40** "Settling Parties" means, collectively, Bell-Carter and Representative Plaintiff, individually and on behalf of the Settlement Class.

**1.41** “Unauthorized Activity Period” means the time from and including September 7, 2022 through and including the Claims Filing Deadline.

**1.42** “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including the Representative Plaintiff, does not know or suspect to exist in his or her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with and release of the Released Parties or might have affected his or her decision to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Representative Plaintiff expressly shall have and each of the other Settlement Class Members shall be deemed to have and by operation of the Final Approval Order shall have, released any and all Released Claims including Unknown Claims and waived the provisions, rights and benefits conferred by California Civil Code § 1542 and also any and all provisions, rights and benefits conferred by any law of any state, province or territory of the United States which is similar, comparable or equivalent to California Civil Code § 1542, which provides:

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

Settlement Class Members including Representative Plaintiff may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have and by operation of the Final Approval Order shall have upon the Effective Date fully, finally and forever settled and released any and all Released Claims including Unknown Claims.

**1.43** All time periods described in terms of “days” shall be in calendar days unless otherwise expressly stated.

**2. SETTLEMENT CONSIDERATION**

**2.1** In consideration for the releases contained in this Settlement Agreement, Bell-Carter will perform all the following:

Bell-Carter will pay to the Claims Administrator as follows: (a) within 10 business days following entry of the Preliminary Approval Order and receipt of Payment Instructions, Bell-Carter will pay the amounts reasonably necessary to pay for the Notice Program and Settlement Administration and (b) on the Funding Date, Bell-Carter will provide an amount necessary to the Claims Administrator to satisfy any valid Claims made by the Settlement Class Members. On the Funding Date, Bell-Carter will separately pay \$130,000 to Settlement Class Counsel for Attorneys’ Fees and Expenses if the Court approves said payment. On the Funding Date, Bell-Carter will separately pay a Service Award of \$3,000 to the Representative Plaintiff if the Court approves said payment. Under no circumstances will Defendant or any of the Released Parties be required to make any other payments under this Settlement Agreement or otherwise in consideration of the releases set forth herein.

**2.2** Each Settlement Class Member who files a valid claim will be eligible for one cash payment. If more than one valid claim is submitted, the largest valid claim filed will be processed and the remaining claims will be denied as duplicative.

**2.3** Settlement Class Members may make a Settlement Claim for: (i) an award for Lost Time as described in ¶ 2.4.1; (ii) an award for Ordinary Loss as described in ¶ 2.4.2; and (iii) an award for Extraordinary Loss as described in ¶ 2.4.3.

**2.4.1 *Lost Time.*** Every Settlement Class Member who submits a valid claim is eligible to receive an award for the lost time spent dealing with the Incident of up to three hours at \$20 per hour. In order to make a valid claim, each Settlement Class Member will need to attest under penalty of perjury as to the hours that such Settlement Class Member spent dealing with the Incident.

**2.4.2 *Ordinary Loss.*** A Settlement Class Member who incurred Ordinary Losses as a result of the Incident and submits a valid claim for a Reimbursement Award shall be eligible to receive a Reimbursement Award consisting of reimbursement of up to \$175. A valid claim for a Reimbursement Award must include supporting documentation and be sworn upon penalty of perjury.

**2.4.3 *Extraordinary Loss.*** A Settlement Class Member who incurred Extraordinary Losses as a result of the Incident and submits a valid claim for a Reimbursement Award shall be eligible to receive a Reimbursement Award consisting of reimbursement of up to \$4,500. A valid claim for a Reimbursement Award must include supporting documentation and be sworn upon penalty of perjury.

**2.5** Settlement Class Members seeking an award under this Agreement must complete and submit a written Claim Form to the Claims Administrator, postmarked or submitted electronically on or before the Claims Filing Deadline. The Claim Form must: (a) be signed by the Settlement Class Member, and (b) provide appropriate documentation where required by the

Claim Form. Failure to provide supporting documentation as requested as set forth in as requested on the Claim Form or by the Claims Administrator shall result in denial of a Settlement Claim.

**3 VENUE, PRELIMINARY SETTLEMENT APPROVAL AND FINAL APPROVAL**

**3.1** The Parties agree and understand that Plaintiff shall file an action in Superior Court of California, County of Contra Costa, and that all subsequent actions shall be conducted in this forum.

**3.2** As soon as practicable after the execution of the Settlement Agreement, Settlement Class Counsel shall file a motion seeking entry of a Preliminary Approval Order ("Motion for Preliminary Approval"). A proposed Preliminary Approval Order shall be submitted with the Motion for Preliminary Approval. The Motion for Preliminary Approval shall request that the Court, *inter alia*:

- a) Stay all proceedings in the Litigation other than those related to approval of the Settlement Agreement;
- b) Stay and/or enjoin, pending Final Approval of the Settlement Agreement, any actions brought by Settlement Class Members concerning the Released Claims;
- c) Preliminarily certify the Settlement Class for settlement purposes only;
- d) Preliminarily approve the terms of the Settlement Agreement as fair, adequate and reasonable;
- e) Appoint Representative Plaintiff as the Settlement Class representatives for settlement purposes only;
- f) Appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;
- g) Approve the notice program, as set forth in Paragraph 4 herein and set the dates

for the Claims Filing Deadline, Opt-Out Deadline and Objection Deadline;

- h) Approve the form and contents of a long form notice (“Long Notice”) to be posted on the settlement website, and a Summary Notice to be sent via First Class Mail to Settlement Class Members (“Summary Notice”), which together shall include a fair summary of the Settling Parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from the settlement, the process and instructions for filing a Claim Form and the date, time and place of the Final Approval Hearing;
- i) Approve a Claim Form;
- j) Appoint a Claims Administrator;
- k) Set deadlines for objections, Requests for Exclusion, a Motion for Final Approval, and briefing in support of final approval by the Settling Parties; and
- l) Schedule the Final Approval Hearing.

**3.3** Defendant will not object to the entry of the Preliminary Approval Order as it complies with the terms of this Settlement Agreement.

**3.4** Settlement Class Counsel and Bell-Carter shall request that the Court hold a Final Approval Hearing after notice is completed and at least 30 days after the Opt-Out Deadline and Objection Deadline.

**3.5** Settlement Class Counsel and the Representative Plaintiff shall move for Final Approval on or before the deadline set by the Court. Defendant shall not object to the Motion for Final Approval so long as such motion is in accordance with the terms of this Settlement Agreement, but may file briefing in support of Final Approval or in opposition to any objections



by the deadline set by the Court.

**3.6** The proposed Final Approval Order shall be filed with the Motion for Final Approval and shall, among other things:

- a) Determine the Settlement Agreement is fair, adequate and reasonable;
- b) Finally certify the Settlement Class for settlement purposes only;
- c) Determine that the Notice Program satisfies due process requirements;
- d) Dismiss all claims in the Litigation with prejudice;
- e) Bar and enjoin any Settlement Class Members who did not timely opt out in accordance with the requirements of this Settlement Agreement from asserting any of the Released Claims; and
- f) Release and forever discharge Bell-Carter and the Released Parties from the Released Claims.

#### **4**     **NOTICE PROGRAM**

**4.1** Within 10 days of entry of the Preliminary Approval Order, Bell-Carter will provide the Claims Administrator with a list of Settlement Class Members which will include, to the extent available, the name and physical mailing address of each Settlement Class Member. The Claims Administrator shall cause notice to be disseminated to the Settlement Class Members pursuant to the Preliminary Approval Order and the Notice Program as described below and in compliance with all applicable laws. The Claims Administrator must maintain the list of Settlement Class Members in strict confidence and may not share the list with anyone other than Bell-Carter. The Claims Administrator must enter into a confidentiality agreement as reasonably specified by Bell-Carter.

**4.2** Class Notice shall be provided to the Settlement Class as follows:

**4.2.1** Within 10 days after receiving the Settlement Class list from Bell-Carter, the Claims Administrator shall send the Summary Notice on a postcard via First Class U.S. Mail, postage pre-paid, to Settlement Class Members. Within 20 days after sending such mail, the Claims Administrator shall undertake reasonable efforts to confirm the address and to resend notice for any Settlement Class Members for which the Claims Administrator receives returned mail from the U.S. Postal Service indicating that the initial mailing was not delivered.

**4.2.2** Within 7 days after receiving the Settlement Class list from Bell-Carter, the Claims Administrator shall establish a dedicated settlement website that includes this Settlement Agreement, the Long Notice and the Claim Form approved by the Court. Settlement Class Counsel shall propose the format and content of the settlement website for approval by Defendant's Counsel. The Claims Administrator shall maintain and update the website throughout the Claims Period. The Claims Administrator will also post on the settlement website copies of the Motion for Final Approval of the Settlement Agreement, and the Motion for an Attorneys' Fees and Expenses Award and a Service Award. A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members' inquiries. The settlement website shall not include any advertising and shall remain operational until 30 days following the entry of Final Approval, at which time the Claims Administrator shall terminate the settlement website and transfer ownership of the URL to Bell-Carter.

**4.3** The Notice Program shall be subject to approval by the Court as meeting the requirements of due process.

**4.4** The Long Notice, Summary Notice and Claim Form approved by the Court may be adjusted by the Claims Administrator in consultation and agreement with the Settling Parties as

may be reasonable and necessary, so long as it is not inconsistent with such approval and does not materially alter the language approved by the Court.

4.5 Prior to the Final Approval Hearing, Counsel for the Settling Parties shall cause to be filed with the Court an appropriate declaration from the Claims Administrator demonstrating compliance with the Court-approved Notice Program.

## **5 OPT-OUT PROCEDURES**

5.1 Each Settlement Class Member wishing to exclude themselves from the Settlement Class must individually sign and timely mail a written Request for Exclusion to the address designated by the Claims Administrator.

5.2 To be effective, a Request for Exclusion must be postmarked no later than 90 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

5.3 Within 7 days after the Opt-Out Deadline, the Claims Administrator shall provide the Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all completed Requests for Exclusions. Settlement Class Counsel may file these materials with the Court, with any Personal Information other than names and cities and states of residence redacted, no later than 7 days prior to the Final Approval Hearing.

5.4 All persons who opt out of the Settlement Class shall not receive any benefits of or be bound by the terms of this Settlement Agreement. All persons falling within the definition of the Settlement Class who do not opt out shall be bound by the terms of this Settlement Agreement and the Final Approval Order entered thereon.

## **6 OBJECTION PROCEDURES**

**6.1** Each Settlement Class Member who does not file a valid and timely Request for Exclusion may file with the Court a notice of intent to object to the Settlement Agreement. The Long Notice shall instruct Settlement Class Members who wish to object to the Agreement to send their written objections only to the Court. The Notice shall make clear that the Court can only approve or deny the Settlement Agreement and cannot change the terms. The Notice shall advise Settlement Class Members of the deadline for submission of any objections.

**6.2** All such notices of an intent to object to the Settlement Agreement must be written and must include all of the following: (i) the objector's full name, address, telephone number and e-mail address, (ii) information identifying the objector as a Settlement Class Member including proof that the objector is a member of the Settlement Class, (iii) a statement as to whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class or to the entire Class, (iv) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection the objector believes applicable, (v) the identity of any counsel representing the objector, (vi) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and if through counsel, identifying that counsel, (vii) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative.

**6.3** To be timely, written notice of an objection in the appropriate form must be postmarked no later than the Objection Deadline.

## **7 CLAIMS ADMINISTRATION**

**7.1** The Claims Administrator shall administer and calculate the Settlement Claims

submitted by Settlement Class Members. All Settlement Claims must be submitted on or before the Claims Filing Deadline to be deemed timely. The determination by the Claims Administrator of the validity or invalidity of all Settlement Claims shall be binding. The Claims Administrator shall periodically provide Settlement Class Counsel and Defendant's counsel with reports as to both settlement claims and distribution, and they shall have the right to obtain and review supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate.

**7.2** For each settlement claim submitted and received, the Claims Administrator will determine whether: (1) the Claimant is a Settlement Class Member and (2) that the Claimant has provided all information required to complete the Claim Form by the Claims Filing Deadline, including but not limited to information required under Paragraph 2. The Claims Administrator may, at any time, request from the Claimant, in writing, additional information as the Claims Administrator may reasonably require in order to adequately evaluate the settlement claim. All information provided to the Claims Administrator will be deemed confidential by the Claims Administrator.

**7.3** The Claims Administrator shall determine whether a Claimant's Claim Form and supporting materials are sufficient to support a claim. If the Claims Administrator should receive an incomplete Claim Form or a Claim Form with insufficient documentation to determine whether the claimant is a Settlement Class Member, the Claims Administrator shall request additional information and give the claimant 21 days to cure any defect before rejecting a settlement claim. The Claims Administrator shall make requests for additional information within 21 days after the Claims Filing Deadline. If a Settlement Class Member fails to correct all deficiencies within 21 days from receiving a request for additional information, the Claims Administrator shall deny the

claimant's settlement claim and the claimant will not be entitled to an Award.

7.4 After receiving additional information, the Claims Administrator shall have 30 days to accept or reject each settlement claim. If, after review of the settlement claim and all documentation submitted by the Claimant, the Claims Administrator determines that such a settlement claim is valid, then the settlement claim shall be paid within the time period provided in this Paragraph. If the settlement claim remains invalid because the Claimant does not provide the requested information needed to complete the Claim Form and evaluate the settlement claim, then the Claims Administrator may reject the settlement claim without any further action apart from providing a notice of rejection of the settlement claim.

7.5 No Person shall have any claim against the Claims Administrator, Defendant, the Released Parties, or their counsel, Settlement Class Counsel and/or the Representative Plaintiffs based on distribution of Awards to Settlement Class Members.

7.6 The Claims Administrator shall agree to hold any funds provided by Bell-Carter in connection with the Settlement in an Escrow account and administer payments towards valid claims out of this fund, subject to the continuing jurisdiction of the Court. The Claims Administrator shall prepare any required tax returns and pay any taxes owed. Under no circumstances will Bell-Carter have any liability for taxes or tax expenses under this Settlement Agreement.

7.7 The Claims Administrator will send payments electronically in an electronic payment format recommended by the Claims Administrator and agreed-upon by the Parties for Approved Claims within the later of 30 days after the Effective Date. No distributions will be made without authorization from the Parties. If a Settlement Class Member cannot, or chooses not to, receive payment electronically, award checks shall be sent by U.S. mail. Award checks, electronic

and paper, shall be valid for a period of 180 days from issuance and shall state that the check must be cashed within 180 days after which time it will become void. In the event a settlement check becomes void, the Settlement Class Member to whom that settlement check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or to any further distribution from the Settlement Fund or to any further recourse against the Released Parties, and the Agreement and Release will in all other respects be fully enforceable against the Settlement Class Member. No later than 190 days from the issuance of the Award checks, the Claims Administrator shall take all steps necessary to stop payment on any Award checks that remain uncashed.

7.8 If there is any balance remaining 90 days after the Claims Administrator completes the process for stopping payment on any Award checks that remain uncashed, the Settling Parties agree that such funds shall be returned to Bell-Carter. These funds shall not be considered unclaimed property under the laws of California or any other state.

7.9 All Settlement Class Members who fail to timely submit a valid settlement claim hereunder within the time frames set forth herein or such other period as may be ordered by the Court or otherwise allowed, shall be forever barred from receiving an Award pursuant to this Agreement, but will in all other respects be subject to and bound by the provisions of this Agreement, the Releases contained herein and the Final Approval Order.

## **8 RELEASES**

8.1 Each Settlement Class Member, by operation of the Final Approval Order, will be deemed to have forever fully, finally, completely and unconditionally released, discharged and acquitted Bell-Carter and the Released Parties from any and all of the Released Claims and will be deemed to have also released Unknown Claims. Further, each Settlement Class Member will

be permanently barred and enjoined from commencing, prosecuting or participating in any recovery in any action in this or any other forum in which any of the Released Claims or Unknown Claims are asserted.

8.2 Upon entry of the Final Approval Order, each Settlement Class Member, including Representative Plaintiff, shall be barred from initiating, asserting or prosecuting against Bell-Carter and any Released Parties any claims that are released by operation of the Settlement Agreement and the Final Approval Order.

9 **SETTLEMENT CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES AWARD;  
REPRESENTATIVE PLAINTIFF'S SERVICE AWARD**

9.1 Settlement Class Counsel may file a motion seeking reasonable Attorneys' Fees and Expenses in an amount not to exceed \$130,000. Bell-Carter will not object to Settlement Class Counsel's payment unless Settlement Class Counsel's request exceeds the terms outlined in this Agreement.

9.2 Settlement Class Counsel will also request from the Court a Service Award for the Representative Plaintiff in the amount of \$3,000.00. Bell-Carter will not object to Representative Plaintiff's request for a Service Award payment unless Representative Plaintiff's request exceeds the terms outlined in this Agreement.

9.3 Within seven days after the date the Court approves the Attorneys' Fees and Expenses Award and the Service Awards, Bell-Carter shall pay any Attorneys' Fees and Expenses Award and to an account designated by Settlement Class Counsel. After the Attorneys' Fees and Expenses Award and the Service Awards have been deposited into this account, Class Counsel shall be responsible for distributing the Service Awards to Representative Plaintiff and shall have sole discretion in allocating such Attorneys' Fees and Expenses and distributing to each participating Representative Plaintiff's Counsel firm an allocated share of such Attorneys' Fees



and Expense to that firm. Defendant shall have no responsibility for distribution of Attorneys' Fees or Expenses among participating firms.

**9.4** Defendant shall not be liable for any additional Attorneys' Fees and expenses of Representative Plaintiff's Counsel in the Litigation.

**10 CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

**10.1** Defendant's willingness to settle this Litigation on a class-action basis and to agree to the accompanying certification of the Settlement Class for settlement purposes is dependent on achieving finality in this Litigation and the desire to avoid the expense of this and other litigation. Consequently, Bell-Carter has the right to terminate this Settlement Agreement, declare it null and void and have no further obligations under this Settlement Agreement to the Representative Plaintiff, the Settlement Class or Settlement Class Counsel, unless each of the following conditions occur:

- a) The Court has entered a Preliminary Approval Order;
- b) The Court enters a Final Approval Order; and
- c) The number of Opt-Outs is fewer than two percent of the estimated Settlement Class.

**10.2** If all conditions in Paragraph 10.1 are not fully satisfied, this Settlement Agreement shall be automatically terminated unless Settlement Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Settlement Agreement.

**10.3** In the event that the Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated in accordance with its terms: (a) the Settling Parties shall be restored to their respective positions in the Litigation that existed prior to the mediation and shall

jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court, (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement, including certification of the Settlement Class for settlement purposes only, shall be treated as vacated, *nunc pro tunc* and (c) any amounts in the Escrow Account not due and payable to the Claims Administrator shall be returned to Bell-Carter. Notwithstanding any statement in this Class Settlement Agreement to the contrary, after the Court's approval of the amount of Attorneys' Fees and Expenses Award to Settlement Class Counsel, no further order of the Court reducing the amount of any Attorneys' Fees and Expenses Award to Settlement Class Counsel, and no modification of any order or reversal on appeal of any order that has the effect of reducing the amount of any Attorneys' Fees and Expenses Award to Settlement Class Counsel, shall constitute grounds for cancellation or termination of the Class Settlement Agreement.

**10.4** For the avoidance of doubt, Defendant conditionally agrees and consents to certification of the Settlement Class for settlement purposes only, and within the context of the Settlement Agreement only. If the Settlement Agreement for any reason is not fully approved or is otherwise terminated, Defendant reserves its right to assert any and all objections and defenses to certification of a class and neither the Settlement Agreement nor any Order or other action relating to the Settlement Agreement shall be offered by any Person as evidence or in support of a motion to certify a class for a purpose other than settlement.

## **11 MISCELLANEOUS PROVISIONS**

**11.1** The Settling Parties and their counsel acknowledge that it is their intent to consummate this Settlement Agreement and agree to undertake their best efforts to effectuate and implement all terms and conditions of this Settlement Agreement, including taking all steps and efforts contemplated by this Settlement Agreement, and any other steps and efforts which may become necessary by order of the Court or otherwise.

**11.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation and with regard to the Released Parties. The Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

**11.3** Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement: (a) is or may be deemed to be or may be used as an admission of or evidence of the validity or lack thereof of any Released Claim or of any wrongdoing or liability of any of the Released Parties or (b) is or may be deemed to be or may be used as an admission of or evidence of any fault or omission of any of the Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Settlement Agreement in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or

counterclaim.

**11.4** The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

**11.5** The Settlement Agreement contains the entire agreement between the Settling Parties and supersedes all prior agreements or understandings between them. The terms of the Settlement Agreement shall be construed as if drafted jointly by all Settling Parties to this Settlement Agreement. The terms of the Settlement Agreement shall be binding upon each of the Settling Parties to this Settlement Agreement, their agents, attorneys, employees, successors and assigns and upon all other Persons or entities claiming any interest in the subject matter hereof, including any Settlement Class Member.

**11.6** Released Parties shall not be liable for any additional Attorneys' Fees, costs or expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually other than what is expressly provided for in this Settlement Agreement. Settlement Class Counsel agree to hold Released Parties harmless from any claim regarding the division of any award of attorneys' fees and expenses to Settlement Class Counsel, and any claim that the term "Settlement Class Counsel" fails to include any counsel, Person or firm who claims they are entitled to a share of any Attorneys' Fees awarded to Settlement Class Counsel in this lawsuit.

**11.7** The Settlement Agreement shall be considered to have been negotiated, executed and delivered and to be wholly performed in the State of California. The rights and obligations of the Parties to the Settlement Agreement shall be construed and enforced in accordance with and

governed by the internal, substantive laws of the State of California without giving effect to that State's choice of law principles.

**11.8** The Court shall retain jurisdiction over the implementation, enforcement and performance of this Settlement Agreement and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Settling Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Claims Administrator. As part of its agreement to render services in connection with this Settlement, the Claims Administrator shall consent to the jurisdiction of the Court for this purpose.

**11.9** The individuals signing this Settlement Agreement on behalf of Bell-Carter represent that they are fully authorized by Bell-Carter to enter into and to execute this Settlement Agreement on its behalf. Representative Plaintiff's Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Bell-Carter on behalf of Representative Plaintiff and to enter into and to execute this Settlement Agreement on behalf of the Settlement Class subject to Court approval.

**11.10** None of the Settling Parties to this Settlement Agreement shall be considered to be the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**11.11** The Settling Parties agree that this Settlement Agreement and the Final Order

following from the Settlement Agreement will not prejudice in any way the Settling Parties' right to raise any of the arguments that the Settling Parties made in this case in any future litigation.

**11.12** In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Settlement Agreement shall continue in full force and effect without said provision to the extent Bell-Carter does not exercise its right to terminate under Paragraph 10.

**11.13** If applicable, within 30 days after Award payments are funded, Settlement Class Counsel shall destroy all confidential, non-public information obtained in connection with the Litigation and Settlement Agreement and certify the same.

**11.14** All notices or formal communications under this Settlement Agreement shall be in writing and shall be given (i) by hand delivery, (ii) by registered or certified mail, return receipt requested and postage pre-paid, or (iii) by overnight courier to counsel for the Settling Party to whom notice is directed at the following addresses, and also send a copy by electronic mail:

For the Representative Plaintiff and the Settlement Class:

Matthew R. Wilson, Esq.  
Michael J. Boyle, Jr., Esq.  
MEYER WILSON CO., LPA  
305 W Nationwide Blvd.  
Columbus, OH 43215  
(614) 224-6000  
(614) 224-6066  
mwilson@meyerwilson.com  
mboyle@meyerwilson.com

For Bell-Carter:


M. Ryan Pinkston, Esq.  
SEYFARTH & SHAW LLP  
560 Mission Street  
Suite 3100  
San Francisco, CA 94105-2930  
(415) 544-1013  
rpinkston@seyfarth.com

Counsel may designate a change of the person to receive written notice or a change of address by giving written notice to all Settling Parties in the manner described in this Paragraph.

**11.15 Settlement Class Counsel, Representative Plaintiff, Defendant and Defendant's** Counsel may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Settling Parties had signed the same instrument. Facsimile and scanned signatures shall be considered as valid signatures as of the date signed. This Settlement Agreement shall not be deemed executed until signed by all Representative Plaintiff, Settlement Class Counsel and by Counsel for and Representative of Defendant.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Agreement to be executed on their behalf by their duly authorized counsel of record, all as of the day set forth below:

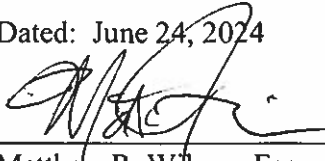
Dated: 07/16, 2024

  
\_\_\_\_\_  
Kenneth Durham, Representative Plaintiff

Dated: 6/18, 2024

  
\_\_\_\_\_  
Bell-Carter Foods, LLC:

Dated: June 24, 2024



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Matthew R. Wilson, Esq.  
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*Attorneys for Plaintiff Kenneth Durham*



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*Attorneys for Defendant  
Bell-Carter Foods, LLC.*