

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KALVIN DRUMMOND, MOHAMMED
BAH, CHRISTOPHER GRANDISON,
SHANE BENT, ROBERT CIAMPAGLIA and
STEFAN GODLEY on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

HERR FOODS INC.,

and

JOHN DOES 1-10,

Defendants.

Civil Action No. 2:13-cv-05991-BMS

**JOINT STIPULATION OF CLASS AND
COLLECTIVE SETTLEMENT AND RELEASE**

Subject to its terms and conditions and the approval of the Court, this Joint Stipulation of Class and Collective Action Settlement and Release (the “Stipulation”) reflecting the terms of the parties’ class-wide settlement (the “Settlement”) is made and entered into by and among the Plaintiffs Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia and Stefan Godley (collectively, “Plaintiffs”), individually and on behalf of the putative class and collective action members, and Defendant Herr Food Inc. (“Defendant” or “Herr’s” or the “Company”). Plaintiffs and Defendant are jointly referred to in this Stipulation as the “Parties,” and each of them as a “Party.”

I. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (for themselves and the Participating Class Members, as defined below) and Defendant, with the assistance of their respective counsel, that, as among the Settling Parties, including all Settlement Class Members, the Action, the Plaintiffs' Released Claims, the Participating Class Members' Released Claims, the Claimants' Released Claims, and Class Counsel's Released Fees/Costs Claims (all of which are defined below) shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, as to all Settling Parties and Participating Class Members, upon and subject to the terms and conditions of this Stipulation and the Judgment (defined below).

II. DEFINITIONS

In addition to terms defined elsewhere in the Stipulation, as used in this Stipulation the following terms have the meanings indicated below:

1. "Action" means the civil action titled "*Drummond, et al. v. Herr Foods Inc., et al.*" now pending in the United States District Court for the Eastern District of Pennsylvania (Case No. 2:13-cv-05991-BMS).
2. "CAFA Notice" means a notice of proposed settlement pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, substantially in the form attached to this Stipulation as Exhibit C.
3. "Change of Name and/or Address Form" means the form, substantially in the form attached to this Stipulation as Attachment C to Exhibit B, by which a Class Member may provide his or her correct name and address to the Settlement Administrator in the event that it is now different than what is reflected in Defendant's personnel data.

4. “Claimant” means all Class Representatives, Plaintiffs and Opt-in Plaintiffs as well as all Class Members who submit a timely and valid Claim Form pursuant to this Stipulation and who do not submit a timely and valid written request for exclusion from the Settlement.
5. “Claim Form” means the form by which Class Members may claim their Settlement Shares and consent to join this Action, substantially in the form attached to this Stipulation as Form A to Exhibit B.
6. “Claims Administrator” or “Settlement Administrator” means the third-party claims administration firm selected by the Parties and approved by the Court. The Parties have agreed to propose Kurtzman Carson Consultants as the Claims Administrator for this Court’s consideration and approval.
7. “Class Counsel” means Swartz Swidler, LLC.
8. “Class Member” is an individual employed by Defendant Herr Foods Inc. (“Herr’s”) in the position of: (a) “Route Salesperson” or “Senior Route Salesperson” for one or more days during the Class Period, as well as any individual who filed a complaint or consent form in the Action prior to November 10, 2014 and who worked for Herr’s within three years prior to the date he or she filed the consent form with the Court.
9. “Class Notice” means the Notice of (1) Proposed Class and Collective Action Settlement and (2) Final Settlement Approval Hearing to be sent to Class Members after the Court grants preliminary approval of the Settlement, substantially in the form attached to this Stipulation as Exhibit B.

10. “Class Period” means the period of time beginning on November 10, 2011 and ending on January 31, 2016.
11. “Class Representatives” or “Plaintiffs” means Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia and Stefan Godley, who are the named Plaintiffs in this Action.
12. “Compensable Work Week” means a seven-day work week – during the Class Period – during which a Class Member was actively employed (i.e., not on a leave of absence) by Herr’s or alleged to be employed by Herr’s in the position of: (a) “Route Salesperson” or “Senior Route Salesperson.” For Class Members who filed a complaint or consent form prior to November 10, 2014, “Compensable Work Week” means any seven-day work week – from three years prior the date of the filing of his or her consent form or the complaint (if he or she was named in the caption) through January 31, 2016 – where the Class Member was actively employed (i.e. not on a leave of absence) by Herr’s or alleged to be employed by Herr’s in the position of: (a) “Route Salesperson” or “Senior Route Salesperson.”
13. “Counsel for Defendant” means Michael J. Puma of Morgan, Lewis & Bockius LLP.
14. “Court” means the United States District Court for the Eastern District of Pennsylvania.
15. “Days” or “days” refer to calendar days below unless specifically indicated as business days.
16. “Final” means the last of the following dates, as applicable:

- a. If no Class Member files a valid and timely written objection to the Settlement, then the date the Court enters the Final Approval Order of the Settlement dismissing the Action with prejudice;
 - b. If a Class Member files a valid and timely written objection to the Settlement, then the day after the applicable date for seeking appellate review of the District Court’s final approval of the Settlement has passed, assuming no appeal or request for review is filed within thirty (30) days of the Final Approval Order as defined below; and if an appeal is filed, then the day after the final resolution of that appeal (including any requests for rehearing and/or petitions for writ of certiorari) resulting in the final judicial approval of the Settlement.
 - c. “Final Approval Order” means the Court’s order granting final approval of the Settlement, which will constitute a “judgment” within the meaning of Rule 58(a) of the Federal Rules of Civil Procedure, substantially in the form attached to this Stipulation as Exhibit D.
- 17.** “Notice Materials” means the Class Notice, the Claim Form, and the Change of Name and/or Address Form.
- 18.** “Opt-in Plaintiff” means a Class Member who submitted a Consent to Join the Lawsuit prior to November 30, 2015.
- 19.** “Participating Class Member” means a Class Member who has not completed and timely submitted a written request for exclusion from the Settlement.
- 20.** “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

21. “Preliminary Approval Order” means the Court’s order granting preliminary approval of the Settlement, substantially in the form attached to this Stipulation as Exhibit A.
22. “Qualified Settlement Fund” or “QSF” means the qualified settlement fund set up by the Settlement Administrator into which the Settlement Payment will be deposited after the Final Approval Order is Final.
23. “Settlement Payment” means the maximum payment by Herr’s pursuant to this Stipulation of Two-Million Dollars and No Cents (\$2,000,000.00) to fund the QSF. The Settlement Payment will be the sole source and maximum payment by Defendant or the Released Parties (defined below) under this Settlement and shall include: (1) all Settlement Shares (defined below); (2) all enhancement amounts approved for Class Representatives; (3) all Class Counsel Attorneys’ Fees and Costs approved by the Court; (4) the reasonable fees and expenses of the Settlement Administrator; and (5) Defendant’s share of payroll taxes. Under no circumstances shall Defendant or the Released Parties (defined below) pay or be required to pay any amount in connection with this Settlement above and beyond the Settlement Payment.
24. “Settlement Share” means each Class Member’s potential share of the Net QSF (defined below), as calculated pursuant to this Settlement.
25. “Settling Parties” or “Parties” means Defendant and the Class Representatives on behalf of themselves and all Participating Class Members.

III. RECITALS

1. On October 14, 2013, Plaintiff Calvin Drummond, a former Route Salesperson (“RSP”) for the Company, filed a class and collective action Complaint against

the Defendant in the U.S. District Court for the Eastern District of Pennsylvania, alleging, on behalf of himself and all other allegedly similarly situated employees, that the Company violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.101 et seq., and the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq., by improperly classifying him and other putative class and collective action members in the RSP position as exempt. Plaintiff Drummond amended the Complaint on November 6, 2013 to add Mohammed Bah, Shane Bent, and Christopher Grandison as named Plaintiffs. On May 30, 2015, Plaintiffs amended the Complaint once again to add Pennsylvania state law claims for unlawful wage deductions.

2. Pursuant to the parties’ case management plan, the first phase of discovery for this matter closed on June 5, 2014. During this initial phase of discovery Herr’s produced over 6,500 pages of documents and a corporate designee for a Rule 30(b)(6) deposition covering thirty different topics. Subsequently, June 20, 2014, Plaintiffs filed a motion for additional discovery pursuant to Federal Rule of Civil Procedure 56(d) in response to Defendant’s partial motion for summary judgment as to the FLSA claims of Opt-In Plaintiff Jacqueline Jones. The Court granted that motion in part, and Plaintiffs received an additional forty days of discovery to depose four individuals and review seven categories of documents to be produced by Herr’s.
3. On October 13, 2015, Plaintiffs filed their Fourth Amended Complaint, which added claims for overtime compensation and wage deductions under the New

Jersey Wage and Hour Law, N.J.S.A. § 34:11–56a, et seq., the New Jersey Wage Payment Law, N.J.S.A. § 34:11–4.1, et seq., the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. § 3-401, et seq., and the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. § 3-501, et seq. The Fourth Amended Complaint included the addition of Stefan Godley and Robert Ciampaglia as named Plaintiffs. Defendant denied the material allegations; maintained that the Court should not certify the proposed class action; asserted that Plaintiffs and the proposed Class were properly paid all wages due under the FLSA and the laws of Pennsylvania, New Jersey, and Maryland; maintained that Defendant bore no liability to Plaintiffs or the proposed Class for wages, penalties, or otherwise; and raised other defenses.

4. On November 30, 2015, the Parties participated in good-faith, arms-length negotiations presided over by mediator The Honorable (retired) Diane M. Welsh. During that mediation, the parties were able to reach an agreement to settle the Action on the terms set forth herein.
5. Based on the discovery conducted in this case, information exchanged confidentially for purposes of mediation, and their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant as to both class and final collective action certification and the merits of the claims, and potential appellate issues.

6. It is the mutual desire of the Parties to fully and finally settle, compromise, and discharge all disputes and claims raised in or related in any way to the Action as more fully set forth below. In order to achieve a full and complete release of the released persons, the Participating Class Members, including the Class Representatives (who agree not to seek to opt-out of the Settlement), acknowledge that this Settlement is intended to include and resolve all the claims that were at any time during the litigation asserted in the Action as more fully set forth below.
7. This Settlement represents a compromise of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant or any of the Released Parties (defined below) that Plaintiffs' claims in the Action have merit or that they have any liability to Plaintiffs or any Class Members on those claims or any other claim or that certification is appropriate if a class action were certified or decertification of the conditionally certified action would be inappropriate. Nothing in this Action shall be construed as an admission by Plaintiffs that Defendant's defenses in this Action have merit.

IV. DUTIES OF THE PARTIES TO SEEK PROMPT COURT APPROVAL

1. Promptly upon execution of this Settlement, Plaintiffs will move the Court for entry of the Preliminary Approval Order. Plaintiffs will provide a draft of that motion to Counsel for Defendant for Defendant's review at least five (5) business days before the filing deadline. The proposed Preliminary Approval Order shall include the following terms:
 - a. For settlement purposes only and without reaching any determination as to the manageability at trial of the proposed class action under Rule 23(b)(3), Federal Rules of Civil Procedure, certifying the Class as an opt-out class

action under Rule 23(b)(3), for all opt-in Plaintiffs and all remaining Class Members employed since November 10, 2011.

- b. Preliminarily approving the Settlement.
- c. Preliminarily approving Class Counsel's request for attorneys' fees and costs.
- d. Scheduling a final approval hearing on the questions of (1) whether the Settlement should be finally approved as fair, reasonable, and adequate as to the Participating Class Members; (2) whether the Court should grant final certification to the FLSA collective action; (3) whether the Court should award the requested enhancement payments to the Plaintiffs; and (4) whether the Court should award the requested fees and costs to Class Counsel.
- e. Approving as to form and content the Notice Materials and setting deadlines for submission of completed Claim Forms and written requests for exclusion from the Settlement and service and filing of objections to the Settlement.
- f. Appointing a Settlement Administrator to exercise the duties set forth in this Settlement.
- g. Directing the Settlement Administrator to mail the Notice Materials by first-class mail to the Class Members by the deadline set forth below and to mail a reminder notice, perform standard skip-trace services to verify addresses, and perform all other services as more fully set forth below.

2. Any disagreement among the Parties concerning the final forms of the Notice Materials, the CAFA Notice, or other documents necessary to implement the Settlement, as well as all other disputes regarding the Settlement and its implementation, will be referred to the Court for resolution if the Parties' good faith efforts to resolve the disagreement in person or by phone have failed.

V. CERTIFICATION OF THE CLASS FOR PURPOSES OF SETTLEMENT ONLY

1. For purposes of the Settlement only, the Parties stipulate that the Court may certify the Class as an opt-out class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure (the "Class Stipulation"). More specifically, the Parties agree as part of the Class Stipulation that, for settlement purposes only, the requirements of Federal Rule 23(b)(3) are satisfied, with the exception of the manageability requirement of Federal Rule 23(b)(3) that the Court need not address for purposes of settlement.
2. For purposes of settlement only, the Parties also stipulate that all Claimants are similarly situated within the meaning of section 16(b) of the FLSA, 29 U.S.C. § 216(b) (the "FLSA Stipulation").
3. The Class Stipulation and FLSA Stipulation are made solely for purposes of the Settlement. The Class Stipulation and FLSA Stipulation are in no way an admission that class or collective certification is proper under the more stringent litigation certification standard that requires a showing of, *inter alia*, manageability, that certification requirements would be established by further discovery, or that decertification of the class or collective action would not be warranted after additional discovery.

4. The existence and terms of this Settlement, the Class Stipulation, and the FLSA Stipulation shall not be admissible in this or any other action or proceeding as evidence that (i) the proposed Class or any other class should be certified or not decertified; (ii) this Action or any other action should be certified as a class or collective action or not decertified; or (iii) Defendant or the Released Parties (defined below) are liable to Plaintiffs, the proposed Class, or any other putative class or collective action class members.
5. If, for any reason, the Court grants final approval of the Settlement with material modification, or if the Court's final approval of the Settlement is reversed or materially modified on appellate review, then all terms of this Settlement (other than the confidentiality requirements set forth below), the Class Stipulation, and the FLSA Stipulation will automatically become null and void; the terms and fact of this Settlement (and of any act performed or document executed pursuant to or in furtherance of the Settlement), the fact that the Parties had made the Class Stipulation and the FLSA Stipulation, or that the Court granted certification of the Class, certification of the collective action, or otherwise accepted either Stipulation, will be inadmissible evidence in any subsequent proceeding in the Action or elsewhere. An award of Plaintiffs' Enhancement Payments or of Class Counsel's Attorneys' Fees and Costs Payment in an amount less than that sought by Plaintiffs or Class Counsel will not constitute a failure to grant final approval of the Settlement or a material modification of the Settlement for purposes of any provision of this Stipulation.

VI. APPOINTMENT AND DUTIES OF SETTLEMENT ADMINISTRATOR

1. Subject to the approval of the Court, the Parties have agreed to the appointment of a Settlement Administrator to perform the following duties in connection with administration of the Settlement: (i) using the data and information provided by Defendant to prepare the Claim Forms with the number of Compensable Work Weeks worked by each Class Member; (ii) obtaining forwarding addresses for Class Members using appropriate methods described below; (iii) mailing the Notice Materials to Class Members; (iv) creating and maintaining a website for an online Claims submission procedure; (iv) tracking non-delivered Class Materials and taking reasonable steps to re-send them to Class Members' current addresses; (v) tracking and timely reporting to Class Counsel and Counsel for Defendant returned Claim Forms and written requests for exclusion from the Settlement; (vi) calculating the amounts due to each Claimant pursuant to the Settlement; (vii) resolving disputes (if any) by Class Members regarding the number of Compensable Work Weeks or other matters, and notifying Class Counsel and Counsel for Defendant of such disputes and their resolution; (viii) establishing the QSF; (ix) disbursing all amounts payable from the QSF and handling all tax reporting; (x) disbursing Class Counsel's approved Attorneys' Fees and Costs Payment; (xi) notifying Class Counsel and Counsel for Defendant of any Claimants who have not cashed their Settlement Share checks by the deadline set forth below; (xii) sending reminder notices to Claimants to cash their settlement checks and as otherwise set forth herein; (xii) monitoring the responses to the class Notice (including tracking Class participation by number of Class Members and by number of participating Compensable Work Weeks) and maintaining a

toll-free number for Class Members, and (xiii) other duties as determined jointly by the Parties.

2. Defendant will provide the Settlement Administrator with data necessary to perform the Settlement Administrator's duties.
3. All disputes relating to the Settlement Administrator's performance of its duties, after good faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out and thereafter to enforce the releases contained herein.

VII. CAFA NOTICE

Pursuant to CAFA, within ten (10) days after Plaintiffs file the motion for preliminary approval of the Settlement, Defendant will mail the CAFA Notice to the Attorney General of the United States, the Attorney General of the Commonwealth of Pennsylvania, the Attorney General of the State of New Jersey, the Attorney General of the State of Maryland, and the Attorney General of each other state where Class Members reside according to Defendant's records. The Parties intend and believe that the CAFA Notice pursuant to the procedures described in this section comply with the requirements of CAFA; will seek approval of these procedures for CAFA Notice in Plaintiffs' motion for preliminary approval of the Settlement; and will request the Court to adjudicate the validity of the CAFA Notice in the motion for final approval of the Settlement and bar any Class Member's claim to void or avoid the Settlement under CAFA.

VIII. NOTICE TO THE CLASS OF THE SETTLEMENT AND CLAIMS PROCESS

1. Mailing the Notice Materials to the Class
 - a. Within fifteen (15) days after the Court enters its Preliminary Approval Order, and provided only that the Settlement Administrator first executes a confidentiality agreement satisfactory to Herr's, Herr's will provide to the Settlement Administrator a list of each Class Member's employee identification number, social security number, name, last known address, phone number, and the number of his or her Compensable Work Weeks. Herr's also will provide Class Counsel with a list in an Excel (or other format capable of summing data fields) format of each Class Member's employee identification number, name, last known address, and the number of his or her Compensable Work Weeks. The data provided to the Settlement Administrator and Class Counsel will remain confidential and will not be used or disclosed to anyone, except as required to applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.
 - b. Within seven (7) days after Herr's provides to the Settlement Administrator the data set forth above, the Settlement Administrator will mail, by first-class mail, the Notice Materials, including a return envelope with pre-paid postage affixed to the envelope, to all Class Members at their last known address, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

- c. The Settlement Administrator will use standard devices, including the National Change of Address database or equivalent, to obtain forwarding addresses prior to mailing and will use appropriate skip tracing to take appropriate steps to increase the probability that the Notice Materials will be received by all Class Members.

2. Claim Form

- a. The Claim Form mailed to the Class Members will show for the recipient Class Member the number of Compensable Work Weeks. No individual who has filed a Consent Form as of the date of the Preliminary Approval Date will be required to submit a Claim Form for payment. All Class Members who have filed with the Court, by the date of Preliminary Approval, a Consent Form will be deemed a Claimant for all purposes and be entitled to a payment the same as if he or she had submitted a Claim Form, provided he or she does not request exclusion from the Settlement. The Notice to the Class Members who are already opt-in Plaintiffs will explain that the existing named and opt-in Plaintiffs automatically shall become Claimants absent a timely and valid request to opt-out.
- b. Class Members will have the opportunity to challenge the information pre-printed on their individualized Claim Forms by submitting a written challenge along with their signed Claim Form and providing supporting documentation to the Settlement Administrator within the time period provided for submitting the Claim Form. Any challenges to the information pre-printed on the Claim Form should be supported by

documentary or other evidence. The Settlement Administrator may reject any challenge not supported by such evidence.

- c. Timely challenges submitted with documentary or other evidence will be resolved without hearing by the Settlement Administrator after consultation with Class Counsel and Counsel for Defendant. Herr's determinations from its records as to Compensable Work Weeks will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make a final determination based on its evaluation of all the evidence presented.
- d. Each Class Member will have ninety (90) days after the date on which the Settlement Administrator mails the Notice Materials to complete and submit to the Settlement Administrator a completed and executed Claim Form. A completed Claim Form will be deemed timely submitted to the Settlement Administrator if it is (i) mailed to the Settlement Administrator by first-class mail and postmarked by not later than the deadline for submission stated above; or (ii) it is delivered to and received by the Settlement Administrator by the deadline for submission stated above, whether by mail, facsimile transmission, e-mail, electronic delivery, professional delivery, or personal delivery.
- e. In the event that a Claim Form is submitted timely but is deficient in one or more respects, the Settlement Administrator will return the Claim Form to the Class Member within seven (7) business days of receipt with a notice explaining the deficiencies and stating that the Class Member will

have seven (7) business days from the date of the deficiency notice to correct the deficiency and resubmit the Claim Form. The envelope containing any resubmitted Claim Form must be postmarked within seven (7) business days of the date of the deficiency notice to be considered timely, absent a showing of good cause. If necessary, the Class Member will be sent a second deficiency notice to correct any deficiency concerning a resubmitted Claim Form, which will be governed by the same timeliness requirements as the first deficiency notice. Failure to correct the deficiencies set forth in the second deficiency notice within the timeframe set forth above will result in the Class Member automatically becoming a Participating Class Member, and the Class Member will be bound by all terms and conditions of the Settlement, including the release of all Released Claims.

3. Objection to Settlement

- a. Each Class Member who does not timely submit a written request for exclusion from the Settlement will have ninety (90) days after the date on which the Settlement Administrator mails the Notice Materials to object to the Settlement by serving, via mail, facsimile, or e-mail, on the Settlement Administrator by the ninety (90) day deadline, a written objection to the Settlement. The Settlement Administrator shall promptly serve the written objection on Class Counsel and Counsel for Defendant, and shall file all objections with the Court by no later than five (5) days following the expiration of the ninety (90) day deadline.

4. Exclusion from Settlement

- a. Each Class Member will have ninety (90) days after the date on which the Settlement Administrator mails the Notice Materials to submit a written request for exclusion from the Settlement (“Submission Deadline”). The written request must state that the Class Member wishes to exclude himself or herself from the Settlement and: (1) must contain the name of the person request exclusion and the last four digits on the person’s social security number; (2) must be signed by the Class Member or his or attorney or other person who has power of attorney; and (3) must be faxed, or e-mailed to the Settlement Administrator by the Submission Deadline or mailed to the Settlement Administrator by first-class mail and postmarked by not later than the Submission Deadline. The request for exclusion will not be valid if it is not timely submitted, if it is not signed by the Class Member, does not contain the required statement noted above, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope or fax stamp on the request for exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely written request for exclusion within ninety (90) days of the Settlement Administrator’s

mailing of the Notice Materials shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court.

- 5. Reminder of Deadline; Untimely Submissions**
 - a. Forty Five (45) days after the Settlement Administrator mails the Notice Materials to the Class Members, the Settlement Administrator will mail a reminder card to all Class Members who have not submitted a completed Claim Form or filed a Consent Form with the Court prior to Preliminary Approval, an objection to the Settlement, or written request for exclusion from the Settlement, indicating the applicable deadlines for submission of those papers.
 - b. No Claim Form or written request for exclusion will be honored if submitted late under the deadlines set forth above, unless the Class Member shows good cause as determined by the (1) Settlement Administrator and Defendant and Plaintiffs; or (2) the Court.
- 6. Reports and Declaration by Settlement Administrator**
 - a. By not later than five (5) business days after expiration of the 90-day deadline for submission of the written exclusions, the Settlement Administrator will submit to Class Counsel and Counsel for Defendant a report setting forth the Class Members (identified by employee identification numbers) who as of that date have submitted (i) valid requests for exclusion and (ii) invalid requests for exclusion. In the event that the Settlement Administrator accepts any written requests for

exclusion after the expiration of the 90-day deadline, it will promptly update and distribute an updated report.

- b. By not later than five (5) business days after expiration of the 90-day deadline for submission of Claim Forms, the Settlement Administrator will submit to Class Counsel and Counsel for Defendant a report setting forth the Class Members (identified by employee identification numbers) who as of that date have submitted (i) valid Claim Forms and (ii) invalid Claim Forms, along with the number count of Class Members who have submitted valid Claim Forms out of all of the Class Members and the number of participating Compensable Work Weeks based on the submitted valid Claim Forms out of the Total Compensable Work Weeks attributable to all Class Members pursuant to this Settlement.
- c. By not later than five (5) business days after the expiration of the 90-day deadline for submission of Claim Forms, the Settlement Administrator will prepare and submit to Class Counsel and Counsel for Defendant for filing in support of the Plaintiffs' motion for final approval a declaration attesting to its mailing efforts regarding the Notice Materials and (indicated by number of Class Members only) its receipt of valid Claim Forms and valid requests for exclusion and its inability to deliver the Notice Materials to Class Members due to invalid addresses. No less than ten (10) business days before the hearing on the motion for final approval of the Settlement, the Settlement Administrator will prepare and submit to

Class Counsel and Counsel for Defendant for filing in support of the motion a supplemental declaration as applicable.

- d. After mailing the Notice Materials to the Class Members, the Settlement Administrator will, on a weekly basis, provide updates to Class Counsel and Counsel for Defendant as to the number of Class Members who submitted (i) valid requests for exclusion; (ii) invalid requests for exclusion; (iii) valid Claim Forms; (iv) invalid Claim Forms during the preceding week; and (v) objections. To the extent practicable, the weekly updates shall set forth the number of participating Compensable Work Weeks for those who submitted valid Claim Forms during the preceding week. To the extent practicable, the weekly updates shall also provide updated data of the extent Notice Materials are returned undeliverable and of any re-mailing efforts and results.

IX. RIGHT TO RESCIND

In the event that more than five percent (5%) of the Class Members submit valid and timely written requests to be excluded from the Settlement, Defendant will have the right to rescind the Stipulation and all actions taken in its furtherance will be null and void other than the confidentiality provision below. Defendant must exercise this right within ten (10) days after the Settlement Administrator provides to Class Counsel and Defendant's Counsel the final count of the number of valid opt-outs and Claimants.

X. FINAL APPROVAL OF THE SETTLEMENT

Plaintiffs will move the Court for final approval of the Settlement by the deadline set by the Court, which unless the Court orders otherwise, will be at least fifteen (15) calendar days prior to the final approval hearing scheduled by the Court. Plaintiffs will provide a draft of that

motion to Counsel for Defendant for Defendant's review at least five business days before the filing deadline. The Parties will submit for entry by the Court, with their motion for final approval, the proposed Final Approval Order in the form attached hereto as Exhibit D. Any modifications to the proposed Final Approval Order may be made only by mutual agreement of the Parties.

XI. ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVE PAYMENTS

At the same time as the motion for final approval, Plaintiffs and Class Counsel may separately move the Court for an award of Class Representative Payments from the QSF in an amount not to exceed \$7500 for Calvin Drummond, \$5000 each for Mohammed Bah, Shane Bent, and Christopher Grandison, \$1500 each for Robert Ciampaglia and Stefan Godley, \$500 for Christopher Spross, and \$5000 for Jaqueline Jones (\$31,000 total) for his or her services to the class in addition to his or her Settlement Share, and for an award for Class Counsel. Attorneys' Fees and Costs Payment from the QSF will not exceed Six Hundred Sixty-Six Thousand and Six Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$666,666.66) in attorneys' fees and an additional amount for reasonable costs and expenses not to exceed Twenty Thousand Dollars (\$20,000.00). Defendant will not oppose the motion for Class Representative Payments and a Class Counsel Attorneys' Fees and Costs Payment to the extent consistent with the terms set forth herein, but will not be required to support the motion.

XII. WAIVER OF RIGHT TO APPEAL

Provided that the Final Approval Order is consistent with the terms and conditions of this Settlement without material modification, the Class Representatives, Class Members who did not timely submit and objection to the Settlement, Class Counsel and all other counsel of record for the Class Representatives, and Defendant hereby waive any and all rights to appeal from the

Final Approval Order, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Final Approval Order therefore will become final and nonappealable at the time it is entered. The waiver does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.

XIII. REVERSAL OR MATERIAL MODIFICATION OF JUDGMENT ON APPEAL

If, after a notice of appeal or a petition for writ of *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Approval Order such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Final Approval Order is not fully affirmed on review by a higher court, the Class Representatives through Class Counsel and Defendant through its counsel will each have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Final Approval Order becomes Final. Notwithstanding a reviewing court's vacatur, reversal, or modification of the Final Approval Order, Defendant's obligation to make payments under this Settlement remains limited by the maximum Settlement Payment.

XIV. CREATION OF THE QUALIFIED SETTLEMENT FUND

1. Once the Final Approval Order becomes Final, Herr's shall wire within ten (10) business days to the Claims Administrator the Settlement Payment, which shall be deposited into an interest-bearing escrow account to be opened, administered and controlled by the Claims Administrator. The account shall be opened and administered by the Claims Administrator as a "Qualified Settlement Fund" under

Section 468B of the IRC and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, et seq.

2. While held in the QSF, the funds in the QSF will accrue interest at the then-current T-bill rate.
3. Provided that the Final Approval Order becomes Final, the Net QSF allocated to the Claimants (including all pro rata additional allocations for unclaimed amounts distributed to Claimants) shall be paid.
4. If the Settlement is not granted final approval by the Court, or if the Final Approval Order does not become Final, then all proceeds of the QSF (other than those used to pay the Settlement Administrator's reasonable fees and expenses in administering the Settlement to that point), including all accrued interest, will be immediately returned to Herr's.

XV. DISTRIBUTION OF THE QUALIFIED SETTLEMENT FUND

1. The "Net QSF" shall be the amount of the Settlement Fund remaining after deducting approved attorneys' fees and costs, approved enhancement payments to the Plaintiffs, and costs of the Claims Administrator estimated to be \$27,500.
2. Each Claimant shall receive a payment from the Net Settlement Fund to be determined based on a Claimant's number of Compensable Work Weeks.
3. All amounts of the Net QSF not timely and validly claimed by Class Members shall be reallocated to the Claimants on a pro rata basis.
4. Class Counsel shall be paid Attorneys' Fees and Costs awarded by the Court, for which the Settlement Administrator will issue a Form 1099 to Class Counsel. Class Counsel is responsible for all federal, state, and local tax liabilities that may result from such payment and the Released Parties (defined below) shall bear no

responsibility for such liabilities. Any unapproved amount of the Class Counsel's Attorneys' Fees and Costs Payment or of the requested Class Representative enhancement payments will be included in the Net QSF allocated to Class Members available to be claimed on a claims-made basis as described above.

5. Each Claimant's Settlement Share will be calculated as follows:
 - a. The "Net QSF" will equal the proceeds of the QSF at the time of distribution less (i) approved Class Representative enhancement payments, (ii) approved Class Counsel's Attorneys' Fees and Costs Payment (iii) Herr's share of payroll taxes; and (iv) the Settlement Administrator's approved fees and expenses, including the costs of mailing all notices, reminders and checks pursuant to this Settlement.
 - b. A Claimant's Settlement Share will be the product of the Net QSF times the percentage (rounded up or down to the nearest five-digit decimal) of (i) that Claimant's number of Compensable Work Weeks applicable to that Claimant divided by (ii) the total of the Compensable Work Weeks attributable to all Class Members pursuant to this Settlement. For instance, if a Claimant is credited with 100 Compensable Work Weeks and there are 100,000 Compensable Work Weeks attributable to all Claimants, then that Claimant's Settlement Share will be 0.1% of the Net QSF.
 - c. Because the Settlement Shares include sums in settlement of claims for wages, interest, liquidated damages, and penalties, fifty percent (50%) of each Settlement Share is intended to constitute a settlement of a claim for

unpaid wages, for which the Settlement Administrator will issue a Form W-2 to the Claimant, payroll tax withholding and deductions will be taken, and the employer's share of payroll taxes on that portion will be paid from the QSF; and the remaining fifty percent (50%) of each Settlement Share is intended to constitute a settlement of claims for interest, liquidated damages, and penalties, for which no payroll tax withholding and deductions will be taken and the Settlement Administrator will issue a Form 1099 to the Claimant. The Claimants are responsible for all federal, state, and local tax liabilities that may result from such Settlement Share payments subject to reporting on a Form 1099, and the Released Parties (defined below) shall bear no responsibility for such liabilities.

- d. All approved Class Representative Enhancement Payments, which are not payments of wages, and the Class Counsel's Attorneys' Fees and Costs Payment shall be reported on Form 1099s.
- e. The Claims Administrator will report all payments to government authorities including the IRS as required by law, and shall make all legally required deductions, withholdings and/or employment tax payments out of the QSF.
- f. Defendant makes no representations with respect to the taxability of any payments pursuant to this Settlement, the Notice to the Class will advise Class Members to seek their own tax advice as necessary, and the Parties

agree that each Class Member will have sufficient opportunity to seek such advice after receiving the Notice.

6. By not later than sixty (60) days after the Settlement Administrator mails the checks to the Claimants for their Settlement Shares, the Settlement Administrator will contact by letter each Claimant who has not cashed his or her Settlement Share checks and remind him or her to do so before the 90-day deadline discussed below. The Settlement Administrator will inform these Claimants that if they fail to cash their Settlement Share checks by the 90-day deadline, their funds will be returned to Herr's.
7. The Settlement Administrator will hold in trust all unclaimed funds for a period of ninety (90) days following the deadline to cash Settlement Share checks, during which time any Claimant who failed to cash their Settlement Share check may request reissuance of same. After thirty (30) days following this 90-day deadline (210 days after the mailing of the checks), The Settlement Administrator will return all unclaimed funds to Herr's.

XVI. NO EFFECT ON OTHER BENEFITS

The Settlement Shares and Class Representatives' enhancement payments will not create any credit or otherwise affect the calculation of benefits provided under any benefit or compensation plan or program provided by Defendant (such as 401(k), pension, bonus, severance, or deferred compensation plans), and no payment made pursuant to this Settlement will be compensation for purposes of such plans/programs, require any contribution or award under such plans/programs, or otherwise require or modify coverage, contributions, or benefits under such plans/programs, and the Participating Class Members will be deemed to have waived

all such benefit or compensation plan or program claims, whether known or unknown by them, as part of their releases of claims under this Settlement.

XVII. RELEASE OF CLAIMS BY THE PLAINTIFFS, PARTICIPATING CLASS MEMBERS, AND CLAIMANTS

- 1. Participating Class Members' Released Claims.** In consideration of his or her eligibility for a Settlement Share, each and every Participating Class Member (including the Class Representatives and Claimants) hereby releases the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature and description, whether known or unknown, whether anticipated or unanticipated, arising prior to January 31, 2016, which arise under state or local law or regulation and: (a) were pled in the Action at any time and/or (b) could have been pled based upon the factual allegations in the Action, including all claims based on any of the following: (i) alleged failure to pay any type of overtime wages, (ii) alleged failure to pay any type of earned or minimum wages, (iii) alleged improper deductions, and (iv) to the extent related to the claims in this Action, any statutory, constitutional, regulatory, contractual or common law claims for wages, damages, litigation costs, unfair business practices, unfair competition (including, without limitation, all such claims available in the state(s) where each Participating Class Member lived or worked as an Route Salesperson or Senior Route Salesperson as set forth in the appendix of state statutes attached hereto as Exhibit E); and (c) this release includes any and all of the following based on any of the matters released by the foregoing (a) and (b) above: penalties, liquidated damages, punitive damages, interest, attorneys'

fees, litigation costs, restitution, and equitable relief (“Participating Class Members’ Released Claims”).

- 2. Claimants’ Released Claims.** In consideration of the Settlement Share check sent to him or her, each and every Claimant (including the Class Representatives) will release the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities, whether known or unknown, whether anticipated or unanticipated, arising prior to the date the Claimant signs his or her Claim Form that were asserted or could have been asserted pursuant to the FLSA based upon the factual allegations in the Action, including all claims based any of the following: (i) alleged failure to pay wages, (ii) alleged failure to pay overtime wages, (iii) alleged failure to pay straight time wages, and (iv) alleged failure to pay minimum wages, and this release includes any and all of the following based on any of the matters provided for above in this paragraph: penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief (“Claimants’ Released Claims”).

XVIII. CLASS COUNSEL’S ACKNOWLEDGEMENT REGARDING ATTORNEYS’ FEES AND COSTS

Class Counsel hereby acknowledges that there are no other claims, causes of action, demands, damages, costs, rights, and liabilities of any nature and description for attorneys’ fees, costs, or expenses against the Released Parties arising from or related to the Action and Complaint.

XIX. CONFIDENTIALITY

Other than necessary disclosures made to the Court, the Class Representatives and Class Counsel shall not directly or indirectly disclose the fact or the terms of the Settlement or this

Stipulation to the media, on any website (except as discussed below), to any member of the general public or the press, provided that if any Class Representatives, Class Counsel, Defendant or their attorneys receive inquiries from the media, they may state only that the Action has been resolved on the terms set forth in the Stipulation that was publicly filed. If the Class Representatives or Class Counsel are legally required to communicate about the settlement with governmental authorities, they shall give counsel for Defendant not less than ten (10) business days' notice before any such communication occurs unless the Class Representatives and Class Counsel are given less than twelve (12) business days' notice of the required communication, in which event the Class Representatives and Class Counsel will give notice to counsel for Defendant as soon as is reasonably possible. If the Class Representative or Class Counsel violate the terms of this paragraph prior to Final Approval becoming Final, Defendant may rescind the Settlement, rendering it null and void, and will no longer be bound by any of its terms, but only if Defendant does so in writing transmitted to Class Counsel before any order of final approval is rendered by the Court. The Court will retain jurisdiction to enforce this confidentiality paragraph. Notwithstanding the foregoing, Class Counsel may refer on their website, until 30 days after the 90-day deadline to cash Settlement Share checks, to the existence of this settlement and the fact that they are Class Counsel (which website language must be jointly approved before it is used) so that any Participating Class Member or Claimant can contact them with questions. Starting 31 days after the Final Approval Order becomes Final, and provided only that they remove all other references to Defendant and any Released Parties, Class Counsel may refer on their website only to the fact that they were appointed class counsel and settled a wage/hour class and collective action against a national employer for driver-sales employees for

two million dollars, but without identifying this action or the employer or Defendant or any Released Parties.

XX. USE AND RETURN OF DOCUMENTS

All originals, copies, and summaries of documents, presentations, and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter, including any and all e-mails and attachments containing such materials, may be used only with respect to this Settlement, or any dispute between Class Members and Class Counsel regarding the Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. At the time the Final Approval Order becomes Final, all materials referenced above will be returned to Defendant and deleted from Class Counsel's files and the Parties will promptly comply with the provisions of the Confidentiality Agreement and Protective Order in this Action for the return of documents and data.

XXI. FULL COOPERATION

The Parties will fully cooperate with each other and use reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to obtain preliminary and final approval of this Settlement without material modifications and to implement its terms.

XXII. NO PRIOR ASSIGNMENTS

The Parties represent, covenant, and warrant that 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 claims, causes of action, demands, rights, and liabilities of every nature and description released under this Settlement.

XXIII. NOTICES

Unless otherwise specifically provided by this Settlement, all notices, demands or other communications given under this Settlement will be in writing and be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return-receipt requested, or as of the first business day after it is deposited with an overnight delivery service, addressed as follows:

To Plaintiffs and the Class:

JUSTIN L. SWIDLER
Swartz Swidler, LLC
1101 Kings Highway N., Suite 402
Cherry Hill, NJ 08034

To Defendant:

MICHAEL J. PUMA
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921

XXIV. CONSTRUCTION

This Settlement is the result of lengthy, arms-length negotiations between the Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Stipulation and related documents.

XXV. CAPTIONS AND INTERPRETATIONS

Paragraph titles, headings, or captions contained in this Stipulation are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each other term of this Stipulation is contractual and not merely a recital.

XXVI. MODIFICATION

This Stipulation may not be changed, altered, or modified, except in writing and signed by the Parties and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms as approved by the Court or by a writing signed by the Parties.

XXVII. CIRCULAR 230 DISCLAIMER

Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

XXVIII. APPLICABLE LAW

All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted according to the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict of law or choice of law principles.

XXIX. INTEGRATION CLAUSE

This Stipulation and its exhibits constitute the entire agreement between the Parties and their respective counsel relating to the Settlement and transactions contemplated by the Settlement. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or a Party's counsel, including the proposal of the mediator, are merged into this Stipulation. No rights under this Stipulation may be waived except in writing.

XXX. BINDING ON ASSIGNS

This Stipulation will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

XXXI. COUNTERPARTS

This Stipulation may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Stipulation, which will be binding upon and effective as to all Parties, subject to Court approval.

XXXII. PARTICIPATING CLASS MEMBERS BOUND BY SETTLEMENT

Because of the number of Class Members, it is impractical to have each Participating Class Member or Claimant execute this Settlement. The Class Notice will inform all Class Members of the binding nature of the releases described above, which shall have the same force and effect as if this Stipulation were executed by each Participating Class Member and Claimant.

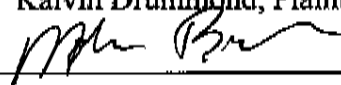
XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

DATED: March 23, 2016 By:  _____
Mohammed Bah, Plaintiff

DATED: March __, 2016 By: _____
Christopher Grandison, Plaintiff

DATED: March __, 2016 By: _____
Shane Bent, Plaintiff

DATED: March __, 2016 By: _____
Robert Ciampaglia, Plaintiff

DATED: March __, 2016 By: _____
Stefan Godley, Plaintiff

DATED: March __, 2016 **SWARTZ SWIDLER, LLC**
By: _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016 By: _____
HERR FOODS INC.

DATED: March __, 2016 **MORGAN, LEWIS & BOCKIUS LLP**
By: _____
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

DATED: March __, 2016 By: _____
Mohammed Bah, Plaintiff

DATED: March __, 2016 By: _____
Christopher Grandison, Plaintiff

DATED: March 22, 2016 By: Shane Bent
Shane Bent, Plaintiff

DATED: March __, 2016 By: _____
Robert Ciampaglia, Plaintiff

DATED: March __, 2016 By: _____
Stefan Godley, Plaintiff

DATED: March __, 2016 By: _____
SWARTZ SWIDLER, LLC
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016 By: _____
HERR FOODS INC.

DATED: March __, 2016 By: _____
MORGAN, LEWIS & BOCKIUS LLP
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

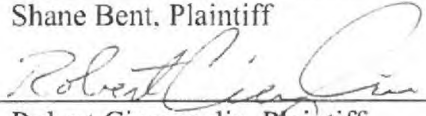
The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

DATED: March __, 2016 By: _____
Mohammed Bah, Plaintiff

DATED: March __, 2016 By: _____
Christopher Grandison, Plaintiff

DATED: March __, 2016 By: _____
Shane Bent, Plaintiff

DATED: March 21, 2016 By: 
Robert Ciampaglia, Plaintiff

DATED: March __, 2016 By: _____
Stefan Godley, Plaintiff

DATED: March __, 2016 **SWARTZ SWIDLER, LLC**
By: _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016 By: _____
HERR FOODS INC.

DATED: March __, 2016 **MORGAN, LEWIS & BOCKIUS LLP**
By: _____
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March 19, 2016

By: 
Kalvin Drummond, Plaintiff

DATED: March __, 2016

By: _____
Mohammed Bah, Plaintiff

DATED: March __, 2016

By: _____
Christopher Grandison, Plaintiff

DATED: March __, 2016

By: _____
Shane Bent, Plaintiff

DATED: March __, 2016

By: _____
Robert Ciampaglia, Plaintiff

DATED: March __, 2016

By: _____
Stefan Godley, Plaintiff

DATED: March __, 2016

SWARTZ SWIDLER, LLC
By: _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016

By: _____
HERR FOODS INC.

DATED: March __, 2016

MORGAN, LEWIS & BOCKIUS LLP
By: _____
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

DATED: March __, 2016 By: _____
Mohammed Bah, Plaintiff

DATED: March __, 2016 By: _____
Christopher Grandison, Plaintiff

DATED: March __, 2016 By: _____
Shane Bent, Plaintiff

DATED: March __, 2016 By: _____
Robert Ciampaglia, Plaintiff

DATED: March 25, 2016 By: Stefan Godley
Stefan Godley, Plaintiff

DATED: March __, 2016 **SWARTZ SWIDLER, LLC**
By: _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016 By: _____
HERR FOODS INC.

DATED: March __, 2016 **MORGAN, LEWIS & BOCKIUS LLP**
By: _____
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

DATED: March __, 2016 By: _____
Mohammed Bah, Plaintiff

DATED: March 22 2016 By: 
Christopher Grandison, Plaintiff

DATED: March __, 2016 By: _____
Shane Bent, Plaintiff

DATED: March __, 2016 By: _____
Robert Ciampaglia, Plaintiff

DATED: March __, 2016 By: _____
Stefan Godley, Plaintiff

DATED: March __, 2016 **SWARTZ SWIDLER, LLC**
By: _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016 By: _____
HERR FOODS INC.

DATED: March __, 2016 **MORGAN, LEWIS & BOCKIUS LLP**
By: _____
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

DATED: March __, 2016 By: _____
Mohammed Bah, Plaintiff

DATED: March __, 2016 By: _____
Christopher Grandison, Plaintiff

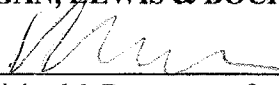
DATED: March __, 2016 By: _____
Shane Bent, Plaintiff

DATED: March __, 2016 By: _____
Robert Ciampaglia, Plaintiff

DATED: March __, 2016 By: _____
Stefan Godley, Plaintiff

DATED: March __, 2016 **SWARTZ SWIDLER, LLC**
By: _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March 28, 2016 By:  _____
HERR FOODS INC.

DATED: March __, 2016 **MORGAN, LEWIS & BOCKIUS LLP**
By:  _____
Michael J. Puma, as to form only
Attorney for Defendant

XXXIII. PARTIES' AUTHORITY TO SIGN

The signatories to this Stipulation hereby represent that they are fully authorized to enter into this Stipulation on behalf of themselves or their respective principals.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of an agreement to the Stipulation.

DATED: March __, 2016 By: _____
Kalvin Drummond, Plaintiff

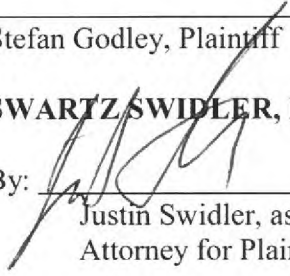
DATED: March __, 2016 By: _____
Mohammed Bah, Plaintiff

DATED: March __, 2016 By: _____
Christopher Grandison, Plaintiff

DATED: March __, 2016 By: _____
Shane Bent, Plaintiff

DATED: March __, 2016 By: _____
Robert Ciampaglia, Plaintiff

DATED: March __, 2016 By: _____
Stefan Godley, Plaintiff

DATED: March 29, 2016 **SWARTZ SWIDLER, LLC**
By:  _____
Justin Swidler, as to form only
Attorney for Plaintiff and the Class

DATED: March __, 2016 By: _____
HERR FOODS INC.

DATED: March __, 2016 **MORGAN, LEWIS & BOCKIUS LLP**
By: _____
Michael J. Puma, as to form only
Attorney for Defendant

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KALVIN DRUMMOND, MOHAMMED
BAH, CHRISTOPHER GRANDISON,
SHANE BENT, ROBERT CIAMPAGLIA and
STEFAN GODLEY on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

HERR FOODS INC.,

and

JOHN DOES 1-10,

Defendants.

Civil Action No. 2:13-cv-05991-BMS

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF SETTLEMENT**

On _____, 2016, the Court heard an unopposed motion by Plaintiffs Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia, and Stefan Godley (collectively “Class Representatives”). The Court has considered the Joint Stipulation of Class and Collective Action Settlement and Release (“Stipulation”) and the proposed Notice of (1) Proposed Class and Collective Action Settlement and (2) Final Settlement Approval Hearing (“Class Notice”) and attached exhibits and hereby finds and orders as follows:

The Court finds on a preliminary basis that the settlement memorialized in the Stipulation, filed with the Court, falls within the range of reasonableness and, therefore, meets the requirements for preliminary approval.

The Court conditionally certifies, for settlement purposes only, the following class (“Class”) described in the Stipulation: all individuals employed by Defendant Herr Foods Inc. (“Defendant”) in the position of “Route Salesperson” or “Senior Route Salesperson” position for one or more days between November 10, 2011 and January 31, 2016, as well as any individual who filed a complaint

or consent form in this lawsuit prior to November 10, 2014 and who worked for Defendant within three years prior to the date he or she filed the consent form with the Court.

The Court finds, for settlement purposes only, the requirements of Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(3) are satisfied, with the exception of the manageability requirement of Rule 23(b)(3) that the Court need not address for purposes of settlement.

This Order, which conditionally certifies a class action for settlement purposes only, shall not be cited in this or any matter for the purpose of seeking class or collective certification, opposing decertification, or for any other purpose, other than enforcing the terms of the Stipulation.

The Court appoints, for settlement purposes only, as Class Representatives Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia, and Stefan Godley.

The Court appoints, for settlement purposes only, Justin Swidler of Swartz Swidler, LLC as Class Counsel for the purposes of Settlement and the releases and other obligations therein. Kurtzman Carson Consultants is appointed as Settlement Administrator.

The Class Notices (one for current opt-in Plaintiffs and one for other Class Members), attached to the Motion for Preliminary Approval as Exhibit B to Exhibit A and the Claim Form, Change of Name and/or Address Information, and Settlement Administrator form of letter regarding inconsistent documentation, attached to the Class Notice as Forms A through C, respectively, are approved. The Settlement Administrator is ordered to mail those documents to the Class members as provided in the Stipulation.

Each Class Member who does not timely submit a valid written request for exclusion from the Settlement will have ninety (90) days after the date on which the Settlement Administrator mails the Class Notice to object to the Settlement by serving on the Settlement Administrator. The Administrator shall serve a copy of any objection received on Class Counsel and Counsel for Defendant, and Class Counsel shall file any objection received.

The Court will conduct a Final Approval Hearing on _____, 2016 at ____ a.m./p.m. to determine the overall fairness of the settlement, attorneys' fees and costs to Class Counsel,

enhancements to the Plaintiffs, and whether final certification of the Fair Labor Standards Act collective action is appropriate. The Final Approval Hearing may be continued without further notice to Class Members. Class Counsel shall file the motion for final approval of the settlement sought in the Stipulation on or before _____, 2016.

IT IS SO ORDERED.

Dated: _____, 2016

Hon. Berle M. Schiller
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

As a current or former route salesperson for Herr Foods, Inc., you are eligible to receive a payment from a class action settlement.

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

- The settlement will provide \$2,000,000 to resolve all claims that Herr Foods, Inc. failed to pay its route salespersons overtime wages under federal and state law during the Class Period of November 10, 2011 through January 31, 2016. Herr Foods, Inc. denies that it paid anyone incorrectly or violated the law, and there has been no finding that it did either.
- The court-appointed lawyers will ask the Court for up to 33 1/3% of the \$2,000,000 settlement amount as fees for investigating the case, litigating the case, and negotiating the settlement, as well as their costs.
- The two sides disagree as to who would win, and how much if any could be won, if the case went to trial.
- **Your legal rights will be affected whether you act or don't act.** Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Do Nothing	Get payment and release claims.
Exclude Yourself	Get no payment and preserve your claims.
Object	Write to the Court about what you don't like in the settlement.
Go to a Hearing	If you object, also ask to speak in Court about the fairness of the settlement.

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

QUESTIONS? CALL CLASS COUNSEL TOLL-FREE [INSERT NUMBER] OR VISIT WWW.SWARTZ-LEGAL.COM

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KALVIN DRUMMOND, *et al.*

Plaintiffs,

v.

HERR FOODS INC., *et al.*

Defendants.

Case No.: 13-5991

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

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

PLEASE READ THIS NOTICE CAREFULLY.

1. Why did I get this notice package?

You are receiving this notice because you are an opt-in Plaintiff in the above-referenced, *Kalvin Drummond, et al. v. Herr Food, Inc., et al.*, 13-5991 (the “Lawsuit”), which is pending in the United States District Court for the Eastern District of Pennsylvania in Philadelphia, Pennsylvania (the “Federal Court”).

The Federal Court has preliminarily approved a settlement (“Settlement”) of the Lawsuit. The Settlement provides for current and former route salespersons to receive a portion of a Two Million Dollar (\$2,000,000) fund (“Settlement Fund”). The Federal Court will conduct a hearing (“Fairness Hearing”) to determine if the Settlement should be approved.

This Notice describes the Settlement and describes how you can obtain a money recovery from the Settlement. This Notice also describes how you can exclude yourself from, or object to, the Settlement.

2. What is this lawsuit about and why did it settle?

In this case, six former route salespersons, Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia, and Stefan Godley (collectively, the “Class Representatives”), assert that Herr’s violated the federal Fair Labor Standards Act (“FLSA”), the Pennsylvania Minimum Wage Act, the Pennsylvania Wage Payment and Collection Law, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Law, the Maryland Wage and Hour Law, and the Maryland Wage Payment and Collection law, by failing to pay route salespersons overtime wages for hours worked over 40 hours in a workweek and for deducting from route salespersons’ wages for shortages.

Herr’s denies all of the Class Representatives’ allegations and continues to assert that it paid its employees fairly and consistent with the law. However, it has decided to settle the Lawsuit. The

Settlement enables Herr's to dedicate its time and resources to ongoing business operations and, as such, benefits both its employees and customers.

The employees' attorneys, who are referred to as "Class Counsel," believe that the Settlement benefits the class members. The Settlement provides a benefit to a large number of present and former route salespersons, and enables the class members to avoid the risk that Herr's could win the lawsuit, in which case class members would recover nothing. The Settlement also enables class members to recover money without the delay of protracted litigation.

The Settlement is the result of good-faith, arms-length negotiations between the Class Representatives and Herr's, through their respective attorneys, which included months of discussions, several depositions, motion practice, the formal and informal exchange of thousands of pages of documents and data, negotiations through counsel experienced in these types of cases, and a mediation presided over by an experienced mediator. The settlement represents a compromise regarding disputed claims, considering the risks and uncertainties of continued litigation. The Class Representatives and Class Counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the Class Members.

The Federal Judge overseeing the Lawsuit has "preliminarily approved" the Settlement as fair. The Federal Judge will make his final decision regarding the fairness of the Settlement at the Fairness Hearing described in Section 8 below.

3. What does the Settlement provide and how much will I be paid?

Under the Settlement, Herr's has agreed to pay a Settlement amount of Two Million Dollars (\$2,000,000) to resolve all claims asserted in the Lawsuit. Your "Settlement Share" will be calculated based upon the settlement formula stated in the settlement agreement on file with the Court.

After the deduction from the Settlement Amount of litigation costs, attorney's fees, service payments, the costs of administering the settlement, and the employer's share of payroll taxes (leaving as the remainder the "Net Settlement Amount"), the Settlement Administrator approved by the Court will make a settlement payment to all Class Members who remain in the case as opt-in Plaintiffs or who submit a timely, proper and fully complete Claim Form ("Claimants"). The Settlement Share paid to each Claimant will be based on a formula that accounts for each Claimant's Compensable Work Weeks for the period of time in which he or she was employed by Herrs in the positions of "Route Salesperson" or "Senior Route Salesperson" between three (3) years prior to their filing of a consent form and January 31, 2016.

One-half of each Settlement Share paid to a Plaintiff or Claimant shall be payment for wages and reported on Form W-2s, and the remaining half of each Settlement Share shall be payment for interest/penalties and reported on Form 1099s. The Claims Administrator will report all payments to government authorities including the IRS as required by law, and shall make all legally required deductions, withholdings and/or employment tax payments out of the Settlement Fund. If any Claimant who submitted a timely and valid Claim Form does not cash the check for his or her Settlement Share within 90 days after issuance, he or she will not receive any proceeds under the Settlement and the Settlement Share proceeds will be returned to the Settlement Fund.

Neither Class Counsel nor Herr's make any representations concerning tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice. Any perceived tax advice in this Notice was not intended or written to be used, and it cannot be used by any recipient, for the purpose of avoiding any tax obligations or penalties that may be imposed on any person. This Notice imposes no limitation on the disclosure of the tax treatment or tax structure of any transaction.

At the Fairness Hearing, Class Counsel will apply to receive one-third of the Total Settlement (equivalent to \$666,666.66) for the services they provided. Class Counsel will also seek to recover its out-of-pocket expenses incurred in the Lawsuit, not to exceed \$20,000. This amount will be requested based on the substantial work Class Counsel performed in the Lawsuit and the risk Class Counsel took in bringing the Lawsuit. Class Counsel has conducted extensive investigation in prosecuting the Lawsuit for years, including, but not limited to, interviewing hundreds of employees, taking several depositions of Herr's officers, engaging in motion practice, reviewing and analyzing thousands of documents related to the Lawsuit, including thousands of electronic records, propounding discovery, and answering discovery.

At the Fairness Hearing, Class Counsel will ask the Court to approve service payments of \$7,500 for Calvin Drummond; \$5000 each for Mohammed Bah, Shane Bent, and Christopher Grandison; \$1500 each for Robert Ciampaglia and Stefan Godley, \$500 for Christopher Spross; and \$5000 for Jaqueline Jones (\$31,000 total) for their service to the Class, including direct participation in Class Counsel's fact investigation, answering discovery, providing sworn testimony in some instances, and the settlement negotiations. The Parties further currently estimate the Settlement Administration Costs to be at or about \$27,500, but this is only an estimate and is subject to change.

4. How can I receive my payment?

Since you previously filed a consent form to become an opt-in Plaintiff in this Action, there is no further action required in order for you to participate in and receive payment through the Settlement.

If the Federal Court gives final approval to the Settlement, the Claims Administrator will calculate your Settlement Share in accordance with the formula stated in the Settlement Agreement on file with the Federal Court and will send payment to you at the address indicated on your Claim Form within twenty (20) days of after the Federal Court's order granting final approval.

6. What am I giving up as a Class member?

If the Federal Court grants final approval of the Settlement, the Lawsuit will be dismissed with prejudice, and you will release any and all state law and federal (FLSA) Wage and Hour claims, relating back to the beginning of time through the end of the January 31, 2016, including but not limited to overtime claims, unlawful deduction claims, and any and all other Wage and Hour claims that were or could have been asserted in this matter against Herr's, and including, without limitations, all state and federal claims for wages, penalties, interest, and liquidated damages, as well as all claims for attorney's fees, costs, and expenses.

7. How do I exclude myself (opt-out) from this Settlement?

You will release your legal claims, as described in Section 6 above, unless you affirmatively exclude yourself from the Settlement. If you exclude yourself, you will not release or waive any legal claims, and you will preserve your right to sue Herr's on your own for alleged violations of the Released Claims. If you exclude yourself from the Settlement, you will not receive money in this Settlement.

To exclude yourself from the Settlement, you must mail a written request to opt-out of the settlement to [KCC ADDRESS], or you may send your request via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com. Your request for exclusion must be postmarked or submitted on or before [INSERT DATE] to be valid. To be valid, the Request for Exclusion from Class Settlement form must be signed and dated by you, and must include the name of the case (*Kalvin Drummond, et al. v. Herr Foods Inc. et al.*) You should also provide your phone number on the request in case the Claims Administrator needs to contact you regarding your request for exclusion.

8. Final Approval of Settlement at Fairness Hearing

The Federal Judge presiding over this Lawsuit will conduct a Final Fairness Hearing at [TIME] on [DATE], 2016 in Courtroom [] of the United States Courthouse, 601 Market Street, PA 19106. At the Fairness Hearing, the Judge will decide whether the Settlement is sufficiently fair and reasonable to warrant final court approval. **You are not required or expected to attend the Fairness Hearing.** However, you are welcome to attend at your own expense. If you plan on attending, please contact Class Counsel so that the Court can be notified to ensure that there is enough space and time allotted for you.

9. How do I object to the Settlement?

If you believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement, either personally or through an attorney at your own expense, by filing a written objection with the Court and mailing a copy of your written objection to [KCC ADDRESS] or you may send your objection via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com. In order to object to the Settlement, you must remain a Class Member and may not opt-out or exclude yourself from the Settlement.

All objection(s) to any part of the Settlement must be signed by you or your counsel and set forth your address, telephone number, and the name of the Action: *Kalvin Drummond, et al. v. Herr Food Inc.* (Civ. No. 13-5991). All objections must be postmarked or submitted no later than **[**INSERT DATE**]**. If you submit a timely objection, you may appear, either personally or through an attorney, at your own expense, at the Final Approval Hearing discussed above. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing. If you object to the Settlement, Class Counsel will not represent you in your objection.

Any class member who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness and adequacy of the proposed Settlement, the payment of attorneys' fees, service payments, and litigation costs, the claims process, and any and all other aspects of the Settlement.

Likewise, regardless of whether you file an objection, you will be deemed to have released all of the Released Claims against Herr's and subject to the Release contained in the Settlement Agreement as explained in Section 6 above unless you properly request exclusion from the Settlement in accordance with the Section 7 above. Please note that if you exclude yourself from the Settlement by following the procedures set forth in Section 7 above, you will not have standing to object to the Settlement, and the Court will not consider your objection at the Final Fairness Hearing.

10. Are there more details about the Settlement? Questions?

Yes. This Notice summarizes the most important aspects of the Settlement. You can get a copy of the Joint Stipulation of Class and Collective Action Settlement and Release and obtain further information regarding the Lawsuit and the Settlement by calling Class Counsel. Their contact information is listed below. You will not be charged any money for communicating with Class Counsel. You may also review the Court's files, including the Joint Stipulation of Class and Collective Action Settlement and Release, which will be on file with the Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19105, or online through the Public Access to Court Electronic Resources System, known as "PACER," at <https://ecf.pa.ed.uscourts.gov/cgi-bin/login.pl>. Documents relating to the settlement, including the Court order preliminarily approving the settlement and the settlement agreement itself are available free of charge on Class Counsel's website at <http://www.swartz-legal.com>.

You may also contact the Settlement Administrator at [INSERT NUMBER]. **Do not telephone the Court for information regarding this Settlement or the claim process.**

11. Do I have an attorney in this case?

The Court has appointed Swartz Swidler, LLC as "Class Counsel" to represent the interests of class members in the Lawsuit. Class Counsel will represent you in the Lawsuit and can answer questions for you regarding the Lawsuit and the Settlement. Class Counsel's contact information is below. You will not be charged any money for Class Counsel's representation of you; rather Class Counsel will be paid out of the class-wide Settlement Fund. You also have the right to get your own attorney at your own expense in which case Class Counsel will not represent you in the Lawsuit or Settlement. If you object to the Settlement, Class Counsel will not represent you in your objections.

Justin L. Swidler, Esq.
Richard S. Swartz, Esq.
Joshua S. Boyette, Esq.
Swartz Swidler, LLC
1101 Kings Hwy N., Ste. 402
Cherry Hill, NJ 08034

Website: <http://www.swartz-legal.com>
Phone: (856) 685-7420
Fax: (856) 685-7417
Toll Free: [INSERT NUMBER]
Email: jswidler@swartz-legal.com

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

As a current or former route salesperson for Herr Foods, Inc., you are eligible to receive a payment from a class action settlement.

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

- The settlement will provide \$2,000,000 to resolve all claims that Herr Foods, Inc. failed to pay its route salespersons overtime wages under federal and state law during the Class Period of November 10, 2011 through January 31, 2016. Herr Foods, Inc. denies that it paid anyone incorrectly or violated the law, and there has been no finding that it did either.
- The court-appointed lawyers will ask the Court for up to 33 1/3% of the \$2,000,000 settlement amount as fees for investigating the case, litigating the case, and negotiating the settlement, as well as their costs.
- The two sides disagree as to who would win, and how much if any could be won, if the case went to trial.
- **Your legal rights will be affected whether you act or don't act.** Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Submit a Claim Form	The only way to get a payment.
Exclude Yourself	Get no payment and preserve your claims.
Object	Write to the Court about what you don't like in the settlement.
Go to a Hearing	If you object, also ask to speak in Court about the fairness of the settlement.
Do Nothing	Get no payment. Give up your rights.

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

QUESTIONS? CALL CLASS COUNSEL TOLL-FREE [INSERT NUMBER] OR VISIT WWW.SWARTZ-LEGAL.COM

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Please note that, as set forth in detail in this Notice and in the Settlement Agreement on file with the Federal Court, if the Court grants final approval of the Settlement, then any and all wage and hour claims that you may have against Herr Foods, Inc. (and/or any of its parents, subsidiaries, affiliates, divisions, predecessors and successors, and each of their present and former officers, directors, shareholders, members, managers, employees, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, successors and assigns) for the non-payment of compensation alleged to be owed to you in the Lawsuit during the Claims Period, will be permanently released (i.e., forever waived/forgiven).

The only way to avoid this release of claims is if you “opt-out” of the Settlement as described on page 4. If you do not opt-out and you do not submit a claim form, you will not receive compensation but will be waiving rights.

The only way to receive a payment from the settlement for releasing such claims is to complete and return the attached Claim Form.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KALVIN DRUMMOND, *et al.*

Plaintiffs,

v.

HERR FOODS INC., *et al.*

Defendants.

Case No.: 13-5991

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

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

PLEASE READ THIS NOTICE CAREFULLY.

1. Why did I get this notice package?

You are receiving this notice because records indicate that you worked as a route salesperson or senior route salesperson for Herr Foods Inc. (“Herr’s”) at some point between November 10, 2011 and January 31, 2016. The above-referenced lawsuit, *Kalvin Drummond, et al. v. Herr Food, Inc., et al.*, 13-5991 (the “Lawsuit”), is pending in the United States District Court for the Eastern District of Pennsylvania in Philadelphia, Pennsylvania (the “Federal Court”).

The Federal Court has preliminarily approved a settlement (“Settlement”) of the Lawsuit. The Settlement provides for current and former route salespersons to receive a portion of a Two Million Dollar (\$2,000,000) fund (“Settlement Fund”). The Federal Court will conduct a hearing (“Fairness Hearing”) to determine if the Settlement should be approved.

This Notice describes the Settlement and describes how you can obtain a money recovery from the Settlement. This Notice also describes how you can exclude yourself from, or object to, the Settlement.

2. What is this lawsuit about and why did it settle?

In this case, six former route salespersons, Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia, and Stefan Godley (collectively, the “Class Representatives”), assert that Herr’s violated the federal Fair Labor Standards Act (“FLSA”), the Pennsylvania Minimum Wage Act, the Pennsylvania Wage Payment and Collection Law, the New Jersey Wage and Hour Law, the New Jersey Wage Payment Law, the Maryland Wage and Hour Law, and the Maryland Wage Payment and Collection law, by failing to pay route salespersons overtime wages for hours worked over 40 hours in a workweek and for deducting from route salespersons’ wages for shortages.

Herr's denies all of the Class Representatives' allegations and continues to assert that it paid its employees fairly and consistent with the law. However, it has decided to settle the Lawsuit. The Settlement enables Herr's to dedicate its time and resources to ongoing business operations and, as such, benefits both its employees and customers.

The employees' attorneys, who are referred to as "Class Counsel," believe that the Settlement benefits the class members. The Settlement provides a benefit to a large number of present and former route salespersons, and enables the class members to avoid the risk that Herr's could win the lawsuit, in which case class members would recover nothing. The Settlement also enables class members to recover money without the delay of protracted litigation.

The Settlement is the result of good-faith, arms-length negotiations between the Class Representatives and Herr's, through their respective attorneys, which included months of discussions, several depositions, motion practice, the formal and informal exchange of thousands of pages of documents and data, negotiations through counsel experienced in these types of cases, and a mediation presided over by an experienced mediator. The settlement represents a compromise regarding disputed claims, considering the risks and uncertainties of continued litigation. The Class Representatives and Class Counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the Class Members.

The Federal Judge overseeing the Lawsuit has "preliminarily approved" the Settlement as fair. The Federal Judge will make his final decision regarding the fairness of the Settlement at the Fairness Hearing described in Section 8 below.

3. What does the Settlement provide and how much will I be paid?

Under the Settlement, Herr's has agreed to pay a Settlement amount of Two Million Dollars (\$2,000,000) to resolve all claims asserted in the Lawsuit. Your "Settlement Share" will be calculated based upon the settlement formula stated in the settlement agreement on file with the Court.

After the deduction from the Settlement Amount of litigation costs, attorney's fees, service payments, the costs of administering the settlement, and the employer's share of payroll taxes (leaving as the remainder the "Net Settlement Amount"), the Settlement Administrator approved by the Court will make a settlement payment to all Class Members who submit a timely, proper and fully complete Claim Form enclosed with this Notice ("Claimants"). The Settlement Share paid to each Claimant will be based on a formula that accounts for each Claimant's Compensable Work Weeks for the period of time in which he or she was employed by Herra in the positions of "Route Salesperson" or "Senior Route Salesperson" between November 10, 2011 and January 31, 2016.

One-half of each Settlement Share paid to a Plaintiff or Claimant shall be payment for wages and reported on Form W-2s, and the remaining half of each Settlement Share shall be payment for interest/penalties and reported on Form 1099s. The Claims Administrator will report all payments to government authorities including the IRS as required by law, and shall make all legally required deductions, withholdings and/or employment tax payments out of the Settlement Fund. If any Claimant who submitted a timely and valid Claim Form does not cash the check for his or her Settlement Share within

90 days after issuance, he or she will not receive any proceeds under the Settlement and the Settlement Share proceeds will be returned to the Settlement Fund.

Neither Class Counsel nor Herr's make any representations concerning tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice. Any perceived tax advice in this Notice was not intended or written to be used, and it cannot be used by any recipient, for the purpose of avoiding any tax obligations or penalties that may be imposed on any person. This Notice imposes no limitation on the disclosure of the tax treatment or tax structure of any transaction.

At the Fairness Hearing, Class Counsel will apply to receive one-third of the Total Settlement (equivalent to \$666,666.66) for the services they provided. Class Counsel will also seek to recover its out-of-pocket expenses incurred in the Lawsuit, not to exceed \$20,000. This amount will be requested based on the substantial work Class Counsel performed in the Lawsuit and the risk Class Counsel took in bringing the Lawsuit. Class Counsel has conducted extensive investigation in prosecuting the Lawsuit for years, including, but not limited to, interviewing hundreds of employees, taking several depositions of Herr's officers, engaging in motion practice, reviewing and analyzing thousands of documents related to the Lawsuit, including thousands of electronic records, propounding discovery, and answering discovery.

At the Fairness Hearing, Class Counsel will ask the Court to approve service payments of \$7,500 for Calvin Drummond; \$5000 each for Mohammed Bah, Shane Bent, and Christopher Grandison; \$1500 each for Robert Ciampaglia and Stefan Godley, \$500 for Christopher Spross; and \$5000 for Jaqueline Jones (\$31,000 total) for their service to the Class, including direct participation in Class Counsel's fact investigation, answering discovery, providing sworn testimony in some instances, and the settlement negotiations. The Parties further currently estimate the Settlement Administration Costs to be at or about \$27,500, but this is only an estimate and is subject to change.

4. How can I receive my payment?

IN ORDER TO RECEIVE MONEY FROM THE SETTLEMENT, YOU MUST COMPLETE AND RETURN A CLAIM FORM BY NO LATER THAN [INSERT DATE].

You may complete the Claim Form online at <http://www.url.com>. In the alternative, you may submit the attached Claim Form by facsimile to (xxx) xxx-xxxx, by e-mail to someone@kcc.com, or by returning by first class mail (for your convenience, a pre-addressed postage-paid envelope is enclosed). You may use the enclosed postage pre-paid, pre-addressed envelope only if you are mailing the Claim Form from within the United States. **The Claim Form must be post-marked by [insert date].**

Herr's understands and acknowledges that it has a legal obligation not to retaliate against any Class Member who elects to participate in the Settlement. For instance, if you currently work for Herr's, you should know that the company encourages you to claim your share of the settlement. Whether you do so or not, Herr's is paying out the full \$2,000,000.

If the Federal Court gives final approval to the Settlement, and if you have timely completed and submitted the attached Claim Form, the Claims Administrator will calculate your Settlement Share in accordance with the formula stated in the Settlement Agreement on file with the Federal Court and will

send payment to you at the address indicated on your Claim Form within twenty (20) days of after the Federal Court's order granting final approval.

5. What happens if I do not submit a Claim Form?

If you fail to complete and timely submit the attached Claim Form as set forth in this notice, you will not receive any money under this Settlement, but you will still legally release your claims as described in Section 6, unless you affirmatively exclude yourself from the Settlement, which you can do by following the instructions described in Section 7 below.

6. What am I giving up as a Class member?

If the Federal Court grants final approval of the Settlement, the Lawsuit will be dismissed with prejudice, and you will release any and all state law (and federal FLSA, if you are a Claimant) Wage and Hour claims, relating back to the beginning of time through the end of the January 31, 2016, including but not limited to overtime claims, unlawful deduction claims, and any and all other Wage and Hour claims that were or could have been asserted in this matter against Herr's, and including, without limitations, all state and federal (if you are a Claimant) claims for wages, penalties, interest, and liquidated damages, as well as all claims for attorney's fees, costs, and expenses.

7. How do I exclude myself (opt-out) from this Settlement?

You will release your legal claims, as described in Section 6 above, unless you affirmatively exclude yourself from the Settlement. If you exclude yourself, you will not release or waive any legal claims, and you will preserve your right to sue Herr's on your own for alleged violations of the Released Claims. If you exclude yourself from the Settlement, you may not submit a Claim Form to receive money in this Settlement. If you submit a Claim Form and a request to exclude yourself, your request to exclude yourself will be null and void.

To exclude yourself from the Settlement, you must mail a written request to opt-out of the settlement to [KCC ADDRESS], or you may send your request via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com. Your request for exclusion must be postmarked or submitted on or before [INSERT DATE] to be valid. To be valid, the Request for Exclusion from Class Settlement form must be signed and dated by you, and must include the name of the case (*Kalvin Drummond, et al. v. Herr Foods Inc. et al.*) You should also provide your phone number on the request in case the Claims Administrator needs to contact you regarding your request for exclusion.

8. Final Approval of Settlement at Fairness Hearing

The Federal Judge presiding over this Lawsuit will conduct a Final Fairness Hearing at [TIME] on [DATE], 2016 in Courtroom [] of the United States Courthouse, 601 Market Street, PA 19106. At the Fairness Hearing, the Judge will decide whether the Settlement is sufficiently fair and reasonable to warrant final court approval. **You are not required or expected to attend the Fairness Hearing.** However, you are welcome to attend at your own expense. If you plan on attending, please contact Class Counsel so that the Court can be notified to ensure that there is enough space and time allotted for you.

9. How do I object to the Settlement?

If you believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement, either personally or through an attorney at your own expense, by filing a written objection with the Court and mailing a copy of your written objection to [KCC ADDRESS] or you may send your objection via facsimile to (xxx) xxx-xxxx or by e-mail to somone@kcc.com. In order to object to the Settlement, you must remain a Class Member and may not opt-out or exclude yourself from the Settlement.

All objection(s) to any part of the Settlement must be signed by you or your counsel and set forth your address, telephone number, and the name of the Action: *Kalvin Drummond, et al. v. Herr Food Inc.* (Civ. No. 13-5991). All objections must be postmarked or submitted no later than **[**INSERT DATE**]**. If you submit a timely objection, you may appear, either personally or through an attorney, at your own expense, at the Final Approval Hearing discussed above. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing. If you object to the Settlement, Class Counsel will not represent you in your objection.

Any class member who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness and adequacy of the proposed Settlement, the payment of attorneys' fees, service payments, and litigation costs, the claims process, and any and all other aspects of the Settlement.

Likewise, regardless of whether you file an objection, you will be deemed to have released all of the Released Claims against Herr's and subject to the Release contained in the Settlement Agreement as explained in Section 6 above unless you properly request exclusion from the Settlement in accordance with the Section 7 above. Please note that if you exclude yourself from the Settlement by following the procedures set forth in Section 7 above, you will not have standing to object to the Settlement, and the Court will not consider your objection at the Final Fairness Hearing.

10. Are there more details about the Settlement? Questions?

Yes. This Notice summarizes the most important aspects of the Settlement. You can get a copy of the Joint Stipulation of Class and Collective Action Settlement and Release and obtain further information regarding the Lawsuit and the Settlement by calling Class Counsel. Their contact information is listed below. You will not be charged any money for communicating with Class Counsel. You may also review the Court's files, including the Joint Stipulation of Class and Collective Action Settlement and Release, which will be on file with the Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19105, or online through the Public Access to Court Electronic Resources System, known as "PACER," at <https://ecf.paed.uscourts.gov/cgi-bin/login.pl>. Documents relating to the settlement, including the Court order preliminarily approving the

settlement and the settlement agreement itself are available free of charge on Class Counsel's website at <http://www.swartz-legal.com>.

You may also contact the Settlement Administrator at [INSERT NUMBER]. **Do not telephone the Court for information regarding this Settlement or the claim process.**

11. Do I have an attorney in this case?

The Court has appointed Swartz Swidler, LLC as "Class Counsel" to represent the interests of class members in the Lawsuit. Class Counsel will represent you in the Lawsuit and can answer questions for you regarding the Lawsuit and the Settlement. Class Counsel's contact information is below. You will not be charged any money for Class Counsel's representation of you; rather Class Counsel will be paid out of the class-wide Settlement Fund. You also have the right to get your own attorney at your own expense in which case Class Counsel will not represent you in the Lawsuit or Settlement. If you object to the Settlement, Class Counsel will not represent you in your objections.

Justin L. Swidler, Esq.
Richard S. Swartz, Esq.
Joshua S. Boyette, Esq
Swartz Swidler, LLC
1101 Kings Hwy N., Ste. 402
Cherry Hill, NJ 08034

Website: <http://www.swartz-legal.com>
Phone: (856) 685-7420
Fax: (856) 685-7417
Toll Free: [INSERT NUMBER]
Email: jswidler@swartz-legal.com

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KALVIN DRUMMOND, *et al.*
Plaintiffs,

v.

HERR FOODS INC., *et al.*
Defendants.

Case No.: 13-5991

CLASS MEMBER SETTLEMENT CLAIM FORM INSTRUCTIONS

TO RECEIVE A PAYMENT UNDER THE SETTLEMENT AGREEMENT IN THIS LAWSUIT, YOU MUST COMPLETE, SIGN, DATE, AND RETURN THE SETTLEMENT CLAIM FORM, WHICH MUST BE POSTMARKED, FAXED OR E-MAILED BY NO LATER THAN _____.

Any Class Member Settlement Claim Form (“Claim Form”) that is not submitted by First Class Mail, Facsimile, E-Mail, Online at [claim administrator site] or the equivalent, is not postmarked before [*insert date*], is not addressed to the proper address, or is not **signed** and **dated** by the Class Member where indicated on the Form, will not constitute a valid claim and payment will be denied unless otherwise ordered by the Court. For more information on the Settlement and how your share of the settlement funds will be calculated, as well as your rights in connection with the Settlement, please see the attached Notice.

If you chose to mail your Claim Form, you should use the pre-addressed and pre-stamped envelope provided if you are mailing the Claim Form from the United States. If you are not mailing the Claim Form from the United States and/or you choose to use your own postage and envelope, you must mail the Claim Form to the following address.

Kalvin Drummond et al. v. Herr Foods Inc. et al., Settlement Administration
c/o Settlement Administrator
Address
(xxx) xxx-xxxx

You do not need to include these instructions (i.e. this page) when submitting the Claim Form. You should call the Claims Administrator to confirm receipt as a small percentage of mail may be lost by the Postal Service.

It is your responsibility to keep a current address on file with the Claims Administrator. This is the address that will be used to mail your distribution from the Settlement. Please make sure to notify the Claims Administrator of any change of address.

CLASS MEMBER SETTLEMENT CLAIM FORM

YOU MUST COMPLETE AND RETURN THIS FORM TO BE ELIGIBLE FOR PAYMENT

Part I	PERSONAL INFORMATION
Name: _____	
Street Address: _____	
City: _____ State: _____ Zip: _____	
Telephone: _____ E-mail (Optional): _____	
Part II	YOUR COMPENSABLE WORK WEEKS
<p>Your Settlement share is based on a formula that accounts for your Compensable Work Weeks (i.e. weeks that you worked as a Route Salesperson or Senior Route Salesperson from November 10, 2011 to January 31, 2016). According to records maintained by Herr's, you worked the following number of Compensable Work Weeks:</p> <p>Compensable Work Weeks _____</p> <p><u>IF YOU DISPUTE HERR'S RECORDS:</u></p> <p>If you disagree with the number of Compensable Work Weeks provided above, please state your estimate of the number of workweeks you worked as a Route Salesperson, Senior Route Salesperson, or other similarly titled position from November 10, 2011 to January 31, 2016.</p> <p>_____ (insert number)</p> <p>Please attach to the Claim Form any documents that support your estimate or an explanation describing what you believe is inaccurate in Herr's records. Please be advised that Herr's records are presumed to be correct unless the documents or explanation you provide demonstrates otherwise.</p>	
Part III	CONSENT TO PARTICIPATE IN SETTLEMENT CLASS
<p>By signing and returning this Claim Form, you elect to opt into the conditionally certified collective action and agree that you are bound by the Settlement, and agree that you have released those claims identified in the Notice you received with this Claim Form, identified as the "Participating Class Members' Released Claims" and "Claimants' Released Claims" described in more detail in the Stipulation of Settlement that Class Counsel can share with you. Please note that unless you affirmatively opt-out of the lawsuit, you will be releasing certain legal claims regardless of whether you sign and return this form.</p>	
SIGNATURE: _____ DATE: _____	

YOU MUST SUBMIT THIS CLAIM FORM BY NO LATER THAN [] TO BE ELIGIBLE FOR PAYMENT.

YOU CAN SUBMIT THIS FORM BY MAIL TO: *Kalvin Drummond et al. v. Herr Foods Inc. et al.*, Settlement Administration. c/o Settlement Administrator, Address, (xxx) xxx-xxxx, XXXX ABC STREET, CITY, STATE
 BE SURE YOU HAVE SIGNED AND **DATED THIS FORM**. YOU SHOULD MAKE A COPY OF THIS FORM BEFORE MAILING IT.

FORM B

[SETTLEMENT ADMINISTRATOR LETTERHEAD]

[DATE]

[CLASS MEMBER NAME AND ADDRESS]

Kalvin Drummond et al. v. Herr Foods Inc. et al.
United States District Court for the Eastern District of Pennsylvania
(Civil Action No. 2:13-cv-05991-BMS)

Dear [NAME]:

It appears that you have submitted inconsistent documentation with respect to whether you intend to participate in the above-referenced class action settlement (the "Settlement"). Specifically, you have submitted a written request to be excluded from /opt-out of the Settlement and you have also submitted a Claim Form.

Please complete the information below to indicate whether it is your intention to participate in the settlement (and be eligible to receive a payment) or to opt-out of the Settlement (and receive nothing), and return this form by ****INSERT DATE**** to:

Kalvin Drummond et al. v. Herr Foods Inc. et al.,

Settlement Administration

c/o _____

Phone: _____

If this fully completed and signed Form is not received by ****INSERT DATE****, you will be deemed to have elected to participate in the settlement.

I. PERSONAL INFORMATION

Name (first, middle and last): _____

Home Street Address: _____

City, State, Zip Code: _____

PLEASE PROVIDE YOUR Home or Mobile Telephone Number: () _____

PLEASE PROVIDE YOUR E-mail address (optional) – to be used only to communicate with you regarding the Settlement: _____

PLEASE CHOOSE ONE (AND ONLY ONE) OF THE FOLLOWING OPTIONS:

 I elect to participate in the Settlement. I understand that this means I am releasing all claims set forth in the Notice of (1) Proposed Class and Collective Action Settlement and Release and (2) Final Settlement Approval Hearing that I previously have received and read.

 I elect to opt out of participation in the Settlement. I understand this means that I will not be eligible to receive any money or other benefits under the Settlement.

II. PLEASE SIGN BELOW.

Dated: _____

(Signature)

(Print Name)

Sincerely,

The Settlement Administrator

FORM C

CHANGE OF NAME AND/OR ADDRESS INFORMATION

Kalvin Drummond et al. v. Herr Foods Inc. et al.

United States District Court for the Eastern District of Pennsylvania

(Civil Action No. 2:13-cv-05991-BMS)

Instructions: Please complete this Form only if you wish to change your name and/or mailing address information.

Former name and mailing address:

Name (first, middle and last): _____

Home Street Address: _____

City, State, Zip Code: _____

Home Telephone Number: (____) _____

Social Security Number:

New name and/or mailing address:

Name (first, middle and last): _____

Home Street Address: _____

City, State, Zip Code: _____

Home Telephone Number: (____) _____

For purposes of verification only, I began working for Herr Foods Inc. at the _____

branch in:

(Month) (Year)

I understand that all future correspondence in this action, including but not necessarily limited to important notices or payments to which I am entitled (if any), will be sent to the new address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: _____

(Signature)

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KALVIN DRUMMOND, MOHAMMED
BAH, CHRISTOPHER GRANDISON,
SHANE BENT, ROBERT CIAMPAGLIA and
STEFAN GODLEY on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

HERR FOODS INC.,

and

JOHN DOES 1-10,

Defendants.

Civil Action No. 2:13-cv-05991-BMS

NOTICE OF PROPOSED SETTLEMENT PURSUANT TO 28 U.S.C. § 1715

PLEASE TAKE NOTICE THAT the parties to the above-referenced class action have reached a proposed settlement of the claims at issue in the litigation. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, Defendant Herr Foods Inc. (“Defendant”) provides this notice to the Attorney General of the United States of America and the Attorney General of each State where Defendant’s records reflect that Class Members reside. Defendant encloses and/or states the following in accordance with its notice obligations under 28 U.S.C. §1715(b):

1. Plaintiffs’ Fourth Amended Complaint in the above-titled action;
2. The parties’ Joint Stipulation of Class and Collective Action Settlement and Release;

3. The parties' proposed Notices of (1) Proposed Class and Collective Action Settlement and (2) Final Settlement Approval Hearing, which includes information about the scheduled judicial hearing in the above-titled action;
4. The parties' proposed Claim Form;
5. A reasonable estimate of Class Members and the estimated proportionate share of the claims of Class Members to the entire settlement.

PLEASE TAKE FURTHER NOTICE that the Court scheduled a judicial hearing for preliminary approval on _____, 2016 at _____ a.m./p.m. at the United States District Court for the Eastern District of Pennsylvania, Courtroom __, 601 Market Street, Room 2609, Philadelphia, PA 19106-1797.

PLEASE TAKE FURTHER NOTICE that pursuant to CAFA, you are not required to comment on the settlement. However, if you wish to comment on the settlement, the Court will schedule at the time of preliminary approval a judicial hearing for final approval, no less than 90 days from the date of this Notice, at the United States District Court for the Eastern District of Pennsylvania, Courtroom [REDACTED], 601 Market Street, Room 2609, Philadelphia, PA 19106-1797. If you choose to comment, you may do so electronically (the Court provides information about its electronic case filing system at <https://www.paed.uscourts.gov/us01001.asp>), or in hard copy form to Clerk of Court, United States District Court for the Eastern District of Pennsylvania, Courtroom [REDACTED], 601 Market Street, Room 2609, Philadelphia, PA 19106-1797. If you choose to comment, please also provide notice to the parties' counsel as follows:

CLASS COUNSEL

SWARTZ SWIDLER, LLC
Justin L. Swidler, Esq.
Richard S. Swartz, Esq.
Matthew D. Miller, Esq.
Joshua S. Boyette, Esq.
1101 Kings Hwy. N., Suite 402
Cherry Hill, NJ 08034
Tel: 856-685-7420

Fax: 856-685-7417

DEFENDANT'S COUNSEL

MORGAN, LEWIS & BOCKIUS LLP

Michael J. Puma
Eleanor R. Farrell
1701 Market Street
Philadelphia, PA 19103
Telephone: 215.963.5000
Facsimile: 215.963.5001
E-mail: mpuma@morganlewis.com

If you have questions about this notice, the underlying action, or the enclosed materials, please contact Class Counsel and/or counsel for Defendant as provided above.

Dated: _____, 2016

MORGAN, LEWIS & BOCKIUS LLP

By: s/ Michael J. Puma
Michael J. Puma
Counsel for Defendant

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KALVIN DRUMMOND, MOHAMMED
BAH, CHRISTOPHER GRANDISON,
SHANE BENT, ROBERT CIAMPAGLIA and
STEFAN GODLEY on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

HERR FOODS INC.,

and

JOHN DOES 1-10,

Defendants.

Civil Action No. 2:13-cv-05991-BMS

**[PROPOSED] ORDER (1) CONFIRMING CERTIFICATION OF CLASS AND
COLLECTIVE ACTION FOR SETTLEMENT PURPOSES; (2) GRANTING FINAL
APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT; AND
(3) ENTERING FINAL JUDGMENT**

This matter came on for hearing upon the Court's Order of _____, 2016 following the Plaintiffs' unopposed motion for final approval of the settlement in this action. Due and adequate notice having been given to the Settlement Class (as defined below), and the Court having considered all papers filed and proceedings had herein and all oral and written comments received regarding the proposed settlement, and having reviewed the record in the above captioned matter, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- a. The Court has jurisdiction over the subject matter of the above-captioned action, the named Plaintiffs ("Class Representatives"), Defendant Herr Foods Inc. ("Defendant") and all members of the Settlement Class, which

consists of all individuals employed by Defendant in the position of “Route Salesperson” or “Senior Route Salesperson” for at least one day between November 10, 2011 and January 31, 2016, as well as any individual who filed a complaint or consent form in the Action prior to November 10, 2014 and who worked for Defendant within three years prior to the date he or she filed the consent form with the Court (collectively the “Settlement Classes” or “Settlement Class Members”).

- b. The term Stipulation shall refer to the Joint Stipulation of Class and Collective Action Settlement and Release filed by the parties in this case in connection with their application for preliminary approval of this matter, and all terms herein shall have the same meaning as terms defined in the Stipulation, unless specifically provided herein.
- c. The Court grants final approval of the parties’ Settlement on the terms set forth in the Stipulation.
- d. The Court finds that the distribution by first-class mail of the Notices of (1) Proposed Class and Collective Action Settlement and (2) Final Settlement Approval Hearing (“Notice”) and Claim Form constituted the best notice practicable under the circumstances to all persons within the definition of the Settlement Class and fully met the requirements of due process under the United States Constitution and applicable state laws. Based on evidence and other material submitted in conjunction with the Final Settlement Approval Hearing, the actual notice to the Settlement Class was adequate. These papers informed Class Members of the terms

of the Settlement, their right to claim a share of the settlement proceeds, their right to object to the Settlement, or to elect not to participate in the Settlement and pursue their own remedies, and their right to appear in person or by counsel at the Final Settlement Approval Hearing and be heard regarding approval of the Settlement. Adequate periods of time were provided by each of these procedures. [No Settlement Class Members objected to the Settlement, and only ___ individuals opted out of the Settlement.]

- e. The Court finds, for purposes of settlement only, that the Class satisfies the applicable standards for certification under Federal Rules 23(a) and 23(b)(3). Accordingly, solely for purposes of effectuating this settlement, this Court has certified a class of all Settlement Class Members, as that term is defined above. Because the Rule 23 class is being certified here for settlement purposes only, the Court need not (and does not) address the manageability requirement of Rule 23(b)(3). *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).
- f. The Court finds, for settlement purposes only, that the Settlement Class Members meet the requirements for collective action certification under Section 216(b) of the Fair Labor Standards Act.
- g. The Court approves the settlement of the above-captioned action, and each of the releases and other terms set forth in the Stipulation, as fair, just, reasonable and adequate as to the Settlement Class, the Class Representatives, and Defendant (collectively “Settling Parties”). The

Settling Parties and the Settlement Administrator are directed to perform in accordance with the terms set forth in the Stipulation.

- h. Except as to any individual claim of those persons (identified in Attachment A hereto, if any, by employee identification number) who have validly and timely requested exclusion from the Class, all of the claims asserted in the above-captioned matter are dismissed with prejudice as to the Class Representatives and the Settlement Class Members. The Settling Parties are to bear their own attorneys' fees and costs, except as otherwise provided in the Stipulation.
- i. By this Judgment, each Settlement Class Member who has not validly and timely requested exclusion from the Settlement by opting out (including the Class Representatives and Claimants), regardless of whether he or she made a claim against the settlement for any money, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released and discharged the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature and description, whether known or unknown, whether anticipated or unanticipated, arising prior to January 31, 2016, which arise under state or local or regulation and: (a) were pled in the Action at any time; and/or (b) could have been pled, including all claims based on any of the following: (i) alleged failure to pay any type of overtime wages, (ii) alleged failure to pay any type of earned or minimum wages, (iii) alleged improper deductions, and (iv) to the extent related to

the claims in this Action, any statutory, constitutional, regulatory, contractual or common law claims for wages, damages, litigation costs, unfair business practices, unfair competition (including, without limitation, all such claims available in the state(s) where each Participating Class Member lived or worked as an Route Salesperson, Senior Route Salesperson, or similarly titled position, as set forth in the appendix of state statutes attached to the Stipulation of Settlement as Exhibit E); and (c) this release includes any and all of the following based on any of the matters released by the foregoing (a) and (b) above: penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief (collectively "Participating Class Members' Released Claims").

- j. By this Judgment, each and every Claimant (including the Class Representatives and all individuals who already were opt-in Plaintiffs at the time of preliminary approval) shall be deemed to have, and by operation of the Judgment shall have, also fully, finally, and forever released and discharged the Released Parties from (in addition to the Participating Class Members' Released Claims) any and all claims, obligations, causes of action, actions, demands, rights, and liabilities, whether known or unknown, whether anticipated or unanticipated, arising prior to the date the Claimant signs his or her Claim Form that were asserted or could have been asserted in the Action at any time pursuant to the FLSA, including all claims based any of the following: (i) alleged

failure to pay wages, (ii) alleged failure to pay overtime wages, (iii) alleged failure to pay straight time or earned wages, and (iv) alleged failure to pay minimum wages, and this release includes any and all of the following based on any of the matters provided for above in this paragraph: penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief ("Claimants' Released Claims").

- k. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the released claims described above, any wrongdoing or liability of Defendant or any of the Released Parties, or whether class or collective action certification is warranted in this action or any other proceeding or that decertification is not warranted in this action or any other proceeding; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant or 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 Judgment from the above-captioned matter in any other action that may be brought against 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 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

- l. The Action is dismissed on the merits and with prejudice, permanently barring the Class Representatives and Settlement Class Members (other than those who timely filed valid written requests for exclusion from the Class) from prosecuting any of the Participating Class Members' Released Claims, and also permanently barring the Class Representatives and Claimants from prosecuting any of the Claimants' Released Claims.
- m. The Court hereby confirms the appointment of Calvin Drummond, Mohammed Bah, Christopher Grandison, Shane Bent, Robert Ciampaglia and Stefan Godley as Class Representatives for the Settlement Class for purposes of the Settlement.
- n. The Court hereby confirms the appointment of Justin Swidler of Swartz Swidler, LLC as Class Counsel for the Settlement Class for purposes of Settlement and the releases and other obligations therein.
- o. The Court finds that the plan of allocation set forth in the Stipulation is fair and reasonable and that distribution of the Settlement Fund to Claimants, Class Counsel and Class Representatives shall be done in accordance with the terms outlined in the Class Notice and Stipulation. Pursuant to the Class Notice and Stipulation, Defendant shall pay Two Million Dollars and No Cents (\$2,000,000.00) to fund a Qualified Settlement Fund. Other than Defendant's payment to the Qualified Settlement Fund, Defendant and Released Parties shall not be required to

make any payments in connection with the Settlement. The following payments shall be paid out of the Qualified Settlement Fund: (i) all Settlement Shares as defined in the Stipulation (ii) Class Counsel's approved attorneys' fees and costs in this matter; (iii) payment of approved reasonable fees to the Settlement Administrator for its services; (iv) enhancement payments to the Class Representatives in an amount not to exceed \$ [REDACTED] total (e.g., \$ [REDACTED] each); and (v) Defendant's share of payroll taxes. The Court finds that these payments are fair and reasonable. Accordingly, the Court hereby awards to Class Counsel for attorneys' fees of Six Hundred Sixty-Six Thousand and Six Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$666,666.66), and costs of \$ [REDACTED] as of the date of disbursement. The Court also hereby approves the payment of settlement administration costs in the amount of \$ [REDACTED] to [REDACTED] the Settlement Administrator for services rendered in this matter. The enhancement awards to the Class Representatives in an amount of \$7500 for Calvin Drummond, \$5000 each for Mohammed Bah, Shane Bent, and Christopher Grandison, \$1500 each for Robert Ciampaglia and Stefan Godley, \$500 for Christopher Spross, and \$5000 for Jaqueline Jones (\$31,000 total) for his or her services to the class are approved.

- p. The Settlement Administrator is directed to make the foregoing payments to Class Counsel, the Settlement Administrator, and Class Representatives in accordance with the terms of the Stipulation. Those payments come out

of the total Qualified Settlement Fund provided for in the Stipulation.

After deducting the foregoing, the remaining shall constitute the Net Settlement Fund, and the Settlement Administrator shall distribute payments of Settlement Shares to Claimants pursuant to the terms of the Stipulation.

- q. The unclaimed Settlement Shares and uncashed Settlement Share checks (including all pro rata additional allocations for unclaimed amounts distributed to Claimants) shall be paid as set forth in the Stipulation.
- r. This matter is hereby dismissed with prejudice. The Court reserves and retains exclusive and continuing jurisdiction over the Action, the Class Representatives, the Settlement Class, Class Counsel, and Defendant for the purposes of supervising the implementation, effectuation, enforcement, construction, administration and interpretation of the Settlement and this Judgment.
- s. This document shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: _____, 2016

Hon. Berle M. Schiller
United States District Judge

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KALVIN DRUMMOND, MOHAMMED
BAH, CHRISTOPHER GRANDISON,
SHANE BENT, ROBERT CIAMPAGLIA and
STEFAN GODLEY on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

HERR FOODS INC.,

and

JOHN DOES 1-10,

Defendants.

Civil Action No. 2:13-cv-05991-BMS

**NON-EXHAUSTIVE LIST OF STATE WAGE AND HOUR
STATUTES/ORDINANCES INCLUDED AMONG RELEASED STATE LAW CLAIMS**

Delaware

- Wage Payment & Collection Act: Del. Code Ann. tit. 19, § 1101 et seq.
- Minimum Wage Act, Del. Code. Ann. tit. 19, §§ 901 et seq.

Maryland

- Md. Code Ann. , Lab. & Empl. §§ 3-401 et seq.
- Md. Code Ann. , Lab. & Empl. §§ 3-501 et seq.

New Jersey

- New Jersey Wage Payment Law, N.J. Stat. Ann § 34:11-4.1 et seq.
- New Jersey Wage Collection Law: N.J. Stat. Ann. § 34:11-57 et seq.
- N.J. Admin. Code §§ 12:55 et seq.
- N.J. Admin. Code §§ 12:61 et seq.
- New Jersey Wage and Hour Law, N.J. Stat. Ann § 34:11-56a et seq. N.J. Admin. Code §§ 12:56 et seq.

New York

- N.Y. Lab. Law. § 160 et seq. (including, but not limited to, § 161 and § 162)
- N. Y. Lab. Law § 190 et seq. (including, but not limited to, § 191, § 193 and § 198)
- New York Minimum Wage and Hour Law: NY. Lab. Law § 650 et seq.
- 12 N.Y.C.R.R. § 142-2.1 et seq. (including, but not limited to, § 142-2.2, § 142-2.4 and § 142.-2.14)

Ohio

- Ohio Minimum Fair Wage Standards: Ohio Rev. Code Ann. ch. 4111 (including, but not limited to, § 4111.03)
- Ohio Rev. Code. Ann. §§ 4113.15 et seq. (including, but not limited to §§ 4113.16, 4113.19, and 4113.21)

Pennsylvania

- Minimum Wage Act of 1968: 43 Pa. Stat. Ann. § 333.101 et seq.
- Wage Payment and Collection Law: 43 Pa. Stat. Ann. § 260.1 et seq.
- 34 Pa. Code § 231.21, § 231.3 1, § 231.36 and § 231.41

Virginia

- Title 40.1 of Chapter 3 of the Code of Virginia
- The Virginia Minimum Wage Act, Va. Code Ann. §§ 40.1-28.8 et seq.
- Virginia Assignment of Wages Act: Va. Code Ann. § 40.1-29 et seq.

West Virginia

- West Virginia Wage Payment and Collection Act, W.Va. Code § 21-5C-1 et seq. (including, but not limited to, § 21-5C-3)
- West Virginia Minimum Wage and Maximum Hour Act, W. Va. Code § 21-5-1 et seq. (including, but not limited to, §§ 21-5-3,21-5-9(4))