

PAGA SETTLEMENT AGREEMENT

Subject to approval by the Court, Plaintiff Cristobal Pena Hernandez (“Plaintiff”) and Defendant Reiter Berry Farms, Inc. (“Defendant” or “RBF”) (collectively, the “Parties”) hereby agree to the following settlement (“Settlement” or “Settlement Agreement”) of the Plaintiff’s Private Attorneys General Act (“PAGA”) claims and his individual claims in the lawsuit entitled State of California ex rel. Cristobal Pena Hernandez, Santa Barbara County Superior Court Case No. 20CV01640 (“Action”).

PERSONS COVERED BY THE SETTLEMENT

1. Aggrieved Employees: This Settlement covers all non-exempt current and former agricultural workers employed by RBF in an outdoor place of employment in the Santa Maria region at any time from January 31, 2019, through July 31, 2021, which Defendant in good faith estimates as comprising approximately 2,600 individuals (“Aggrieved Employees”), including Plaintiff.

2. Settlement Period: The Settlement covers the period from January 31, 2019 (i.e., one year before Plaintiff filed his initial letter of complaint with the Labor and Workforce Development Agency (“LWDA”)) until July 31, 2021 (“Settlement Period”).

3. Effective Date: “Effective Date” will be the date the Court or any Party serves notice of the Court’s order and judgment approving this Settlement. At no time will Defendant have any obligation to fund the Settlement, in whole or in part, until after this Effective Date.

SETTLEMENT CONSIDERATION

4. Maximum Settlement Amount: RBF will pay Three Hundred Thousand Dollars (\$300,000) (“Maximum Settlement Amount”) to settle Plaintiff’s PAGA claims in the Action and his individual claims. In no event shall RBF be liable for more than the Maximum Settlement Amount. The Maximum Settlement Amount includes Attorneys’ Fees, Litigation Costs, Plaintiff’s Individual Payment, Settlement Administrator Costs, payment to the LWDA and payments to Aggrieved Employees.

5. Attorneys’ Fees: In full satisfaction of all claims Plaintiff and Aggrieved Employees may have for attorneys’ fees arising out of the Action, RBF agrees to pay Plaintiff’s Counsel, Lex Opus and Workworld Law Corp. (“Plaintiff’s Counsel”), a maximum amount of one third of the Maximum

Settlement Amount, subject to Court approval. To the extent the Court approves attorneys' fees of less than this amount, the amount of the difference shall be added to the PAGA Penalties Fund.

6. Litigation Costs: In full satisfaction of all claims Plaintiff and Aggrieved Employees may have for litigation costs arising out of the Action, RBF agrees to pay Plaintiff's Counsel a maximum amount of Ten Thousand Dollars (\$10,000) in litigation costs, subject to Court approval. To the extent the Court approves litigation costs of less than \$10,000, the amount of the difference shall be added to the PAGA Penalties Fund.

7. Plaintiff's Individual Payment: In exchange for a general release, and in recognition of Plaintiff's effort and work in prosecuting the Action on behalf of Aggrieved Employees and the State of California, the Parties agree that Plaintiff will receive a payment of Ten Thousand Dollars (\$10,000) ("Plaintiff's Individual Payment"). The Plaintiff's Individual Payment will be paid from the Maximum Settlement Amount. The Plaintiff's Individual Payments will be treated as 100% miscellaneous income for which a 1099 will be issued. To the extent the Court approves Plaintiff Individual Payments of less than \$10,000, the amount of the difference shall be added to the PAGA Penalties Fund.

8. PAGA Penalties Fund: The Parties agree that RBF will pay the LWDA and Aggrieved Employees in full satisfaction of all claims for PAGA civil penalties under the California Labor Code in an amount equal to the remainder of the Maximum Settlement Amount following deduction of any Court-approved attorneys' fees, litigation costs, Plaintiff's Individual Payment, and Settlement Administration Costs ("PAGA Penalties Fund"). Pursuant to PAGA, 75% of the PAGA Penalties Fund will be paid to the LWDA, and the remaining 25% will be paid to all Aggrieved Employees in proportion to the number of pay periods worked in non-exempt positions from January 31, 2019 through July 31, 2021.

9. Settlement Administrator: Phoenix Settlement Administrators shall be the third-party settlement administrator for the purposes of administering this Settlement.

10. Settlement Administration Costs: Settlement Administration Costs will be paid to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per aggrieved

employee, tax reporting, distributing the PAGA Penalties Fund and Individual Payments Amount, and providing necessary reports, and other duties and responsibilities as requested by the Parties. The Settlement Administration Costs will be paid from the Maximum Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum necessary to administer the Settlement, which is anticipated to be no greater than Ten Thousand Dollars (\$10,000). To the extent actual Settlement Administration Costs are greater than \$10,000, such excess amount will be deducted from the PAGA Penalties Fund.

11. Court Approval of the Settlement and Distribution of Settlement Payments: Within thirty (30) days of the Parties executing this Settlement Agreement, Plaintiff will file a motion requesting that the Court issue an order approving and incorporating by reference the terms and conditions of the Settlement Agreement, and entering judgment. Plaintiff shall promptly submit this Settlement Agreement to the LWDA at the same time the motion for settlement approval is filed.

12. Funding of the Settlement: Within ten (10) business days after the Effective Date of the Settlement, RBF will pay the Maximum Settlement Amount to Phoenix Settlement Administrators.

13. Required Study: Within one hundred fifty (150) days after the Effective Date, RBF will conduct an internal review regarding its ongoing effort to comply with Labor Code § 226.7 and California Code of Regulations, title 8, section 3395, including study of the following matters:

- A. Start and end times for breaks.
- B. Protocol regarding what to do when heat illness symptoms are reported.
- C. Whether and how to monitor drinking water levels and temperature.
- D. Whether temperature within hoop structures should be recorded for purposes of enforcing heat illness prevention program.

Within one hundred eighty (180) days after the Effective Date, RBF will provide confirmation to Plaintiff's Counsel that the required internal review has been completed. Following this confirmation, no discovery will be permitted regarding compliance with this section of the Settlement Agreement.

14. Settlement Payments to Aggrieved Employees: The Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the PAGA Penalties Fund along with an

explanatory letter in the form attached hereto as **Exhibit A**. Checks will remain negotiable for one hundred twenty (120) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred twenty (120) days after issuance will be tendered to the State Controller's Office, Unclaimed Property Division. All settlement payments to Aggrieved Employees will be treated as 100% miscellaneous income for which a Form 1099 will be issued.

15. Settled Claims for Aggrieved Employees and the State of California: Upon issuance of the Court's approval order and judgment, Plaintiff, all Aggrieved Employees, and the State of California shall fully release and forever discharge any and all claims arising during the Settlement Period seeking civil penalties under PAGA that were asserted or could reasonably have been asserted based on the facts alleged or that could have been alleged in the Action for the penalties sought in the Action ("Released Claims"), against RBF, its past and present parents, subsidiaries, predecessors, successors, assigns, owners, officers, directors, employees, agents, trustees, affiliated entities, attorneys or legal representatives, insurers, fiduciaries, beneficiaries, partners, and/or any other entity or individual which could be liable for the acts or omissions of RBF in relation to the Released Claims (hereinafter "Released Parties"). Upon issuance of the Court's approval order and judgment, Plaintiff, all Aggrieved Employees, and the State of California will be forever barred from pursuing against RBF any and all claims for PAGA civil penalties under the Labor Code, Wage Orders, and/or other provisions of law alleged or that could have been alleged to have been violated in the Action with respect to Aggrieved Employees based on the facts alleged or that could have been allege in the Action during the Settlement Period for the penalties sought in the Action.

16. Plaintiff Released Claims: Upon issuance of the Court's approval order and judgment, Plaintiff shall fully and finally release the Released Parties from any and all claims, known and unknown,

under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including, but not limited to, claims arising from or related to employment with Defendant and compensation while an employee of Defendant (“Plaintiff Released Claims”). Plaintiff Released Claims include, but are not limited to, all claims asserted in, arising from, or related to the Action. Plaintiff Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime, and interest; the calculation of the regular rate of pay; wages related to time rounding and timekeeping; missed meal period and rest period premiums; meal period waivers; failure to reimburse for all necessary business expenditures or losses; payment for all hours worked, including off-the-clock work and uncompensated work time; wage statements; deductions; failure to pay wages and final wages in a timely manner; failure to keep accurate records; failure to provide employment records; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, waiting-time penalties, statutory and civil penalties; and attorneys’ fees and costs. Plaintiff’s Released Claims include all claims arising under the Labor Code; the Wage Orders of the California Industrial Welfare Commission; the PAGA; Business and Professions Code §§ 17200, et seq.; the Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; Code of Civil Procedure § 1021.5; the common law of contract; the FLSA, 29 U.S.C. §§ 201, et seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq. Plaintiff’s Released Claims also include all claims for emotional distress, retaliation, punitive damages, and attorneys’ fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the California Fair Employment and Housing Act; privacy claims of any type; and the law of contract and tort. This release excludes the release of claims not permitted by law.

Plaintiff’s Released Claims include all claims, whether known or unknown. Even if Plaintiff discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiff’s Released Claims, those claims will remain

released and forever barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits of section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

17. No Credit Toward Benefit Plans: Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

18. No Prior Assignments: The Parties and their counsel 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 liability, claim, demand, action, cause of action or right herein released and discharged.

19. Nullification of Settlement Agreement: In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

20. Continued Jurisdiction: After entry of the Court's approval order and judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-Court Approval matters as may be appropriate under court rules or as set forth in this Settlement.

21. Entire Agreement: This Settlement Agreement constitutes the entirety of the Parties' settlement terms with regard to the settlement of Plaintiff PAGA and individual claims. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

22. Amendment or Modification: This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest.

23. Authorization to Enter Into Settlement Agreement: The Parties warrant and represent they expressly authorized their legal counsel to negotiate this Settlement Agreement. The Parties will direct their counsel to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties through their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

24. Binding on Successors and Assigns: This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

25. California Law Governs: All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

26. Execution and Counterparts: This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument. To facilitate execution and delivery of this Settlement Agreement, the parties may execute and exchange by facsimile or electronic image (i.e., as a “.pdf” file) counterparts of the signature pages and/or sign by electronical means (i.e., with DocuSign).

27. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm’s-length negotiations. The Parties further acknowledge they are represented by competent counsel and they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

28. Invalidity of Any Provision: Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

29. Captions: The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

30. Waiver: No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

31. Enforcement Action: In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

32. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

33. Representation By Counsel: The Parties acknowledge they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

34. Cooperation and Execution of Necessary Documents: All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

35. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

36. No admission of Liability: The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of RBF or Released Parties. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

PLAINTIFF CHRISTOBAL PENA HERNANDEZ

Dated: 9-2-21

Christobal Pena

DEFENDANT REITER BERRY FARMS, INC.

Dated: 9-14-2021

DocuSigned by:
Andrew Rice
 By: 8FDA987ED24D4CD...

Andy Rice

Vice President

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: Payment From *State ex rel. Hernandez v. v. Reiter Berry Farms, Inc.*

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *State of California ex rel. Christobal Pena Hernandez v. Reiter Berry Farms, Inc.*, Santa Barbara County Superior Court, Case No. 20CV01640 (the “Action”).

The Action was filed against Reiter Berry Farms, Inc. (“RBF”) under the California Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. (“PAGA”). The claim was brought by one former employee of RBF on behalf of the State of California for all persons who worked for RBF outdoors as non-exempt employees in the State of California from January 31, 2019 to July 31, 2021 (“Aggrieved Employees”). You have been identified as an individual on whose behalf the case was brought.

The Plaintiff in the lawsuit claims RBF owes penalties under PAGA for alleged violations of the California Labor Code, including failure to timely pay minimum wages and overtime wages, failure to provide rest, recovery, and meal periods, failure to provide accurate wage statements, and failure to comply with heat illness prevention health-and-safety standards. RBF denies all such allegations, maintains its policies and practices were lawful and that all employees were provided with all wages and working conditions owed at the appropriate times.

The Court has not ruled on the merits of the lawsuit, but it has approved the settlement the parties reached. By law, a portion of the settlement amount goes to the State of California. Another portion of the settlement amount goes to the Aggrieved Employees. In agreeing to this settlement, RBF does not admit it is liable in any way to its current or former employees.

Enclosed is a check for your share of the settlement. You are not a party to this lawsuit and this settlement does not impact your rights or remedies as an individual. However, you and the State are bound by the judgment as it relates to the PAGA.

If you have further questions about this settlement, please contact the lawyer for Mr. Hernandez, Ruben Escobedo, 731 S. Lincoln Street, Santa Maria, CA 93458, (805) 335-2476.

Sincerely,

[NAME AND TITLE OF SIGNATORY]