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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

DINORA GONZALES and ANITA RAMOS,
as aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”), on behalf of
the State of California and other aggrieved
employees,

Plaintiffs,

vs.

GROWERS EXPRESS (DE), LLC, a Delaware
limited liability company; and DOES 1 through
10, inclusive,

Defendants.

Case No. 20CV001103

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Monterey (“Court”), Plaintiffs Dinora Gonzales and Anita Ramos (“Plaintiffs”) and Defendant Growers Express (DE), LLC (“Defendant”) (collectively with Plaintiffs, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the action entitled *Gonzales v. Growers Express*, No. 20CV001103 (Monterey County Superior Court) (the “Action”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Gonzales v. Growers Express*, No. 20CV001103 (Monterey County Superior Court).
2. “Aggrieved Employees” are all persons who were employed by Defendant as non-exempt, hourly-paid, employees at Defendant’s fresh vegetable processing facility, who received at least one wage statement, in the State of California at any time from January 10, 2019 through February 1, 2020.
3. “Court” is the Superior Court for the State of California, County of Monterey.
4. “LWDA” means the California Labor and Workforce Development Agency.
5. “Maximum Settlement Amount” means the maximum settlement amount of Four Hundred Five Thousand Dollars (\$405,000) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action, which includes all payments to Aggrieved Employees, Plaintiffs, Plaintiffs’ Counsel, the LWDA, and the Settlement Administrator, but excluding the individual General Release Payments.
6. “PAGA Penalties Fund” means the Maximum Settlement Amount less the Attorneys’ Fees and Costs, Service Awards, and Settlement Administrator Costs.
7. “Plaintiffs’ Counsel” means Capstone Law APC.
8. “Service Awards” means the amounts to be paid to Plaintiffs as payment for their service on behalf of the LWDA and Aggrieved Employees.

9. “Settlement” is the settlement set forth in this Agreement.

10. “Settled Claims” means any and all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or could have been alleged to have been violated in the Actions with respect to Aggrieved Employees based on the facts alleged in the Action during the Settlement Period.

11. “Settlement Period” means January 10, 2019 through February 1, 2020.

TERMS

12. Maximum Settlement Amount. In consideration for Plaintiffs’ promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will to pay a maximum amount of Four Hundred Five Thousand Dollars (\$405,000) (“Maximum Settlement Amount”), which represents the maximum amount payable in this Settlement by Defendant, and includes all attorneys’ fees, litigation costs and expenses, Service Awards, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Maximum Settlement Amount will be retained by, or revert to, Defendant.

13. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

13(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

13(b) To determine each Aggrieved Employee’s payment from the PAGA Penalties Fund, Defendant will use the following formula: Settlement

Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

14. Escalator Clause. This Settlement is based on Defendant's representation that Aggrieved Employees worked during a total of approximately 6,288 pay periods during the Settlement Period. If the number of pay periods worked during the Settlement Period is greater than 6,600, then Defendant will proportionally increase the Maximum Settlement Amount according to the following formula: Adjusted Maximum Settlement Amount = Total Number of Pay Periods $\div$ 6,600 Pay Periods $\times$ Maximum Settlement Amount.

15. Attorneys' Fees and Costs. Plaintiffs' Counsel will apply to the Court for an award of up to One Hundred Thirty Five Thousand Dollars (\$135,000) for attorneys' fees (33^{1/3}% of the Maximum Settlement Amount), and an application to the Court for an award of up to Ten Thousand Dollars (\$10,000) for litigation costs, to compensate Plaintiffs' Counsel for the work already performed in this case and all work remaining to be performed in documenting the Settlement, securing Court approval of the Settlement, and ensuring that the Settlement is fairly administered and implemented. The Settlement Administrator will issue to Plaintiffs' Counsel a Form 1099 with respect to their award of attorneys' fees and costs. If the Court does not award the requested amount, the difference, if any, shall be allocated to the PAGA Penalties Fund.

16. Additional Attorney's Fees Released by Plaintiffs' Counsel: In consideration for an award of attorney's fees, expenses and costs in accordance with this Settlement, Plaintiffs' Counsel waive any and all claims to any further attorney's fees and costs in connection with the Action. This limitation, however, does not apply to any work Plaintiffs' Counsel may reasonably undertake to enforce the terms of this Settlement.

17. Service Awards. For their service on behalf of the LWDA and Aggrieved Employees, Plaintiffs will request the Court award Three Thousand Dollars (\$3,000) to each Plaintiff ("Service Awards"), in addition to any payment they may otherwise receive as an Aggrieved Employee. The

Settlement Administrator will issue to Plaintiffs a Form 1099 for their Service Payment. If the Court does not award the requested amount, the difference, if any, shall be allocated to the PAGA Penalties Fund.

18. Individual General Release Payments. For general releases of all claims Plaintiffs may have against Defendant arising out of their employment, Defendant agrees to pay Plaintiffs the sum of Five Thousand Dollars (\$5,000), each (“General Release Payments”) subject to the execution of an individual settlement agreement upon the date of entry of the Order and Judgment. The General Release Payments will be paid separately from the Maximum Settlement Amount. In consideration of the General Release Payments, and in furtherance of settlement, Plaintiffs agree that they shall not commence any other action, suit, proceeding, investigation, complaint, claim, grievance or charge with any court, administrative agency, arbitrator or any other body or person, whether Federal, State, contractual or otherwise, or aid or assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance or charge on their behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against any of Company’s Releasees, based in whole or in part upon, or arising out of or in an way connected with their employment with Defendant.

19. Settlement Administration Costs. The Parties will retain ILYM, Group, Inc. as the third-party settlement administrator (“Settlement Administrator”). The Settlement Administrator will be responsible for establishing a qualified settlement fund (“QSF”) and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiffs, and Plaintiffs’ Counsel. The Settlement Administration Costs will be paid from the Maximum Settlement Amount. Based on the estimate that there are approximately Two Hundred and Sixteen (216) Aggrieved Employees, Settlement Administration Costs are estimated at Four Thousand Dollars (\$4,000).

20. Court Approval of the Settlement and Distribution of Settlement Payments. Plaintiffs shall promptly move the Court for the entry of an Order Granting Approval of the Settlement incorporating by reference the terms and conditions of the Settlement Agreement (the “Order and Judgment”). Plaintiffs shall submit the Settlement Agreement to the LWDA at the same time Plaintiffs file the Motion for Settlement Approval with the Court.

21. List of Aggrieved Employees. Within ten (10) calendar days after entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all Aggrieved Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments.

22. Funding of the Settlement. Within ten (10) calendar days after entry of the Order and Judgment, Defendant will deposit a total of \$202,500 into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Within fifty-five (55) calendar days after entry of the Order and Judgment, Defendant will deposit another \$202,500 into the QSF. Within ten (10) calendar days after the entire Maximum Settlement Amount and General Release Payments have been deposited into the QSF, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiffs; (d) Plaintiffs’ Counsel; and (e) itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

23. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter, in English and Spanish, which will be mutually approved by the parties. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. 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. Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing

of the Settlement checks by the Settlement Administrator will be tendered to the unclaimed property fund of The State Controller's Office. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

24. Settled Claims. Upon entry of the Order and Judgment, Plaintiffs, the LWDA and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the Settlement Period. Aggrieved Employees, other than Plaintiffs, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

25. 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, stock purchase 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.

26. 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.

27. 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.

28. Judgment and Continued Jurisdiction. After entry of the 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-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

29. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding

on the Parties.

30. 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 or counsel for all Parties.

31. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and 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 and 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.

32. 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.

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

34. 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 electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

35. 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 by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

36. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that

Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement's terms.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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 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 arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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

43. 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.

44. 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.

45. Denial 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 Defendant. 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 pendency of the 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.

READ CAREFULLY BEFORE SIGNING

Dated: 2/11/2021

PLAINTIFF

DocuSigned by:

Dinora Gonzales

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Dinora Gonzales

PLAINTIFF

Dated: _____

Anita Ramos

faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Dinora Gonzales

PLAINTIFF

DocuSigned by:

Dated: 1/21/2021

Anita Ramos

DEFENDANT

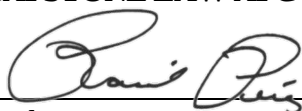
Dated: _____

Kirk Wagner
Name of Authorized Signatory for Growers Express
(DE), LLC

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: February 12, 2021


Raul Perez

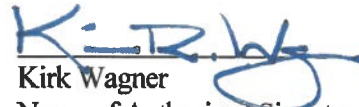
NOLAND, HAMERLY, ETIENNE & HOSS

Dated: _____

Ana C. Toledo

DEFENDANT

Dated: January 29, 2021



Kirk Wagner

Name of Authorized Signatory for Growers Express
(DE), LLC

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

Raul Perez

NOLAND, HAMERLY, ETIENNE & HOSS

Dated: 1/29/21



Ana C. Toledo