

Ross E. Shanberg, Esq. (#179842)
Aaron A. Bartz, Esq. (#198722)
SHANBERG, STAFFORD & BARTZ, LLP
5031 Birch Street
Newport Beach, CA 92660
Tel: (949) 6205-7515 / Fax: (949) 205-7144

Attorneys for Plaintiffs BAUDELIO MARISCAL, CRISTIAN NEVAREZ, and JANET VILLASANA, on behalf of themselves and all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

BAUDELIO MARISCAL, an individual,
CRISTIAN NEVAREZ, an individual, and
JANET VILLASANA, an individual, on
behalf of themselves and other aggrieved
employees,

Plaintiffs,

vs.

MUNGER BROS. LLC, a California limited
liability company; MUNGER FARMS, LLC, a
California limited liability company; and
CROWNE COLD STORAGE, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

) CASE NO. STK-CV-UOE-2020-4639

)

) [Assigned for all purposes to the Hon. Barbara
Kronlund, Dept. 10D]

)

) **DECLARATION OF ROSS E.**

) **SHANBERG IN SUPPORT OF MOTION**

) **TO APPROVE PAGA SETTLEMENT**

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1 7. A breakdown of the Gross Settlement Fund of **\$425,000** is provided below:
2 a. Net Distribution Amount to Aggrieved Employees: \$66,160.50;
3 b. Net Distribution Amount to the LWDA: \$198,481.48;
4 c. Attorneys' Fees: \$141,666.66;
5 d. Litigation Costs: \$8,691.36;
6 e. Settlement Administration expenses: \$10,000.
7 6. The Agreement covers the following "Aggrieved Employees": Any and all
8 current and former hourly-paid, non-exempt direct and staffing agency packing house employees
9 who worked for Defendants in the State of California at any time from February 26, 2019 to
10 December 31, 2020. Based upon Defendants' records, there are approximately 1,517 aggrieved
11 employees as of the date of signing of the Settlement Agreement.

12 7. As part of the settlement, the aggrieved employees release only penalties
13 recoverable under PAGA, and do not release any of their underlying wage claims.

14 **Background of Case**

15 8. This case arises out of alleged wage and hour violations committed by Defendants
16 against their non-exempt direct and staffing agency hourly employees. Plaintiffs served their
17 PAGA letter on the Labor and Workforce Development Agency (LWDA) on February 26, 2020.
18 Attached as Exhibit 2 is a true and correct copy of Plaintiffs' PAGA letter. Thereafter, Plaintiffs
19 submitted a Complaint for filing on May 4, 2020, on behalf of themselves and other aggrieved
20 employees for Civil Penalties under PAGA based on Defendants' wage and hour violations,
21 including failure to pay all wages, meal period and rest break violations, and other wage
22 violations.¹ Attached as Exhibit 3 is a true and correct copy of Plaintiffs' PAGA Complaint filed
23 in this action.

24 9. Since filing this action, my office has been very aggressive in pursuing this case
25 on behalf of Plaintiffs, other aggrieved employees and the State of California. Shortly after

26 _____
27 ¹ Because of Covid-19 court closures, Plaintiffs' Complaint did not receive a filing date until one
28 month later, on June 5, 2020.

1 filing, I communicated with Defendants' counsel on numerous occasions to obtain informal
2 discovery of payroll records, employment policy documents, and other extensive data concerning
3 the hours of work and pay rates of the aggrieved employees. My office also served various
4 demands for information under the Labor Code to obtain as many personnel records as possible
5 for a number of the aggrieved employees other than Plaintiffs, in order to bolster the claims
6 made in this case.

7 10. In order to achieve an efficient resolution of this case, I also discussed possible
8 Mediation with Defendants' counsel, which the parties ultimately agreed to attend. Prior to
9 Mediation, Defendants propounded extensive pay data for the aggrieved employees, as well as
10 additional employment documents and policies relating to the wage issues raised in the case. In
11 preparation for Mediation, moreover, Plaintiffs also hired statistical expert James Toney to
12 analyze the data on the aggrieved employees to create models reflecting the total exposure to
13 PAGA penalties in this case. Attached as Exhibit 4 is a true and correct copy of the PAGA
exposure model developed by Mr. Toney.

14 11. On October 6, 2020, the parties attended mediation before the Honorable Carl J.
15 West (Ret.). The mediation was vigorously contested, and at all times, the settlement
16 negotiations were non-collusive, and involved considerable disputes over payment terms. The
17 parties did not reach a settlement on the day of the Mediation.

18 12. Over the course of the month after the Mediation, the parties continued to work
19 through the Mediator to reach a settlement. Ultimately, a settlement-in-principle was reached
approximately one month after the mediation.

20 13. Plaintiffs did not settle this case until they had conducted sufficient investigation
21 into the claims, interviewed numerous aggrieved employees working for Defendants, and
22 thoroughly reviewed Defendants' employment policies and pay records. I believe that this is a
23 very good settlement of the PAGA claims, which will not affect any aggrieved employee's right
to pursue underlying Labor Code violations against Defendants if he or she chooses to do so.

24 **Plaintiffs' Counsel Is Very Experienced In Representative And Class Actions**

25 14. I am experienced in class and representative actions, including specializing in
26 wage and hour and employment claims. Some of the class action and wage and hour litigation
27 on which I have served as Class Counsel include:
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- 1 a. *Wilkins, et al. v. Equinox Holdings, Inc.*
2 Los Angeles Superior Court, No.: BC440058
- 3 b. *TBC Retail Group Wage and Hour Cases*
4 Los Angeles Superior Court, No.: JCCP No. 4701
- 5 c. *Casserly v. Randstad US,L.P.,et al.*
6 U.S.D.C., Central District of California, No. SACV 12-1023-DOC(ANx)
- 7 d. *Walsh, et al. v. Pacific Bell Telephone Company*
8 Orange County Superior Court, No.: 30-2011-00498062-CU-OE-CXC
- 9 e. *Concho, et al. v. Pipeline Carriers, Inc. et al.*
10 Orange County Superior Court, No.:30:2013-00649600-DU-OE-CXC
- 11 f. *Holsted et al. v. R.J. Noble Company et. al.*
12 Orange County Superior Court, No.:30:2010-00379770-CU-OE-CXC
- 13 g. *Matthews v. Whelan Security of California, Inc.*
14 Orange County Superior Court, No.: 30-2016-00833250-CU-OE-CXC
- 15 h. *Crilly v. MicroElectronics, Inc.*
16 Orange County Superior Court, No.:30-2013-00662586-CU-OE-CXC
- 17 i. *Woods v. JFK Memorial Hospital*
18 Riverside County Superior Court, No.: INC 1205209
- 19 j. *Ramirez et. al v. Titan Insurance of New Mexico*
20 Riverside County Superior Court, No.: RIC1211890
- 21 k. *Duran v. Big 5 Corp.*
22 Los Angeles Superior Court, Case No. BC557154
- 23 l. *Sheahan v. Celtic Leasing Corporation, Inc.*
24 Orange County Superior Court No.: 30-2016-00852151-CU-OE-CXC
- 25 m. *Panasis v. Control4 Corporation*
26 United States District Court, Central District of California
27 Case No. SACV-16-1179-DOC
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1 n. *O&R Construction, LLC v. Dun & Bradstreet, et al.*

2 United States District Court, Western District of Washington

3 Case No. C12-2184 TSZ

4 o. *Kles v. R.J. Noble Company*

5 Orange County Superior Court No. 30-2017-00941089-CU-OE-CXC

6 15. During my 25 year career, I have handled many successful employment law
7 matters both at the trial and appellate levels. I estimate that I have represented plaintiffs in over
8 75 different wage and hour cases, the vast majority of which have resulted in favorable
9 settlements, awards and/or verdicts for my clients. I have successfully prosecuted and obtained
10 significant recoveries in several class action lawsuits and other lawsuits involving complex legal
11 and factual issues. In 2013, I served as class counsel in the above-referenced *Wilkins* case which
12 settled for \$5,500,000 and the above-referenced *Casserly* case which settled for \$4,900,000. I
13 also settled the above-described *Walsh v. Pacific Bell* case for \$16.8 million on behalf of over
14 4,000 customer service representatives.

15 16. I served as co-lead counsel in the matter of *Pellegrino v. Robert Half*
16 *international Inc.*, Orange County Superior Court Case No. 06CC04518, a wage and hour case
17 filed on behalf of 6 recruiters in which I obtained an award in excess of 1.6 million dollars for
18 my clients. The *Pellegrino* case was affirmed on appeal on January 28, 2010, and was one of the
19 first, if not the first and only published decision in California (182 Cal. App. 4th 278) holding
20 that recruiters are non-exempt employees who are not subject to California's administrative
21 exemption set forth in Industrial Welfare Commission Wage Order 4-2001. The Supreme Court
22 previously granted a review and hold of the *Pellegrino* case, and the matter was transferred back
23 to the Court of Appeal for reconsideration. Shortly after the transfer, the case was settled by the
24 parties, resulting in a payment to our clients which exceeded the amount of the judgment and
25 which was extremely favorable.

26 17. I am AV rated by Martindale-Hubbell, the highest possible rating for a lawyer. I
27 have also been selected as a *Super Lawyer* each year in 2015, 2016, 2017, 2018, 2019, and 2020.
28 I am also a member of the California State Bar, Orange County Bar Association, Employment

1 Law Section, the California Employment Lawyer's Association ("CELA"), and a member of the
2 Robert A. Banyard Inns of Court.

3 **Evaluation of the PAGA Claims**

4 18. In this case, Plaintiffs seek PAGA penalties only. The sole PAGA claim that is at
5 issue in this settlement concerns Defendant's failure to: (1) pay all wages owed; (2) provide
6 duty-free meal periods; (3) authorize and permit duty-free rest periods; (4) pay all wages due
7 upon termination; (5) provide suitable seating; (6) provide one day's rest in seven; and (7)
8 properly maintain and submit accurate itemized wage statements.

9 a. **Unpaid wages**

10 California Labor Code § 510(a) and the applicable Wage Orders regulating payment of
11 wages in the State of California, provide that eight (8) hours of labor constitutes a day's work
12 and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty
13 (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half
14 times the regular rate of pay for each employee and any work in excess of twelve (12) hours in
15 any one workday shall be compensated at the rate of no less than twice the regular rate of pay for
16 each employee. Plaintiffs and the aggrieved employees are also entitled to California's
17 minimum wage for each hour worked. Cal. Lab. Code § 1194.

18 Plaintiffs contend that Defendants have committed overtime and minimum wage
19 violations here because of Defendants' 30 minute automatic deduct policy whereby Defendants
20 deduct 30 minutes time from each employees' time whether he or she takes a meal period or not,
21 and whether or not Plaintiffs and the aggrieved employees receive a fully 30 minute meal period.
22 Based on interviews with aggrieved employees, Plaintiffs uncovered evidence that employees
23 must walk to a designated area for their meals, which is a long distance away from their
24 worksite. As such, Plaintiffs and the aggrieved employees contend that they do not receive a 30
25 minute meal period, and are short changed for all of their work hours.

26 Plaintiffs and the aggrieved employees also contend that they must undergo pre-shift and
27 post-shift security checks, before clocking in and after clocking out for work. Plaintiffs contend
28 that such activities are subject to the control of Defendants, and therefore must be compensated.

1 *See Frelkin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1056 (holding that exit searches are “hours
2 worked” and compensable under California law); *Cervantez v. Celestica Corp. et al.* (C.D. Cal.
3 2009) 618 F.Supp.2d 1208, 1215 (finding that pre-shift security checks are compensable because
4 they are under the employer’s control).

5 Defendants contend that they have numerous defenses to Plaintiffs’ unpaid wage claims.
6 Defendants allege that they allow employees extra time to walk to and from their meal periods,
7 and Defendants produced policy documents supporting their defense. Defendants also aver that
8 there are no post-shift security checks, and that any pre-shift security checks are *de minimis*, and
9 after aggrieved employees have already clocked into work.

10 The maximum potential PAGA penalties for the unpaid wage claim is \$1.87 million, as
11 calculated by Plaintiff’s expert. Based on the various issues raised above, Plaintiffs believe they
12 had a 20% chance of success on the various unpaid wage theories. Nevertheless, Labor Code
13 section 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: “[A] court
14 may award a lesser amount than the maximum civil penalty amount specified by this part if,
15 based on the facts and circumstances of the particular case, to do otherwise would result in an
16 award that is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s
17 discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit*
18 *Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing
19 penalty by 30 percent). Thus, Plaintiffs believe that the real value of the unpaid wage penalties
20 are \$261,800. (\$1,870,000 x .2 [chances of success] x .7 [court discretion] = \$261,800).

21 b. Meal period violations

22 Plaintiffs contend that Defendant failed to provide Plaintiffs and other aggrieved
23 employees thirty-minute duty-free meal periods for every five hours of work as is required by
24 Labor Code § 512, the applicable wage orders, and in violation of *Brinker Restaurant Corp. v.*
25 *Superior Court* (2012) 53 Cal.4th 1004. In *Brinker*, the California Supreme Court held that
26 “under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty
27 for the designated period.” *Id.* at 1034.

1 First, Plaintiffs contend that the aggrieved employees are not relieved of all duties when
2 they have to walk long distances simply to get to the designated meal period area. *Second*,
3 Defendants’ 30 minute auto-deduct policy shortens the time for taking meal periods by a
4 substantial margin. *Third*, even for those employees who clocked out during their meal periods,
5 the evidence shows late and short meal breaks, thus violating California law.

6 Moreover, Plaintiffs contend that Defendants fail to document many of Plaintiffs’ and the
7 aggrieved employees’ meal periods, a prima facie violation of the Wage Orders. As such,
8 Plaintiffs claim that there is a presumption that Plaintiffs and the aggrieved employees were not
9 relieved of duty and no meal periods were provided. *See Brinker, supra*, 53 Cal.4th at 1053
10 (conc. opn. of Werdegar, J.).

11 In response to such arguments, Defendants contend that they permit all aggrieved
12 employees more than 30 minute meal periods to walk to the designated meal period location, and
13 for those aggrieved employees working on production lines, there is no requirement to keep
14 records because Defendants shut down the production lines during meal periods, and therefore
15 “operations cease.” *See IWC Wage Order 8-2001*, § 7(A)(3). Defendants further argue that
16 individual issues will predominate because of the various scenarios affecting different classes of
17 employees working for Defendants. As such, Defendants claim that PAGA claims must meet a
18 manageability requirement. *See Litty v. Merrill Lynch & Co., Inc.*, 2014 WL 5904904, *3-4
19 (C.D. Cal. Nov. 10, 2014) (finding that the “PAGA claim [is] unmanageable because a multitude
20 of individualized assessments would be necessary”).

21 The maximum potential PAGA penalties recoverable for meal period violations, as
22 calculated by Plaintiffs’ expert, is \$3.75 million. Based on the various issues raised above
23 regarding proving meal period violations, Plaintiffs believe that they have a 10% chance of
24 proving all of those penalties. Thus, Plaintiffs believe that the real value of the meal period
25 penalties are \$262,500. ($\$3,750,000 \times .10$ [chances of success] $\times .7$ [court discretion] =
26 \$262,500).

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1 d. Failure to pay all wages on termination

2 Plaintiffs further allege that pursuant to Labor Code §203, aggrieved employees terminated
3 from Defendants' employment are entitled to a penalty pursuant to Labor Code §256, because
4 Defendants did not pay them all wages due upon separation. Such a claim is derivative, and for the
5 same reasons as stated above, Defendants contend no wages are due, and thus no penalties owed
6 under PAGA. Defendants argue that because many of their workers were hired through temporary
7 staffing agencies, and for seasonal employment, that wages are not due immediately upon the end of
8 their employment for the season. See Cal. Labor Code § 201.3(b)(1)(A). Defendants further argue
9 that their failure to pay wages upon separation was not "willfull," in that the law is uncertain as to
10 claims asserted in this case or whether the failure to pay is due to a good faith dispute. See *Barnhill*
11 *v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer's failure to pay is not willful if its
12 failure is due to uncertainty in the law); *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire*
13 *Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness not met if defendant's failure to pay a
14 result of a "good faith mistaken belief that wages are not owed").

15 Plaintiffs' expert calculates PAGA penalties on this claim of \$3.13 million. Based on the
16 heightened willfulness standard, Plaintiffs estimate that the real exposure of this claim is 10% of
17 those total penalties. Moreover, Plaintiffs apply the same discounts as set forth above in the
18 above analysis as to the court's discretion to reduce penalties. As such, Plaintiffs believe the real
19 exposure on this claim to be \$219,100 (\$3,130,000 x .1 [chances of success] .70 [court
20 discretion] = \$219,100).

21 e. Suitable seating

22 Plaintiffs initially alleged a claim for Defendants' failure to provide suitable seating for
23 non-exempt employees. After investigating this claim, however, Plaintiffs discovered that many
24 of the jobs cannot be accomplished without standing, and that Defendants do provide seating
25 when necessary. Moreover, seating is not required when it would interfere with the performance
26 of an employee's duties. See, e.g., *Singletary v. Teavana Corp.*, 2014 WL 1760884 (N.D. Cal.
27 2014) (granting summary judgment to employer because plaintiff's job required constant
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1 movement and plaintiff could not work while seated). Thus, Plaintiffs do not believe they would
2 be able to realistically recover any civil penalties on this theory of liability.

3 f. One day's rest in seven

4 Plaintiff also initially brought a claim pursuant to Labor Code section 551 providing that
5 employees are entitled to "one day's rest therefrom in seven," and Labor Code section 552,
6 providing that "[n]o employer shall cause his employees to work more than six days in seven."
7 After filing the Complaint, however, Defendants produced documentary evidence establishing
8 that employees voluntarily waive their right to work more than 6 consecutive days. Moreover,
9 the applicable wage orders provide that seven consecutive days may be worked so long as
10 premium wages are paid, and the evidence establishes that Defendants paid such premium wages
11 when aggrieved employees worked seven consecutive days. As such, Plaintiffs also do not
12 believe they would be able to realistically recover any civil penalties on this theory of liability.

13 g. Improper pay stubs

14 Plaintiffs further allege that Defendants failed to provide proper pay statements that
15 complied with Labor Code § 226.

16 Plaintiffs allege similar theories of liability as above with respect to the paystub claim,
17 i.e. that the wage statements are defective because they do not reflect all wages owed, and fail to
18 show premium payments for missed meal and rest periods. Plaintiffs further allege that to obtain
19 PAGA penalties for pay stub violations, a plaintiff need not satisfy the "injury" or "knowing and
20 intentional" requirements of Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food*
21 *Distributors, Inc.*, 23 Cal.App.5th 667 (2018).

22 On the other hand, Defendants argue that their and their staffing companies' pay stubs are
23 compliant, and therefore no such PAGA penalties are owed. Moreover, Defendants argue
24 derivative violations of Labor Code § 226 do not give rise to pay stub violations upon which
25 PAGA penalties arise. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); *see*
26 *also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196 (E.D. Cal. 2017). Defendants further
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1 argue that any such violations were inadvertent, and therefore not actionable. *See Heritage*
2 *Residential Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 75 (2011).

3 Plaintiffs' expert calculates pay stub penalties to be approximately \$18.36 million. Based
4 on recent law that derivative pay stub violations may not be actionable, and based on
5 Defendant's other potential defenses, Plaintiffs believe they had a 1% chance of recovering all of
6 the potentially recoverable civil penalties. Moreover, Plaintiffs apply the same discounts as set
7 forth above in the analysis as to the court's discretion to reduce penalties. As such, Plaintiffs
8 believe the real exposure on this claim to be \$128,520. $(\$18,360,000 \times .01 \text{ [chances of success]} \times .7 \text{ [court discretion]}) = \$128,520$.

10 h. Total exposure to PAGA penalties

11 Based upon the alleged Labor Code violations, Plaintiffs' believe the total actual PAGA
12 exposure is approximately \$1.13 million. Based on a settlement value of \$425,000, this amounts
13 to approximately 38% of the total exposure to PAGA penalties. Plaintiffs believe this to be a
14 good result, given that Defendants have valid defenses to Plaintiffs' claims, and that there is a
15 substantial question as to whether a trial court will even award cumulative penalties sought by
16 Plaintiffs for alleged multiple Labor Code violations.

16 Attorneys' Fees and Costs

17 19. Through December 15, 2020, my firm, Shanberg, Stafford & Bartz LLP has
18 spent approximately 191 hours on this action and has incurred approximately \$120,142 in fees.
19 The fees incurred were reasonable and necessary in order to prosecute this case. My firm's
20 billing rates for partners, Ross Shanberg (RES), Shane Stafford (SCS) and Aaron Bartz (AAB) is
21 \$675 per hour. Our associate billing rate on this file is between \$375 and \$450 per hour, and our
22 paralegal rate is \$180 per hour. In connection with this PAGA settlement, Plaintiffs' counsel
23 requests attorneys' fees of \$141,666.66, or one-third of the gross settlement amount. I believe
24 that pursuant to *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016), such a recovery is fair
25 and reasonable in this case, given the work expended and the results achieved in this case. My
26 firm has also incurred \$8,691.36 in out of pocket costs to date, all of which were reasonable and
27 necessary in prosecuting this action. Attached as Exhibit 5 is a true and correct copy of my law
28 firm's attorneys' fees billing statements incurred in this class action through December 15, 2020.
Attached as Exhibit 6 is a true and correct copy of my law firm's out of pocket costs incurred in

1 this action.

2 20. Plaintiffs' counsel has also retained ILYM Group, Inc. to administer the
3 settlement in this case. The Settlement Administrator provided a not to exceed bid for \$10,000
4 to administer the settlement. The Settlement Administrator's bid is attached hereto as Exhibit 7.

5 21. I believe my firm's current billing rates are reasonable and competitive in the
6 industry. Through my practice, I have become familiar with the rates charged by law firms in
7 Southern California for litigation of employment-related matters. In my experience, I am
8 frequently opposed by large law firms, some of which have a national or regional presence and
9 focus on representation of employers and management in employment-related matters. Partners
10 in such law firms generally have billing rates of \$800 or more per hour. I am also aware of other
11 billing rates of plaintiffs' firms performing similar work, and my firm's rates are consistently
12 \$100 or more below the hourly rates of other firms doing comparable work. A modest multiplier
13 in this case of 1.18 is also justified given that my firm took this case on a full contingency basis,
14 my firm achieved a good result for the State of California and the aggrieved employees, and we
15 worked efficiently and skillfully during the Covid-19 pandemic to achieve the best possible
16 settlement in this case.

17 22. My office provided notice of the proposed settlement and all documents filed in
18 support of this motion for PAGA settlement approval to the LWDA via uploading the documents
19 the California DIR/LWDA's website on the same date as the filing of the instant motion.
20 Attached as Exhibit 8 is a true and correct copy of the confirmation of filing produced by the
21 LWDA with the motion and other settlement papers.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on December 15, 2020, at Newport Beach, California.

24 //Ross E. Shanberg//
25 Ross E. Shanberg
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EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT

(LABOR CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT

Mariscal et al. v. Munger Bros. LLC, et al.

San Joaquin County Superior Court, Case Number STK-CV-UOE-2020-4639

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that settlement shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Section 1 or elsewhere in this Private Attorneys General Act (Labor Code § 2698, et seq.) Settlement Agreement (“Agreement”).

This Agreement is made by and between Munger Bros. LLC, Munger Farms, LLC, and Crowne Cold Storage, LLC (“Defendants”) and Baudelio Mariscal, Cristian Nevarez, and Janet Villasana (“Plaintiffs”), for themselves and on behalf of the State of California and other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and the law firms defined below as “Plaintiffs’ Counsel” and “Defense Counsel.” (Defendants and Plaintiffs, as defined herein, are sometimes collectively referred to as the “Parties”). This agreement shall be effective upon the date of the Court order approving the settlement (the “Effective Date”).

The Parties agree that the Litigation shall be ended, settled, resolved, and concluded by agreement of Defendant to pay the maximum sum of Four Hundred Twenty Five Thousand Dollars (\$425,000.00) (hereinafter referred to as the “Gross Settlement Fund”), and in consideration for the covenants and promises contained herein. The Gross Settlement Fund includes payments for (1) Plaintiffs’ Counsel attorneys’ fees (not to exceed one-third of the Gross Settlement Fund, or \$141,666.66), for which Plaintiffs’ Counsel shall receive a 1099 form; (2) the Litigation Cost Payment as approved by the Court (not to exceed \$9,000); (3) Settlement Administration Costs (not to exceed \$10,000); and (4) the Net Distribution Amount payable to Plaintiff, the Aggrieved Employees; and the LWDA, as further set forth herein.

Section 1. Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Aggrieved Employees" means any and all current and former hourly-paid, non-exempt direct and staffing agency packing house employees who worked for Defendants in the State of California at any time from February 26, 2019 to December 31, 2020. Defendants represent that as of the date of signing this Agreement, there are approximately 1,517 Aggrieved Employees.
- (b) "Complaint" means the Complaint in Baudelio Mariscal, Cristian Nevarez, Janet Villasana v. Munger Bros. LLC, Munger Farms LLC, and Crowne Cold Storage, LLC, filed in San Joaquin County Superior Court on June 5, 2020, Case No. STK-CV-UOE-2020-4639. The Complaint and the claims alleged therein, are also collectively referred to herein as the "Litigation."
- (c) "Court" means the Superior Court of the State of California, for the County of San Joaquin.
- (d) "Defense Counsel" means:
- William Woolman, Esq.
Charles Hamamjian, Esq.
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Tel: (559) 421-7000 / Fax: (559) 473-1483
- Theodore William Hoppe, Esq.
HOPPE LAW GROUP
680 West Shaw Avenue, Suite 207
Fresno, California 93704
Tel: (559) 241-7070 / Fax: (559) 241-7212
- (e) "LWDA" means the State of California, Labor and Workforce Development Agency.
- (f) "Plaintiffs' Counsel" means:
- Ross E. Shanberg, Esq.
Aaron A. Bartz, Esq.
SHANBERG, STAFFORD & BARTZ LLP
5031 Birch Street
Newport Beach, California 92660
Tel: (949) 205-7515 / Fax: (949) 205-7144
- (g) "Released Claims" means any and all claims for civil penalties that could have been assessed upon or collected from the Released Parties under California Labor Code § 2698, et seq. ("PAGA"), based on the factual allegations of the Complaint, including alleged

violations of Labor Code §§ 201, 202, 203, 210, 226, 226.3, 226.7, 256, 510, 512, 550, 551, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2699, arising from the alleged failure to pay for all time worked or overtime wages, to pay minimum wages, to provide compliant meal breaks and/or pay meal break premiums, to provide compliant rest breaks and/or pay rest break premiums, to timely pay wages during employment and upon termination, to provide compliant wage statements, to maintain payroll records and/or satisfy other recordkeeping requirements, to provide suitable seating, to provide one day's rest in a seven day workweek, and those civil penalties recoverable under Labor Code § 558(a). The Released Claims do not include any underlying claims or causes of action that Aggrieved Employees may have, and relief that they may seek, against Released Parties with respect to violations of the California Labor Code.

- (h) "Released Parties" means Defendants and each of their predecessors in interest, owners, successors in interest, parents, subsidiaries, affiliated companies, staffing agencies including Full Steam Staffing, LLC and Select Staffing, shareholders, directors, officers, managers, employees, joint ventures, investors, assigns, and agents.
- (i) "Settlement Administrator" means ILYM Group, Inc., a third-party administrator who shall administer the settlement in accordance with this Agreement. The costs of the Settlement Administrator to perform its duties under this Agreement are currently estimated not to exceed \$10,000 ("Settlement Administration Costs").
- (j) "Settlement Period" means the time period beginning from February 26, 2019 through December 31, 2020.

Section 2. Background.

- (a) On February 26, 2020, Plaintiffs provided notice to the LWDA in conformity with California Labor Code § 2699.3. On June 5, 2020, Plaintiffs filed a Complaint on behalf of the State of California and other Aggrieved Employees, based on Defendants' alleged failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods, failure to timely pay wages during employment and upon termination, failure to provide compliant wage statements, failure to maintain payroll records, among others.

- (b) Defendants deny all of the allegations in the Complaint and deny that they have committed or are liable for any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.
- (c) Through this Litigation, the Parties have engaged in extensive discovery. The Parties reached this settlement only after conducting investigation of the facts and law. The Parties believe and agree this settlement agreement provides for a fair, adequate, and reasonable resolution of the Litigation and have arrived at the settlement after arms-length negotiations in a private mediation, taking into account all relevant factors, present and potential.
- (d) The Parties understand, acknowledge, and agree this Agreement constitutes a compromise of the Released Claims. It is also the desire and intention of the Parties to implement a final and complete resolution of the Litigation. The Parties further acknowledge nothing in this Agreement shall be construed as an admission by Defendants of liability.
- (e) This settlement contemplates (1) entry of an order by the Court approving this settlement; (2) dismissal of the Litigation with prejudice; and (3) all parties bearing their respective fees and costs except as expressly provided in this Agreement.

Section 3. Attorneys' Fees, Litigation Costs and Settlement Administration Costs.

Plaintiffs' Counsel shall request and be paid, subject to Court approval and after Defendant's receipt of completed IRS Forms W-9 from Plaintiffs' Counsel, an amount of up to one-third of the Gross Settlement Fund (\$141,666.66) for attorneys' fees ("Attorneys' Fees Payment") and up to \$9,000 for reimbursement of actual litigation costs ("Litigation Cost Payment") from the Gross Settlement Fund, and Defendants will not oppose these requests.

The Settlement Administrator will issue IRS Forms 1099 to Plaintiffs' Counsel as required by IRS regulations. Plaintiffs' Counsel shall bear full responsibility for the payment of any taxes or withholdings arising from the Attorneys' Fees Payment or Litigation Cost Payment. Such Attorneys' Fees Payment or Litigation Cost Payment shall include and satisfy all past and future fees and costs incurred to prosecute and settle the Litigation and obtain the order of approval and judgment.

The Settlement Administration Costs shall not exceed \$10,000, subject to Court approval, and shall include all costs of administering the settlement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement

Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees, Plaintiffs' Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying payments to Aggrieved Employees; costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

Except as expressly provided herein, Defendants and Plaintiffs shall each bear their own attorneys' fees and costs.

Section 4. Cooperation.

The Parties will cooperate in obtaining through written stipulation or unopposed motion, if a motion is required, an Order from the Court approving the settlement of PAGA penalties as described in this Agreement. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 5. Submission to LWDA and Court Approval.

The Parties will seek to obtain court approval of this Agreement by way of a motion to be filed by Plaintiffs' Counsel. Plaintiffs' Counsel shall prepare, file and serve the motion for approval of the PAGA settlement and a dismissal with prejudice, which shall declare that Plaintiffs, the LWDA, and the Aggrieved Employees (to the fullest extent allowed under law) are bound by the release of the Released Claims as defined in Section 1(g) and set forth herein. Plaintiffs' Counsel shall submit the Agreement to the Court and LWDA, as necessary under Labor Code § 2699(l) and any other applicable provision. Should either Party fail to act and/or facilitate submission of this Agreement for approval by the Court, the other party may seek to obtain court approval of the Agreement. The Court's approval of this Agreement shall be embodied in a written Order. Should the Court not grant approval of this Agreement, then the entirety of the Agreement shall be null and void, unless otherwise agreed upon in writing by the Parties.

Section 6. Settlement Payment Procedures.

(a) List of Aggrieved Employees:

1. No later than ten (10) days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's (1) full name, (2) last known address, (3) last known phone number, (4) pertinent dates of employment, and (5) social security number. This information shall be treated as and remain confidential and shall be used solely to manage the notice and settlement administration process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except as necessary to applicable taxing authorities, or pursuant to express written authorization of Defendants, the individual in question, or by order of the Court.

(b) Deposit and Distribution of Gross Settlement Fund.

1. Provided that an order granting approval of this Agreement ("Order of Approval") is entered by the Court, and in consideration for the release of Released Claims set forth in Section 12 below and satisfaction of other covenants and promises set forth herein, Defendants agree to pay the Gross Settlement Fund within 10 days of the Order of Approval to a settlement account established by the Settlement Administrator.
2. Each settlement payment made by the Settlement Administrator shall be accompanied by a letter explaining why the check is being sent, substantially in the form attached hereto as "**Exhibit A**" ("Letter"), to each of the Aggrieved Employees identified on the Aggrieved Employee List. Prior to mailing the Letter, the Settlement Administrator shall review the addresses provided using the National Change of Address database. Should any of the Letters be returned undeliverable, the Settlement Administrator will have five (5) business days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and to re-mail the Letter to any alternative or updated address obtained by the Settlement Administrator.
3. All payments provided for by this Agreement shall be made by the Settlement Administrator in accordance with this Agreement and the Order of Approval.

(c) Payment of PAGA Settlement.

1. The Net Distribution Amount shall be calculated by deducting the Attorneys' Fees Payment, the Litigation Cost Payment, and the Settlement Administration Costs, from the Gross Settlement Fund. The Net Distribution Amount is estimated to be approximately \$264,333.34.
2. Pursuant to the PAGA statute and California Labor Code section 558, one hundred percent (100%) of the Net Distribution Amount shall be considered payment of penalties and thus will not be subject to local, state, or federal payroll taxes or withholdings.
3. Seventy-Five (75%) of the Net Distribution Amount shall be distributed to the LWDA ("LWDA Payment") and the other Twenty-Five percent (25%) distributed to the Aggrieved Employees on a *pro rata* basis, based on the Aggrieved Employees' respective workweeks during the Settlement Period, according to Defendants' records. Payments to Aggrieved Employees of their share of the Net Distribution Amount shall be referred to as "Employee Payment(s)."
4. Assuming that the Net Distribution Amount is \$264,333.34, the LWDA Payment is estimated to be \$198,250 and the Employee Payment is estimated to be \$66,083.34.
5. Taxes: All Aggrieved Employees will be issued an IRS Form 1099 for their Employee Payment. The Aggrieved Employees will be solely responsible for the reporting and payment of any state, local, and/or federal income tax, if any, on the amount paid to them. If it is determined that the settlement amount, or any portion of it, is taxable income, the Aggrieved Employees will be solely responsible for all liability as to their own taxes and any costs, fees, interest, assessments, penalties, damages or other losses due to such determination..
6. Expiration of the Settlement Checks: Each Aggrieved Employee will be issued one check for their Employee Payment pursuant to this agreement, which will expire one hundred and eighty (180) days from the date issued. After the 180 day-period, the Settlement Administrator shall remit any unclaimed funds to the California Secretary of State's Unclaimed Property Division in the name of each such Aggrieved Employee.
7. No additional Contribution by Defendants: Defendants will not be required to contribute additional sums to fund the settlement or otherwise resolve the Litigation.

8. No effect on Employee Benefits: The payments made to Aggrieved Employees pursuant to this Agreement shall have no effect on employee benefits. Defendants shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit sharing plans related to monies paid as a result of this Agreement. The individual settlement shares paid to the Aggrieved Employees shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g. bonuses, vacation, holiday pay, retirement plans, etc.) of Aggrieved Employees. The Parties agree that any individual settlement shares paid to Aggrieved Employees under the terms of this Agreement do not represent any modifications of Aggrieved Employees' previously credited hours of service or other eligibility criteria under an employee benefit plan sponsored by Defendants. Further, any individual settlement shares shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee benefit plan or bonus plan sponsored by Defendants.

Section 7. Disputes Relating to Settlement Administration.

Any disputes concerning administration of the settlement which cannot be resolved by the Parties shall be submitted to and resolved by the Court.

Section 8. Dismissal.

Upon final distribution of the entire Gross Settlement Fund, Plaintiffs will dismiss this case in its entirety with prejudice. Plaintiffs' Counsel will file the required dismissal papers within ten (10) days of receiving notification from the Settlement Administrator of such final distribution.

Section 9. No Admission of Wrongdoing.

This Agreement and compliance with the Agreement shall not constitute an admission of liability by Defendants or any of the Released Parties.

Section 10. Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement, including use by

Defendants to attempt to establish that an Aggrieved Employee or the LWDA has resolved or has been compensated for any claims made by that employee or the LWDA.

Section 11. Impact of Non-Approval by Court.

- (a) Should the Court not approve this Agreement in its entirety, the Parties shall request leave and work jointly to make reasonable efforts to remedy the settlement in order to obtain the Court's approval. If the Parties cannot resolve the issues identified by the Court in denying approval, this Agreement shall be rendered null and void, unless otherwise agreed upon in writing by the Parties.
- (b) If the Court ultimately fails to approve this Agreement after the Parties' joint attempt to remedy the issues, then this Agreement shall be considered null and void and neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect and shall not be referred to or used for any purpose whatsoever.

Section 12. Releases.

Upon the Effective Date, the LWDA and Plaintiffs, on behalf of themselves and Aggrieved Employees to the fullest extent allowed by law, shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Plaintiffs' Released Claims and all Aggrieved Employees and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims.

Section 13. Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 14. Representations and Warranties.

Plaintiffs represent and warrant that they have the right and exclusive authority to execute this Agreement. Each Party to this Agreement also represents and warrants to, and agrees with, each other Party hereto as follows:

- (a) Each Party has carefully read and knows and understand the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent legal advice from her or its attorneys with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.

- (b) Each Party to this Agreement has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the fullest extent that each Party deems necessary.
- (c) Each separately-numbered section or paragraph in this Agreement is contractual, not merely a recital.
- (d) Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

Section 15. Amendments and Waiver.

This Agreement may not be changed, altered, or modified, except in writing signed by counsel for the Parties and approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement, unless expressly stated otherwise.

Section 16. Successors and Assigns.

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

Section 17. Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California. The Court will retain continuing jurisdiction to enforce the Agreement.

Section 18. Entire Agreement.

All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, between the Parties are merged herein. No rights under this Agreement may be waived except in writing.

Section 19. Counterparts.

The Parties may execute this Agreement in counterparts, and execution of counterparts will have the same force and effect as if all Parties signed the same instrument. Facsimile or pdf copies of any such signed counterparts may be used in lieu of the original for any purpose. Pursuant to California Civil Code section 1633.7, the Parties agree they may use DocuSign or similar electronic signature technology to expedite the execution of this agreement.

Section 20. Dispute(s).

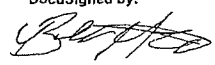
Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 21. Publicity.

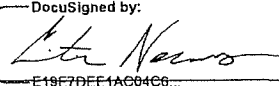
Plaintiffs' Counsel agree to publicize the terms of this Settlement and/or this case only in declarations submitted to a court to establish their adequacy to serve as counsel, in declarations submitted to a court in support of motions for approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement. Except for communications to the Court in seeking Settlement approval, Plaintiffs' Counsel agrees to not make public statements regarding this case, and this Settlement. Plaintiffs' Counsel further agrees to not publish any public statements regarding this case, and this Settlement, including any material on Plaintiffs' Counsel's website and/or blog.

APPROVED AND ACCEPTED.**PLAINTIFFS**

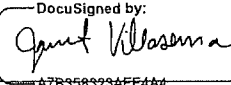
Dated: 12/9/2020, 2020

DocuSigned by:
By 
ABEE09756F95437...
Baudelio Mariscal

Dated: 12/9/2020, 2020

DocuSigned by:
By 
E19E7DEE1AC04C6...
Cristian Nevarez

Dated: 12/9/2020, 2020

DocuSigned by:
By 
A7B358323AFF4A4...
Janet Villasana

DEFENDANTS:

Munger Bros. LLC

Dated: December 11, 2020

By Robert E. Hawk
Its President and Chief Executive Officer

Munger Farms, LLC

Dated: December 11, 2020

By Robert E. Hawk
Its President and Chief Executive Officer

Crowne Cold Storage, LLC

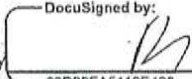
Dated: December 11, 2020

By Robert E. Hawk
Its President and Chief Executive Officer

APPROVED AS TO FORM:

Dated: 12/9/2020, 2020

Shanberg, Stafford & Bartz LLP

By 
DocuSigned by:
63D9BEA5419E438
Ross E. Shanberg
*Attorneys for Plaintiffs Baudelio Mariscal, Cristian
Nevarez, and Janet Villasana*

Dated: 12/11, 2020

Sagaser, Watkins & Weiland, PC

By 
William M. Woolman
*Attorneys for Defendants
Munger Bros., LLC, Munger Farms, LLC, and
Crowne Cold Storage, LLC*

Dated: 12-11, 2020

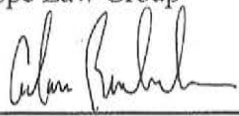
Hoppe Law Group
By  for
Theodore William Hoppe
*Attorneys for Defendants
Munger Bros., LLC, Munger Farms, LLC, and
Crowne Cold Storage, LLC*

EXHIBIT A

[AGGRIEVED EMPLOYEE PAYMENT COVER LETTER]

Enclosed please find a check in the amount of [Employee Payment Amount] (“Employee Payment”).

You are receiving this check as a result of a lawsuit brought by Plaintiffs Baudelio Mariscal, Cristian Nevarez, and Janet Villasana (together, “Plaintiffs”), on behalf of the State of California against Munger Bros. LLC, Munger Farms, LLC and Crowne Cold Storage, LLC (collectively, “Defendants”), in the San Joaquin Superior Court, under Case No. STK-UOE-2020-4639.

Plaintiffs sued Defendants for civil penalties pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), a law which allows Plaintiffs to stand in the shoes of the government and attempt to recover penalties on the government’s behalf and on behalf of those employees whom Plaintiffs claim were “aggrieved” by Defendants’ alleged violations of wage and hour laws. Plaintiffs allege that Defendants violated the rights of their hourly-paid, non-exempt workers in California during the period of February 26, 2019 to December 31, 2020 by, among other things, failing to pay overtime, failing to provide meal period and rest periods, failing to pay minimum wages, failing to timely pay wages upon termination and during employment, failing to provide complete and accurate wage statements, failing to provide suitable seating, failing to provide one day’s rest in a seven day workweek, and failing to keep complete and accurate payroll records. Defendants and each of their predecessors in interest, owners, successors in interest, parents, subsidiaries, affiliated companies, staffing agencies including Full Steam Staffing, LLC and Select Staffing, shareholders, directors, officers, managers, employees, joint ventures, investors, assigns, and agents. (all of whom are hereinafter referred to as the “Released Parties”), deny these claims and deny that they owe any penalties to the government or to you. The Released Parties assert that they have fully complied with all applicable wage and hour laws. Nevertheless, to avoid further costs and time in defending the case, Defendants have agreed to settle the case, and the Court has approved the settlement and release of claims described below. By settling this case, Defendants and the Released Parties are not admitting they have done anything wrong.

On [insert date] the settlement was approved by the Court. A portion of the settlement is being paid to the government and a portion is being to each person who worked for Defendants as hourly-paid, non-exempt direct and staffing agency packing house employees in California from February 26, 2019 to December 31, 2020 (the “Aggrieved Employees”). You are receiving a portion of the settlement based on the number of workweeks you worked for Defendants from February 26, 2019 to December 31, 2020 (the “Settlement Period”) as an hourly-paid, non-exempt employee for Defendants in California.

You will not be retaliated against for cashing the check. It is entirely up to you if you cash your check or not. Checks that are not cashed within 180 days of issuance will be transmitted to the California Secretary of State’s Unclaimed Property Division. Regardless of what you do with the check issued to you, by law and Court order, you have released the Released Parties from the Released Claims described below.

One hundred percent (100%) of your payment under this settlement will be considered penalties and will be reported to the IRS and state tax authorities. You will receive an IRS Form 1099 pertaining to your payment. You are responsible for payment of any and all taxes that are due as a result of this payment.

This settlement resolves any and all claims for **civil penalties** that could have been assessed upon and collected from the Released Parties under California Labor Code § 2698, et seq. (“PAGA”), based on the factual allegations of the Complaint, including alleged violations of Labor Code §§ 201, 202, 203, 210, 226, 226.3, 226.7, 256, 510, 512, 550, 551, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2699, arising from the alleged failure to pay for all time worked or overtime wages, to pay minimum wages, to provide compliant meal breaks and/or pay meal break premiums, to provide compliant rest breaks and/or pay rest break premiums, to timely pay wages during employment and upon termination, to provide compliant wage statements, to maintain payroll records and/or satisfy other recordkeeping requirements, to provide suitable seating, to provide one day’s rest in a seven day workweek, and those civil penalties recoverable under Labor Code § 558(a). The Released Claims

do not include any underlying claims or causes of action that Aggrieved Employees may have, and relief that they may seek, against Released Parties with respect to violations of the California Labor Code.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement.

If you have any questions, you may call or write the Settlement Administrator, at the following number or address: [insert address and telephone number for Settlement Administrator]

EXHIBIT 2

SHANBERG, STAFFORD & BARTZ LLP

5031 BIRCH STREET
NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (949) 205-7515
FACSIMILE (949) 205-7144
www.ssbfirm.com

February 26, 2020

Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Re: *Baudelio Mariscal et al. v. Munger Bros., LLC et al.*

Dear PAGA Administrator:

Please be advised that the law firm of Shanberg, Stafford & Bartz LLP represents Baudelio Mariscal ("Mariscal"), Cristian Nevarez ("Nevarez"), and Janet Villasana ("Villasana") and all other similarly situated aggrieved employees ("Plaintiffs") with respect to their employment with Defendants Munger Bros., LLC, Munger Farms, LLC and Crowne Cold Storage, LLC ("Defendants").

Defendants have committed numerous violations of the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, and 1198. The facts and theories to support the alleged violations are set forth herein.

Defendants are in the agricultural and farming business, including the picking, packing, sorting and otherwise cultivating and distributing farming products, including blueberries.

Plaintiff Mariscal was a stacker for Defendants, working at least 12 hours per day. Nevarez worked as a machine operator for Defendants, typically working between 8 and 21 hours a day. Plaintiff Villasana worked for Defendants as a sorter/packer, and worked shifts of at least 12 hours per day. All Plaintiffs worked for Defendants within California and within the last year. Plaintiffs were paid on an hourly basis and are non-exempt employees.

A. Failure to Pay Overtime

Defendants regularly failed to pay Plaintiffs their mandated overtime compensation that they were due for working in excess of eight hours in one day and forty hours during the week. Defendants failed to pay Plaintiffs proper premium wages for all overtime hours worked, both at one and one-half times the regular rate of pay for hours in excess of 8 per day or 40 per week, and twice the amount of the regular rate of pay for hours in excess of 12 per day. Defendants' failure to pay overtime compensation violates Labor Code §§ 510 and 1194.

Labor Code § 204(a) provides in pertinent part that "[a]ll wages, other than those mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the

employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Pursuant to Labor Code § 204(b)(1), moreover, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” Here, Defendants did not pay Plaintiffs all wages owed in a timely manner, thereby violating Labor Code § 204.

B. Meal Breaks

Defendants adopted, implemented and enforced uniform meal period policies that are not lawful under California law. Defendants are required to provide a first meal period no later than the end of the 5th hour of work, and a second meal period no later than the end of the 10th hour of work. However, Defendants failed to provide proper, timely meal periods during Plaintiffs’ shifts.

Moreover, Defendants required Plaintiffs to sign meal period waivers for hours worked in excess of 10. Such waivers are given as a condition of employment, and are forced upon Plaintiffs without their consent. As such, any such meal period waiver is invalid.

Defendants failed to permit and provide Plaintiffs: (a) a first duty-free meal period of not less than thirty minutes before working more than five hours; or (b) a second duty-free meal period of not less than thirty minutes before working more than ten hours. Defendants also failed to pay Plaintiffs one hour of pay at his regular rate of pay for each workday that a compliant meal period was not provided. As such, Defendants have violated Labor Code §§ 226.7 and 512.

C. Rest Breaks

Defendants failed to adopt, implement, or enforce a rest break policy that complied with California law. Plaintiffs regularly worked shifts of 12 hours or longer, but were never permitted authorized or permitted to take 3 rest breaks, as required by the applicable wage orders. Plaintiffs also worked in a fast-paced environment on production lines and in similar job duties that prevented them from having the opportunity to take regular rest breaks. Defendants coerced Plaintiffs not to take legally mandated rest periods by criticizing, disciplining and/or reprimanding employees who attempted to take legally mandated rest periods; failing to schedule rest periods; and constantly pressuring Plaintiffs to remain at their stations. As such, Defendants failed to authorize and permit Plaintiffs to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, failed to provide a second duty-free rest period of 10 minutes for shifts between 6-10 hours and failed to provide a third duty-free rest period of 10 minutes for shifts in excess of 10 hours. As a result of Defendants’ lack of a rest break policy that complies with California law, Defendants have violated Labor Code section 226.7.

D. Requirement of Work on Seventh Day

As a policy and practice, Defendants regularly required Plaintiffs to work 7 or more consecutive days, without a day of rest in violation of Labor Code sections 551 and 552, and in violation of Wage Orders 8 and 13. As such, Plaintiffs are entitled to PAGA penalties for Defendants’ repeated violation of California law by overworking Plaintiffs and the other aggrieved employees.

E. Failure to Provide Suitable Seating

Plaintiffs worked in positions that required standing for lengthy periods of time, sometimes

more than 12 hours a day, without suitable seating. All of their jobs could be performed with seating, but Defendants failed and refused to provide Plaintiffs and other aggrieved employees with seating pursuant to Labor Code section 1198 and Wage Orders 8 and 13. Thus, Defendants' failure and refusal to provide suitable seating for Plaintiffs and the other aggrieved employees subjects Defendants' to substantial penalties under PAGA.

F. Wage Statement Violations

In conjunction with the above-referenced violations, Defendants willfully failed to provide properly itemized wage statements to Plaintiffs pursuant to Labor Code section 226. Violations include, but are not limited to: an inaccurate showing of wages due and owing, failing to include overtime rates of pay, failing to accurately depict the total hours worked, and failing to maintain accurate payroll and itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code § 226 and 1174.

G. Waiting Time Penalties

In addition, Defendants willfully failed and refused to timely pay all compensation due and owing to Plaintiffs whose employment was terminated during the relevant time period, as required by Labor Code sections 201 and 202. For example, Plaintiffs Mariscal and Villasana were seasonal workers, and are terminated at the end of each season. Nonetheless, Mariscal and Villasana and other aggrieved employees are not paid their final wages for 1 week or more after they are terminated. Other aggrieved employees such as Plaintiff Nevarez, who was terminated as a full time employee, did not receive his final wages until the end of the regular payroll period. As such, Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code section 203.

CONCLUSION

Pursuant to Labor Code Section 2699.3, the undersigned, on behalf of Plaintiffs and other similarly situated employees, is providing written notice of the alleged Labor Code violations. Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Plaintiffs intend to pursue their claims under PAGA in a civil class action lawsuit. Please also consider this letter as providing notice on behalf of other similarly aggrieved employees working for Defendants, that were subject to the same Labor Code violations described above.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned.

Very truly yours,

SHANBERG STAFFORD & BARTZ LLP


Ross E. Shanberg
Shane C. Stafford
Aaron A. Bartz

cc: Munger Bros. LLC (via certified mail)
Agent for Service of Process, Baldev Munger
2619 Road 192
Delano, CA 93215

Munger Farms, LLC, LLC (via certified mail)
Agent for Service of Process, Cliff Woolley
786 Road 188
Delano, CA 93215

Crowne Cold Storage, LLC (via certified mail)
Agent for Service of Process, Cliff Woolley
786 Road 188
Delano, CA 93215

EXHIBIT 3

Ross E. Shanberg (SBN 179842)
Shane C. Stafford (SBN 216151)
Aaron A. Bartz (SBN 198722)
SHANBERG, STAFFORD & BARTZ LLP
5031 Birch Street
Newport Beach, California 92660
Tel: (949) 205-7515; Fax: (949) 205-7144

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BRANDON E. RILEY, CLERK

By MIA STIPE
DEPUTY

Attorneys for Plaintiffs BAUDELIO MARISCAL, CRISTIAN NEVAREZ, and JANET VILLASANA, on behalf of themselves and all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

STK-CV-WE-2020-4039

BAUDELIO MARISCAL, an
individual, CRISTIAN NEVAREZ, an
individual, and JANET VILLASANA,
an individual, on behalf of themselves
and other aggrieved employees,

Plaintiffs,

vs.

MUNGER BROS. LLC, a California
limited liability company; MUNGER
FARMS, LLC, a California limited
liability company; and CROWNE
COLD STORAGE, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") [California
Labor Code §§2698, et seq.]**

DEMAND FOR JURY TRIAL

Plaintiffs BAUDELIO MARISCAL ("Mariscal"), CRISTIAN NEVAREZ ("Nevarez"),
and JANET VILLASANA ("Villasana"), on behalf of themselves and all other aggrieved
employees (hereinafter collectively "Plaintiffs"), and as private attorneys general, hereby assert
representative claims against Defendants MUNGER BROS. LLC ("Munger Bros."), MUNGER
FARMS, LLC ("Munger Farms") and CROWNE COLD STORAGE, LLC ("Crowne") and
DOES 1 through 100 (hereinafter collectively "Defendants") hereby complain and allege as
follows:

I. INTRODUCTION

1. On or about November 19, 2019, Defendants entered into a Consent Judgment

1 with the United States Secretary of Labor. In the Consent Judgment, Defendants agreed to pay
2 \$3.5 million for their wage violations, to comply with certain federal wage and hour laws
3 protecting their employees, and to maintain records relating to Defendants' compliance. This
4 lawsuit is directed at Defendants' California state law violations of wage and hour laws -- it is a
5 representative action seeking recovery of civil penalties under the Private Attorneys General Act
6 of 2004 ("PAGA"), California Labor Code ("Labor Code") §§2698, et seq. PAGA permits
7 "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and
8 other aggrieved current and former employees to recover civil penalties for Defendant's
9 violations of the Labor Code, including, but not limited to Labor Code §§200, et seq., 500, et
10 seq., 1174, 1194, 1194.2, 1197, 1198, 2699, and all applicable Industrial Welfare Commission
11 ("IWC") Orders, including IWC Wage Order 8-2001.

12 2. This action is brought as a representative action on behalf of all current and
13 former aggrieved employees who were employed by Defendants in California and who work or
14 worked as non-exempt hourly employees during the applicable time period and who were subject
15 to Defendants' meal period policy, rest period policy, compensation policy, overtime policy,
16 final payment of wages policy, and related wage and hour policies and/or practices.

17 3. As set forth in detail below, Defendants consistently implemented, maintained
18 and enforced unlawful policies and practices regarding Plaintiffs in violation of California's
19 wage and hour laws, which led to Defendants' violations of Labor Code §§226.7, 512, 201-203,
20 1194, 1194.2, 510, 1174, 1198, 2698, et seq. and IWC Wage Order 8-2001 due to Defendants':
21 (1) failure to pay all wages, including minimum wages, straight time wages, and overtime
22 compensation; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods
23 or provide compensation in lieu thereof; (4) failure to timely pay all wages owed; and (5) failure
24 to properly maintain and submit accurate itemized wage statements. Such policies and practices,
25 as described herein, violate the Labor Code, and therefore trigger civil penalties under Labor
26 Code §2699. Therefore, Plaintiffs, on behalf of themselves and all aggrieved employees, bring
27 this representative PAGA action pursuant to the provisions of the Labor Code as referenced
28 herein. Plaintiffs seek recovery of civil penalties, reasonable attorney's fees and costs, and other

1 relief as deemed proper.

2 4. The acts complained of herein occurred, occur and will occur, at least in part,
3 within the time period from four (4) years preceding the filing of this Complaint or any other
4 Complaint which has tolled the claims asserted herein, up to and through the time of trial for this
5 matter.

6 **II. THE PARTIES**

7 5. Plaintiff Mariscal is, and was at all relevant times mentioned herein, an individual
8 residing within the State of California. Plaintiff Mariscal worked for Defendants as a stacker
9 between approximately July through August 2019.

10 6. Plaintiff Nevarez is, and was at all relevant times mentioned herein, an individual
11 residing within the State of California. Plaintiff Nevarez worked for Defendants as a machine
12 operator between approximately 2012 and August 2019.

13 7. Plaintiff Villasana is, and was at all relevant times mentioned herein, an
14 individual residing within the State of California. Plaintiff Villasana worked for Defendants as a
15 sorter/packer between approximately 2012 through July 2019.

16 8. Defendant Munger Bros. is and has been, at all relevant times herein, a limited
17 liability company organized and existing under the laws of the State of California, with its
18 principal place of business in the State of California, and doing business within the County of
19 San Joaquin, in the State of California.

20 9. Defendant Munger Farms is and has been, at all relevant times herein, a limited
21 liability company organized and existing under the laws of the State of California, with its
22 principal place of business in the State of California, and doing business within the County of
23 San Joaquin, in the State of California.

24 10. Defendant Crowne is and has been, at all relevant times herein, a limited liability
25 company organized and existing under the laws of the State of California, with its principal place
26 of business in the State of California, and doing business within the County of San Joaquin, in
27 the State of California.

28 11. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious

names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend their complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe, and based thereon allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately caused by those Defendants.

12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

13. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of a joint venture, partnership and common enterprise.

14. Each reference in this complaint to "Defendant," "Defendants," or a specifically named Defendant refers also to all Defendants sued under fictitious names.

15. Plaintiffs are informed and believe, and thereon allege that at all relevant times herein, Defendants maintained offices, employed persons, conducted business in, and/or engaged in illegal employment practices and policies in the State of California, County of San Joaquin.

III. JURISDICTION

16. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

17. The California Superior Court also has jurisdiction in this matter because both the relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

18. The California Superior Court also has jurisdiction in this matter because Defendants' corporate officers direct, control, and coordinate Defendants' activities from Defendants' offices located in the State of California.

1 19. The California Superior Court also has jurisdiction in this matter because during
2 their employment with Defendants, Plaintiffs herein were all California citizens and Defendants
3 have owned and operated agricultural businesses within California. Further, there is no federal
4 question at issue, as the issues herein are based solely on California statutes and law.

5
6 **IV. VENUE**

7 20. Venue in San Joaquin County is proper in this matter as Defendants' liabilities
8 and obligations arose in San Joaquin County, including Defendants' statutory obligations to pay
9 Plaintiffs wages for all hours worked, overtime wages, straight time wages, minimum wages,
10 timely wages upon termination and/or resignation, provide legally compliant meal and rest
11 periods, maintain and submit accurate wage statements, and other obligations as described
12 herein.

13 **V. COMMON FACTUAL ALLEGATIONS**

14 21. Defendants own and operate blueberry farms in the Central Coast of California.
15 This case arises out of Defendants' failure to comply with California's wage and hour laws.

16 22. Plaintiffs and the aggrieved employees who Plaintiffs seek to represent worked
17 for Defendants as non-exempt employees in California, during the applicable time period.

18 23. During Plaintiffs' employment, Defendants have failed to pay Plaintiff and other
19 aggrieved employees the proper amount of straight time and overtime wages. Defendants have
20 violated various sections of the Labor Code, including §§510 and 1194, by failing to provide
21 Plaintiffs overtime compensation for work over 8 hours in a day and/or 40 hours in a week,
22 based on the Defendants' deduction of 30 minutes from all employees' work hours to
23 purportedly accommodate a meal period. Defendants', however, fail and refuse to provide duty-
24 free meal periods in compliance with California law, and therefore unlawfully deduct hours from
25 workers' wages based upon the auto-deduct policy and practice adopted and implemented by
26 Defendants.

27 24. Defendants also failed to provide Plaintiffs with meal and rest periods under
28 California law. Defendants failed to adopt, implement, and enforce a uniform meal period policy

1 that complied with California law. For example, Defendants required Plaintiffs to take meal
2 periods after they worked for more than five hours, and Defendants failed to provide Plaintiffs
3 with their full 30 minute duty-free meal period based on numerous factors, including but not
4 limited to the fact that the amount of work required of Plaintiffs by Defendants necessitated that
5 Plaintiffs take their meal periods late, return early from their meal periods, and/or interrupt their
6 meal periods. Moreover, as a matter of policy and/or practice, Defendants failed to pay Plaintiffs
7 one hour of pay at their regular rate of pay for each workday that a 30 minute duty-free meal
8 period was not provided. Defendants also failed to keep accurate records of meal breaks taken by
9 Plaintiffs in violation of Labor Code §1174 and IWC Wage Order 8-2001.

10 25. Defendants also failed to adopt, implement, and enforce a uniform rest period
11 policy that complied with California law. Defendants failed to authorize and permit Plaintiffs to
12 take duty free rest periods of 10 minutes for every four hours worked or major fraction thereof,
13 by requiring Plaintiffs to regularly work through their rest periods to complete their duties, and
14 failing and refusing to provide a rest period for any hours in excess of 10 per day. As a result of
15 Defendants' lack of any meal or rest break policy that complies with California law, Defendants
16 have violated Labor Code §§512 and 226.7 and the IWC Wage Order 8-2001, among other
17 things.

18 26. Defendants further refused and failed to provide Plaintiffs with suitable seats
19 while performing their jobs. Plaintiffs were required to stand for, at times, in excess of 10 or 12
20 hours a day, without a seat that would assist them in performing and executing their job
21 functions. The nature of Plaintiffs' work functions would not have interfered with Plaintiffs'
22 abilities to perform their jobs, and in fact, suitable seating would have contributed to Plaintiffs'
23 efficiency and performance of their jobs, including sorting, packing, stacking, and operating
24 machines and other equipment. As a result, Defendants have violated Labor Code § 1198 and
25 IWC Wage Order 8-2001, among other things.

26 27. Defendants also willfully failed to provide properly itemized wage statements to
27 Plaintiffs pursuant to Labor Code §226. Violations include, but are not limited to: failing to
28 indicate the total hours worked, failing to record accurately the gross wages earned, and failing

1 to maintain accurate payroll and itemized wage statements. The failure to provide accurate
2 itemized wage statements violates Labor Code §§226, 2699, et seq., and IWC Wage Order 8-
3 2001.

4 28. Defendants also caused Plaintiffs to work more than six days in seven without a
5 day's rest in violation of Labor Code §§ 551 and 552, and required Plaintiff to work more than
6 72 hours during a workweek without a day's rest in violation of IWC Wage Order 8-2001.

7 29. Defendants willfully failed and refused to timely pay all compensation due and
8 owing to Plaintiffs whose employment was terminated during the relevant time period, by failing
9 to pay Plaintiffs on the day that they were terminated. Instead, Defendants paid Plaintiffs only
10 on their regular scheduled payday, which was at times at least one week later. Defendants also
11 failed to pay all of Plaintiff's compensation due upon termination by failing and refusing to pay
12 overtime and straight time wages, failing to pay Plaintiffs for time worked during meal and rest
13 periods, failing to pay Plaintiffs for an extra hour because Defendants failed to provide compliant
14 meal and rest periods, and by Defendants' other unlawful actions as described herein. As such,
15 Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance
16 with Labor Code §§201, 202, and 203.

17 **VI. PRIVATE ATTORNEYS GENERAL ACT CLAIM**

18 30. On or about February 26, 2020, Plaintiffs provided written notice via certified
19 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the
20 specific provisions of the Labor Code alleged to have been violated, including the facts and
21 theories to support the alleged violations.

22 31. The LWDA failed to respond to Plaintiff counsel's correspondence dated
23 February 26, 2020, and failed to notify Plaintiffs' counsel as to whether it would investigate the
24 allegations contained therein, within 65 calendar days of the postmark date of Plaintiff'
25 correspondence as required under Labor Code §2699.3. Plaintiffs have fully complied with the
26 notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against
27 an employer pursuant to Labor Code §2699.

28 32. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages,

overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all wages upon termination or resignation, failure to provide suitable seating, failure to provide one day's rest in seven, failure to allow a day's rest after working 72 hours, and failure to provide accurate itemized wage statements, will subject Defendants to civil penalties pursuant to, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, 1197.1, 1198, 2699 and IWC Wage Order 8-2001.

33. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c), and related Labor Code provisions. Plaintiffs bring the causes of action below on behalf of themselves, as private attorneys general, and in a representative capacity on behalf of other aggrieved employees, affected by the labor law violations alleged herein.

A. FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION

34. Labor Code §1194 states that any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

35. Labor Code §1197 states that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

36. Labor Code §510(a) and IWC Wage Order 8-2001 regulating payment of wages in the state of California, provide that eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for each employee and any work in excess of twelve (12) hours in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

37. At all relevant times, Defendants required Plaintiffs to perform work without compensation in violation of the IWC Wage Order 8-2001 and the Labor Code. Specifically, Plaintiffs were not paid for all of their hours worked, because among other things, Defendants

1 automatically deduct 30 minutes of time from Plaintiffs' hours worked for each workday, despite
2 the fact that Plaintiffs were not entitled to take full and uninterrupted 30 minute meal periods.
3 Defendants are therefore in violation of Labor Code §§510 and 1194, and IWC Wage Order 8-
4 2001.

5 38. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs seek recovery of
6 pre-judgment interest on all amounts recovered herein. Plaintiffs further request that this Court
7 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
8 §§1194(a) and/or 2699.

9 39. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
10 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
11 limited to Labor Code §§558, 1197.1, and 2699(f). Plaintiffs seek only to recover the civil
12 penalties provided for in §§558(a) and 1197.1 for the violations alleged herein, and does not seek
13 to recover underpaid wages.

14 **B. MEAL PERIODS (Labor Code §§226.7 and 512)**

15 40. Labor Code §512 and IWC Wage Order 8-2001 state that an employer may not
16 employ an employee for a work period of more than five (5) hours per day without providing the
17 employee a meal period of not less than 30 minutes, and an employer may not employ an
18 employee for a work period of more than 10 hours per day without providing the employee with
19 a second meal period of not less than 30 minutes. Wage Order 8-2001 states that unless the
20 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
21 considered an "on duty" meal period and counted as time worked. Labor Code §226.7(a) further
22 states that no employer shall require any employee to work during any meal or rest period
23 mandated by an applicable order of the IWC. Moreover, an employer is prohibited from exerting
24 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
25 skipping of legally protected breaks.

26 41. Plaintiffs were not provided with nor given the opportunity to take the requisite
27 meal periods before the end of the first 5 hours of work, nor were they provided with or given the
28 opportunity to take a proper second meal period during the days when they worked more than 10

1 hours in a day.

2 42. Pursuant to Labor Code §226.7(b) and IWC Wage Order 8-2001, if an employer
3 fails to provide an employee a meal period in accordance with the applicable provisions of IWC
4 Wage Order 8-2001, the employer shall pay the employee one (1) hour of pay at the employee's
5 regular rate of compensation for each workday that the meal period is not provided. As such,
6 Plaintiffs are entitled to an additional one hour's pay for each day in which Plaintiffs were not
7 provided a proper meal break under the above-described authorities.

8 43. Labor Code §558 and IWC Wage Order 8-2001 state, in pertinent part, that any
9 employer or other person acting on behalf of an employer who violates, or causes to be violated,
10 a section of any provision regulating hours and days of work in any order of the IWC shall be
11 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the employee was underpaid in addition to an
13 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
14 dollars (\$100) for each underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs seek only to
16 recover the civil penalty provided for in §558(a) for the violations alleged herein, and do not
17 seek to recover underpaid wages.

18 44. Plaintiffs request that the Court award interest on all unpaid wages at the legal
19 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
20 pursuant to Labor Code §218.6.

21 45. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
22 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
23 limited to Labor Code §§558 and 2699(f).

24 **C. REST PERIODS (Labor Code §226.7)**

25 46. IWC Wage Order 8-2001 states that every employer shall authorize and permit all
26 employees to take rest periods. The authorized rest period time shall be based on the total hours
27 worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major
28 fraction thereof. An employer must provide employees with 10 minutes rest for shifts from three

1 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
2 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. Furthermore, Labor Code
3 §1198 provides, in pertinent part: . . . The employment of any employee for longer hours than
4 those fixed by the order or under conditions of labor prohibited by the order is unlawful”.

5 47. Plaintiffs were not permitted to take proper rest periods and/or were required to
6 work during any “rest periods” in contravention of California law. Further, Plaintiffs were
7 regularly not provided with the opportunity to take proper rest periods, including but not limited
8 to rest periods when they worked 10 hours or more.

9 48. Pursuant to Labor Code §226.7(b) and IWC Wage Order 8-2001, if an employer
10 fails to provide an employee a rest period in accordance with the applicable provisions of IWC
11 Wage Order 8-2001, the employer shall pay the employee one (1) hour of pay at the employee’s
12 regular rate of compensation for each workday that the rest period is not provided.

13 49. As such, Plaintiffs are entitled to an additional one hour of pay for each day in
14 which they were not provided a proper rest period under the above-described authorities.

15 50. Plaintiffs request that the Court award interest on all unpaid wages at the legal
16 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
17 pursuant to Labor Code §218.6.

18 51. Labor Code §558 and IWC Wage Order 8-2001 state, in pertinent part, that any
19 employer or other person acting on behalf of an employer who violates, or causes to be violated,
20 a section of any provision regulating hours and days of work in any order of the IWC shall be
21 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
22 underpaid employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
24 dollars (\$100) for each underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid wages. Pursuant to Labor
26 Code §§558, 1198 and 2699, and/or IWC Wage Order 8-2001, Plaintiffs are entitled to civil
27 penalties for each pay period in which Defendants underpaid their wages as set forth herein.
28 Plaintiffs seek only to recover the civil penalty provided for in §558(a) for the violations alleged

1 herein, and do not seek to recover underpaid wages.

2 52. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
3 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
4 limited to Labor Code §§558, 2699(f), and IWC Wage Order 8-2001.

5
6 **D. FAILURE TO PROVIDE SUITABLE SEATING**

7 53. Labor Code §1198 states as follows: “The maximum hours of work and the
8 standard conditions of labor fixed by the commission shall be the maximum hours of work and
9 the standard conditions of labor for employees. The employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is
11 unlawful.”

12 54. IWC Wage Order 8-2001 §14(A) states: “All working employees shall be
13 provided with suitable seats when the nature of the work reasonably permits the use of seats.”
14 Further, IWC Wage Order 8-2001 §14(B) states: “When employees are not engaged in the
15 active duties of their employment and the nature of the work requires standing, an adequate
16 number of suitable seats shall be placed in reasonable proximity to the work area and employees
17 shall be permitted to use such seats when it does not interfere with the performance of their
18 duties.”

19 55. Plaintiffs all worked in jobs whereby the nature of the work reasonably permits
20 the use of seats, including among other things, sorting, packing, stacking, and machine
21 operations. Plaintiffs were required to stand for more than 10 or 12 hours during the day.
22 Defendants, as a matter of established company policy and procedure, failed to provide Plaintiffs
23 with suitable seating, or seating at any time that was proximate to Plaintiffs’ and the aggrieved
24 employees’ work area, even though such seating would not have interfered with Plaintiffs’
25 duties, and in fact would have made them more efficient and productive.

26 56. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
27 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
28 limited to Labor Code § 2699(f).

1 **E. FAILURE TO PROVIDE ONE DAY’S REST IN A SEVEN DAY**
2 **WORKWEEK**

3 57. Labor Code §550 states that a “day’s rest” applies to all situations whether the
4 employee is engaged by the day, week, month, or year, and whether the work performed is done
5 in the day or night time.”

6 58. Labor Code §551 provides: “Every person employed in any occupation of labor
7 is entitled to one day’s rest therefrom in seven.” Further, Labor Code §552 states that “[n]o
8 employer shall cause his employees to work more than six days in seven.”

9 59. At all times relevant herein, Defendants required Plaintiffs to work seven days in
10 a workweek, without rest, by explicitly and/or implicitly making it clear that if Plaintiffs did not
11 agree to work without one day’s rest, that they would not continue their employment and/or
12 would not be provided certain employment opportunities available to others who agreed to work
13 without a day’s rest.

14 60. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
15 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
16 limited to Labor Code §§558 and 2699(f).

17 **F. FAILURE TO PROPERLY MAINTAIN AND SUBMIT ACCURATE**
18 **ITEMIZED WAGE STATEMENTS (Labor Code §226)**

19 61. Labor Code §§226, 1174, and/or IWC Wage Order 8-2001 require employers to
20 maintain and provide its employees accurate time and employment records, as well as itemized
21 wage statements showing, among other things, gross wages earned, the total hours worked by the
22 employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay
23 period and the corresponding number of hours worked at each hourly rate by the employee.
24 Furthermore, Wage Order No. 8-2001 and Labor Code §226 requires every employer to keep
25 accurate information with respect to each employee, including: (1) the employee’s full name,
26 home address, occupation, social security number, employee’s date of birth, and time records
27 showing when the employee begins and ends each work period; (2) an employee’s meal periods;
28 (3) total wages paid each payroll period; and (4) total hours worked during the payroll period and

1 applicable rates of pay.

2 62. Defendants failed to properly maintain itemized wage statements in that, among
3 other things, the wage statements provided do not set forth the accurate number of hours worked,
4 correct rates of pay, all overtime compensation, meal periods, premium pay, and other related
5 information required by California law. In addition, in implementing its illegal rest period
6 policies and practices regarding Plaintiffs, Defendants failed to record wages for rest period
7 premiums that should have been paid to Plaintiffs as required by California law. Defendants
8 have failed to record all items delineated in Labor Code §226 and the applicable IWC Wage
9 Order, and required under Labor Code §1174. Plaintiffs are informed and believe that these
10 failures were knowing and intentional by Defendants as Defendants sought to deprive Plaintiffs
11 of their legitimate right to unpaid wages, and otherwise deprive them of their proper
12 compensation. As a result of Defendants' intentional and knowing failure to maintain adequate
13 itemized statements, Plaintiffs could not ascertain the actual amount of compensation they
14 earned and/or were entitled to, and thereby are presumed to have suffered cognizable injury in
15 the form of the accrual of unpaid wages, overtime, and interest pursuant to Labor Code
16 §226(e)(2).

17 63. Pursuant to Labor Code §226(e), an employee who suffers injury as a
18 result of an employer's knowing and intentional failure to comply with subdivision (a), is
19 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
20 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
21 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
22 is entitled to an award of costs and reasonable attorney's fees.

23 64. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
24 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
25 limited to Labor Code §§226.3, 1174.5 and 2699(f), as well as reasonable attorneys' fees and
26 costs.

27 **G. WAITING TIME PENALTIES (Labor Code §§201-203)**

28 65. Labor Code §201 states that an employer is required to provide an employee who

1 is terminated all unpaid wages immediately upon termination.

2 66. Plaintiffs are informed and believe and thereon allege that Defendants failed to
3 pay Plaintiffs all wages due and owing immediately upon termination, thereby violating Labor
4 Code §201.

5 67. Labor Code §202 states, in pertinent part, that an employer is required to provide
6 an employee who quits his or her employment all wages due and owing not later than 72 hours
7 thereafter.

8 68. Plaintiffs are informed and believe and thereon allege that Defendants failed to
9 pay Plaintiffs all wages due and owing upon voluntary resignation, thereby violating Labor Code
10 §202.

11 69. Labor Code §203 states that if an employer willfully fails to pay an employee
12 wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to
13 a maximum of 30 days.

14 70. Defendants willfully withheld paying Plaintiffs wages thereby violating Labor
15 Code §203. As such, Defendants are required to pay Plaintiffs a 30 day wage penalty in addition
16 to all unpaid wages as described herein.

17 71. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
18 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
19 limited to Labor Code §§256 and 2699(f).

20 **H. ALL CLAIMS**

21 72. Pursuant to Labor Code §2699, Plaintiffs seek to recover civil penalties, as
22 otherwise provided by statute and wage order, for which Defendants are liable as a result of their
23 violations of the Labor Code and applicable wage order(s) in an amount to be proven at trial.
24 These penalties include, but are not limited to, those provided by Labor Code §§558, 210, 226.3,
25 256, 1174.5, 1197.1, and 2699. Plaintiffs further seek an award of reasonable attorneys' fees and
26 costs pursuant to the Labor Code §2699(g)(1) and any other applicable statute.

27 **WHEREFORE**, Plaintiffs pray:

28 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely

1 independent and apart from other penalties in the Labor Code and for Labor Code violations
2 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay
3 period for each violation, and \$200 for each aggrieved employee per pay period for each
4 subsequent violation;

5 b. For civil penalties pursuant to Labor Code §558, as follows:

6 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
7 employee for each pay period for which the employee was underpaid;

8 ii. For each subsequent violation, one hundred dollars (\$100) for each
9 aggrieved underpaid employee for each pay period for which the
10 employee was underpaid;

11 c. For civil penalties pursuant to Labor Code §1197.1, as follows:

12 i. For any initial violation that is intentionally committed, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for which
14 the employee is underpaid;

15 ii. For each subsequent violation for the same offense, two hundred fifty
16 dollars (\$250) for each aggrieved underpaid employee for each pay period
17 for which the employee was underpaid regardless of whether the initial
18 violation is intentionally committed;

19 d. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
20 aggrieved employee per pay period for each violation, and \$1,000 for each
21 aggrieved employee per pay period for each subsequent violation;

22 e. For civil penalties per Labor Code §1174.5 in the amount of \$500 for each willful
23 failure to maintain records as required by Labor Code §1174(c).

24 f. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
25 same rate, for each day that an aggrieved employee was paid late, at the time of
26 termination, until payment was/is made, up to a maximum of thirty (30) days;

27 g. For civil penalties per Labor Code §210 in the amount of \$100 for each failure to
28 pay each employee, and for each subsequent violation, or any willful or

intentional violation, \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

h. For reasonable attorneys' fees and costs incurred; and

i. For such relief as this Court may deem just and proper.

Dated: May 4, 2020

SHANBERG, STAFFORD & BARTZ LLP

By: /s/ Aaron A. Bartz

ROSS E. SHANBERG

AARON A. BARTZ

Attorneys for Plaintiffs BAUDELIO MARISCAL,
CRISTIAN NEVAREZ, and JANET VILLASANA,
on behalf of themselves and all other aggrieved
employees

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: May 4, 2020

SHANBERG, STAFFORD & BARTZ LLP

By: /s/ Aaron A. Bartz

ROSS E. SHANBERG

AARON A. BARTZ

Attorneys for Plaintiffs BAUDELIO MARISCAL,
CRISTIAN NEVAREZ, and JANET VILLASANA,
on behalf of themselves and all other aggrieved
employees

EXHIBIT 4

Privileged and Confidential - For Mediation Purposes Only

Munger

PAGA Claims

	Labor Code §558	Meal Breaks Labor Code §2699	Rest Breaks Labor Code §2699	Pay Stubs Labor Code §226.3	Sub-Total
Employee Count	1,517	1,517	1,517	1,517	
First Period Penalty Amount	\$50.00	\$100.00	\$100.00	\$250.00	
Total First Period Penalty	\$75,850.00	\$151,700.00	\$151,700.00	\$379,250.00	\$758,500.00
Total Pay Period Count	19,500	19,500	19,500	19,500	
Net Pay Period Count	17,983	17,983	17,983	17,983	
Subsequent Period Penalty Amount	\$100.00	\$200.00	\$200.00	\$1,000.00	
Total Subsequent Period Penalty Amt	\$1,798,300.00	\$3,596,600.00	\$3,596,600.00	\$17,983,000.00	\$26,974,500.00
Total Penalty	\$1,874,150.00	\$3,748,300.00	\$3,748,300.00	\$18,362,250.00	\$27,733,000.00

	Labor Code §256	Total
Termination Count	1,078	
Straight Time Rate	\$12.08	
Hours Per Termination	240.0	
Penalty Per Termination	\$2,899.20	
Total Penalty	\$3,125,337.60	\$30,858,337.60

Notes:

- PAGA is calculated for the period May 25, 2019 through October 31, 2020
- Net Pay Period count is calculated by subtracting the employee count from the total pay period count.
- 50% of all penalties obtained under Labor Code §2699 to be allocated to the General Fund, and 25% of all penalties obtained to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and 25% to all aggrieved employees.

EXHIBIT 5

Selection Criteria

Slip.Slip Type
Clie.Selection Time
Include: Munger Bros

Rate Info - identifies rate source and level

Slip ID	Time	Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
41851	TIME	RES	1.70	675.00	1147.50
1/17/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and conference with AAB re new investigation of Munger Farms; Review and analyze Consent Judgment			0.00		
41859	TIME	Paralegal	0.57	180.00	102.60
1/23/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Manuel Fernandez			0.00		
41863	TIME	Paralegal	0.64	180.00	115.20
1/23/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Martha Vallardes			0.00		
41856	TIME	Paralegal	0.95	180.00	171.00
1/24/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Juan Fernandez			0.00		
41853	TIME	Paralegal	0.68	180.00	122.40
1/27/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Gabriella Hernandez			0.00		
41858	TIME	Paralegal	0.65	180.00	117.00
1/27/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Maine Numi			0.00		
41867	TIME	Paralegal	0.55	180.00	99.00
1/27/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Reynaldo Yon			0.00		
41848	TIME	Paralegal	0.85	180.00	153.00
1/28/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Andrew Miranda			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
41849	TIME	Paralegal	0.79	180.00	142.20
1/28/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Baudelio Mariscal			0.00		
41852	TIME	Paralegal	0.55	180.00	99.00
1/28/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with David Maldonado			0.00		
41854	TIME	Paralegal	0.79	180.00	142.20
1/28/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Janet Villasana			0.00		
41855	TIME	Paralegal	0.58	180.00	104.40
1/29/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Jose Romero			0.00		
41857	TIME	Paralegal	0.71	180.00	127.80
1/29/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Magdalena Martinez			0.00		
41865	TIME	Paralegal	0.82	180.00	147.60
1/29/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Pedro Fernandez			0.00		
41866	TIME	Paralegal	0.93	180.00	167.40
1/29/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Pete Cabrera			0.00		
41846	TIME	Paralegal	0.75	180.00	135.00
1/31/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Alejandra Carrdenas			0.00		
41847	TIME	Paralegal	1.10	180.00	198.00
2/4/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Armando Chavez			0.00		
41860	TIME	Paralegal	0.70	180.00	126.00
2/5/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Marcos Guzman			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
41864	TIME	Paralegal	0.77	180.00	138.60
2/7/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Martin Mendoza			0.00		
41870	TIME	Paralegal	0.60	180.00	108.00
2/7/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Veronica Gallardo			0.00		
41871	TIME	Paralegal	0.70	180.00	126.00
2/7/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Vincent Serrano			0.00		
41850	TIME	Paralegal	1.00	180.00	180.00
2/10/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Cristian Nevarez			0.00		
41837	TIME	AAB	4.00	675.00	2700.00
2/24/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider client intakes and research possible claims.			0.00		
41838	TIME	AAB	5.20	675.00	3510.00
2/25/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of PAGA letter, and research in support of same.			0.00		
41839	TIME	AAB	1.00	675.00	675.00
2/26/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and revise PAGA letter, and final same.			0.00		
41840	TIME	AAB	4.80	675.00	3240.00
3/27/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider client documents, and continue researching potential claims.			0.00		
41841	TIME	AAB	4.00	675.00	2700.00
3/30/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider client documents, and intakes regarding potential claims; Conferences with RES regarding same.			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
41845	TIME	RES	1.50	675.00	1012.50
3/31/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review intakes re evaluation of PAGA and individual claims; conference re same			0.00		
41862	TIME	Paralegal	0.63	180.00	113.40
4/1/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Martha Vallardes			0.00		
41868	TIME	Paralegal	0.75	180.00	135.00
4/1/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Ricardo Alvarez			0.00		
41869	TIME	Paralegal	0.90	180.00	162.00
4/1/2020		Telephone call	0.00	C@2	
WIP		Munger Bros	0.00		
Phone interview with Rosa Sanchez			0.00		
41888	TIME	AAB	2.50	675.00	1687.50
4/9/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of PAGA Complaint.			0.00		
41933	TIME	RES	2.10	675.00	1417.50
4/17/2020		Phone Opp Atty	0.00	C@1	
WIP		Munger Bros	0.00		
Telephone call with opposing Attorney, Bill Woolman, re outstanding time and payroll records; review and analyze 4 employee records; prepare follow up email to OPC			0.00		
41957	TIME	AAB	3.00	675.00	2025.00
4/20/2020		Research	0.00	C@1	
WIP		Munger Bros	0.00		
Research in support of potential PAGA claims, including seating and 7 day workweek issues.			0.00		
41958	TIME	AAB	6.50	675.00	4387.50
4/21/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of PAGA Complaint.			0.00		
41956	TIME	AAB	4.20	675.00	2835.00
4/23/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Prepare PAGA Complaint, and research in support of same.			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
41955	TIME	AAB	2.00	675.00	1350.00
4/24/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and revise PAGA Complaint.			0.00		
41972	TIME	RES	1.70	675.00	1147.50
4/28/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review draft PAGA Complaint; prepare revisions to same; prepare email to OPC re same			0.00		
42011	TIME	AAB	3.00	675.00	2025.00
5/11/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider personnel file for C. Nevarez and time entries; Research regarding meal and rest break claims.			0.00		
42036	TIME	AAB	2.50	675.00	1687.50
5/18/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider personnel and payroll records of Munger employees, and confer with RES regarding same.			0.00		
42040	TIME	RES	3.40	675.00	2295.00
5/18/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze client personnel and time records; further analysis of client meal, rest, and 203 claims; analyze client intakes re same; prepare for call with OPC			0.00		
42051	TIME	AAB	2.00	675.00	1350.00
5/21/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider further intakes from aggrieved employees, and research regarding claims.			0.00		
42139	TIME	AAB	0.70	675.00	472.50
6/5/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider legal strategies; Conference call with OPC regarding possible mediation.			0.00		
42152	TIME	AAB	0.50	675.00	337.50
6/11/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider payroll documents.			0.00		

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
42155	TIME	RES	1.90	675.00	1282.50
6/15/2020		Phone Opp Atty	0.00	C@1	
WIP		Munger Bros	0.00		
Telephone call with opposing Attorney, Bill Woolman re mediation (Friday); prepare mediation data demand; conference re same			0.00		
42287	TIME	RES	2.20	675.00	1485.00
7/15/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze file re status; prepare email to OPC re outstanding client personnel records and mediation data request; analyze client personnel files			0.00		
42433	TIME	AAB	1.50	675.00	1012.50
8/26/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider class action status, and review notice and related documents regarding same; Confer with RES regarding same.			0.00		
42490	TIME	AAB	5.50	675.00	3712.50
9/4/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze employment and payroll records in preparation for Mediation; Prepare Memo regarding same.			0.00		
42493	TIME	AAB	2.00	675.00	1350.00
9/8/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider client documents and personnel records, and prepare memo for expert.			0.00		
42508	TIME	RES	2.20	675.00	1485.00
9/10/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze retained client personnel and time/payroll records; conference with AAB re same			0.00		
42507	TIME	RES	0.80	675.00	540.00
9/15/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze email from OPC re mediation data; prior phone call with OPC re same			0.00		
42531	TIME	AAB	4.50	675.00	3037.50
9/18/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of Mediation Brief, and research in support of same.			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
42534	TIME	AAB	2.50	675.00	1687.50
9/21/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review mediation data and payroll records.			0.00		
42547	TIME	AAB	5.00	675.00	3375.00
9/22/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Prepare Mediation Brief, and research in support of same.			0.00		
42554	TIME	AAB	6.10	675.00	4117.50
9/23/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Further preparation of Mediation Brief, and research paystub and waiting time penalties claims.			0.00		
42566	TIME	RES	2.20	675.00	1485.00
9/23/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange emails with OPC re mediation data; review and further analysis of same			0.00		
42567	TIME	RES	0.40	675.00	270.00
9/29/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange further emails with OPC re mediation data and exchanging briefs			0.00		
42569	TIME	AAB	0.50	675.00	337.50
9/29/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review expert analysis and call with expert regarding same.			0.00		
42570	TIME	AAB	1.50	675.00	1012.50
9/30/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze mediation data, and call client regarding same; Prepare memo to file.			0.00		
42596	TIME	RES	2.10	675.00	1417.50
9/30/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and analyze Plaintiff personnel files in preparation for mediation			0.00		
42583	TIME	AAB	3.20	675.00	2160.00
10/1/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and revise Mediation Brief, and review and consider exhibits in support of same; Final brief			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
and prepare email to mediator.					
42589	TIME	RES	2.50	675.00	1687.50
10/2/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and further analysis of draft mediation brief; analyze mediation data in preparation for mediation			0.00		
42594	TIME	AAB	6.00	675.00	4050.00
10/5/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider mediation brief and documents in preparation for Mediation, and research in support of same.			0.00		
42595	TIME	RES	3.80	675.00	2565.00
10/5/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation for mediation, including review of brief and mediation data; phone conferences (prior) with expert re same			0.00		
42597	TIME	RES	6.50	675.00	4387.50
10/6/2020		Mediation	0.00	C@1	
WIP		Munger Bros	0.00		
Attend Mediation (via Zoom)			0.00		
42598	TIME	AAB	7.00	675.00	4725.00
10/6/2020		Mediation	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider further mediation documents, and attend Mediation via Zoom.			0.00		
42719	TIME	RES	2.20	675.00	1485.00
10/19/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of written discovery including Special Rogs and RPD's			0.00		
42720	TIME	RES	2.70	675.00	1822.50
10/21/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Further preparation of written discovery; prepare email to OPC re meet and confer re CMC			0.00		
42699	TIME	RES	0.50	675.00	337.50
10/28/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange emails with mediator; phone call with mediator re further settlement negotiations			0.00		

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
42721	TIME	RES	0.20	675.00	135.00
11/6/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange emails with mediator re settlement			0.00		
42742	TIME	RES	0.50	675.00	337.50
11/6/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange further emails with mediator re settlement terms; analyze release of staffing companies; conference re same			0.00		
42757	TIME	RES	0.90	675.00	607.50
11/13/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review email from mediator confirming settlement and terms; analyze further issues, including hiring of administrator; prepare email to administrator re quote; prepare email to OPC re AE count and further issues re terms in SA and Release			0.00		
42758	TIME	AAB	3.40	675.00	2295.00
11/13/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider client documents, and review potential settlement; Prepare PAGA settlement, and research in support of same.			0.00		
42603	TIME	AAB	3.50	675.00	2362.50
11/14/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of draft PAGA settlement agreement.			0.00		
42762	TIME	RES	0.80	675.00	540.00
11/16/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange emails with OPC re settlement allocation and terms; conference with AAB re same; prior phone conference and email with ILYM, claims administration re settlement admin;			0.00		
42763	TIME	AAB	5.50	675.00	3712.50
11/16/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Review of payroll and related personnel records, and call witnesses regarding same; Prepare memoranda regarding same, and further research regarding potential PAGA approval.			0.00		

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
42777	TIME	AAB	1.50	675.00	1012.50
11/20/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and consider workweek data and related issues regarding settlement.			0.00		
42837	TIME	RES	1.20	675.00	810.00
12/3/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Review email from OPC and OPC revisions to draft settlement agreement; prepare lengthy email to OPC re same and further negotiations; phone call with OPC re same			0.00		
42803	TIME	RES	1.10	675.00	742.50
12/7/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange emails with OPC re final settlement terms; phone call with OPC Woolman re same; prepare further revisions to PAGA settlement agreement; prepare further email to OPC re same			0.00		
42815	TIME	AAB	2.50	675.00	1687.50
12/8/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Preparation of PAGA Motion for Approval, and research in support of same.			0.00		
42818	TIME	RES	0.80	675.00	540.00
12/9/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and exchange further emails with OPC re final settlement agreement; prepare email to lead plaintiffs re settlement terms and execution of SA; conference re same			0.00		
42819	TIME	AAB	7.50	675.00	5062.50
12/9/2020		Preparation	0.00	C@1	
WIP		Munger Bros	0.00		
Prepare Motion to Approve PAGA Settlement, and review and respond to emails regarding settlement.			0.00		
42827	TIME	AAB	5.50	675.00	3712.50
12/11/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and revise Motion to Approve PAGA Settlement; Prepare Declaration in support of Motion.			0.00		

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Slip Listing - chron order

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
42836	TIME	RES	0.30	675.00	202.50
12/11/2020		Phone client	0.00	C@1	
WIP		Munger Bros	0.00		
Phone call with client re status of settlement			0.00		
42831	TIME	AAB	4.40	675.00	2970.00
12/14/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review and revise all Motion papers, and prepare Exhibits for filing; Prepare proposed Judgment; Prepare cover letter regarding PAGA payment.			0.00		
42834	TIME	RES	1.40	675.00	945.00
12/14/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review draft motion for settlement approval; prepare revisions to Kullar analysis; conference with AAB re same; prepare email to OPC Woolman re hearing date on MPA			0.00		
42835	TIME	RES	0.60	675.00	405.00
12/15/2020		Review	0.00	C@1	
WIP		Munger Bros	0.00		
Review draft RES declaration prepared by AAB; prepare minor revisions to same; review draft proposed judgment			0.00		
Grand Total					
			Billable		120142.80
			Unbillable		0.00
			Total		120142.80

EXHIBIT 6

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Slip Listing - chron order

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Selection Criteria

Slip.Slip Type
Clie.Selection Expense
Include: Munger Bros

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
41989 5/4/2020 WIP Case initiation filing fees: Civil Case Cover Sheet, Summons, Complaint	EXP JC Filing Fees Munger Bros	1	112.00	112.00
42153 6/11/2020 WIP Unlimited Civil Filing - Case initiating docs: Summons, Complaint, Civil Cover Sheet	EXP JC Filing Fees Munger Bros	1	564.36	564.36
42389 8/11/2020 WIP Proof of Service of Notice and Acknowledgement or Receipt	EXP JC Filing Fees Munger Bros	1	95.00	95.00
42477 9/3/2020 WIP Mediation fees (Jams Inv # 5309294)	EXP RES Mediation Munger Bros	1	6450.00	6450.00
42743 11/11/2020 WIP Invoice from damages expert, Jim Tomey (Inv # 201105) re mediation data analysis	EXP RES Expert Fees Munger Bros	1	1100.00	1100.00
42823 12/11/2020 WIP Motion for preliminary approval of settlement	EXP JC Filing Fees Munger Bros	1	60.00	60.00
42825 12/11/2020 WIP FedEx Expenses	EXP JC FedEx Munger Bros	1	310.00	310.00
Grand Total	Billable	0.00		8691.36

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Slip Listing - chron order

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Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
	Unbillable	0.00		0.00
	Total	0.00		8691.36

EXHIBIT 7

Case Name: Mariscal v. Munger Farms

Requesting Attorneys Name:

Ross Shanberg

E-Mail:

rshanberg@ssbfirm.com

ILYM Contact:

Jonathan Paul

E-Mail:

Jonathan@ilymgroup.com

Contact Number:

310.948.7117

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Estimated # of Class Members	1,550
Estimated Percentage of Remails	10%
NCOA	Yes
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	5	\$750.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	6	\$720.00
NCOA	Flat Rate	\$100.00	1	\$100.00
Toll-Free Call Center	Flat Rate	\$750.00	1	\$750.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.				
Subtotal				\$3,070.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	6	\$900.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	6	\$750.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.10	1,550	\$1,705.00
USPS First Class 1oz Postage	Per Piece	\$0.55	1,550	\$852.50
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.50	93	\$139.50
Preparation of Taxes	Hourly	\$125.00	7	\$875.00
Annual Filing of Tax Return	Per Year	\$1,000.00	1	\$1,000.00
*Additional Bank fees may apply				
Subtotal				\$6,222.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Declaration	Hourly	\$125.00	3	\$375.00
Subtotal				\$675.00

TOTAL CASE ESTIMATE: \$9,967.00

NOT TO EXCEED: \$10,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in

EXHIBIT 8