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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

RUBEN HERNANDEZ, on behalf of himself,
and for all similarly situated persons, and the
general public,

Plaintiffs,

v.

DELANO FARMS COMPANY, INC., and
DOES 1 through 50, inclusive,

Defendants.

Lead Case No.: BCV-20-101130 TMS

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF CLASS
ACTION AND PAGA CLAIMS**

Complaint Filed: May 13, 2020
FAC Filed: July 1, 2020
Trial Date: None Set

DIANA BERBER, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiffs,

v.

DELANO FARMS COMPANY, a
Washington corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. BCV-20-101243

Complaint Filed: May 27, 2020

JOINT STIPULATION AND SETTLEMENT AGREEMENT OF CLASS ACTION AND PAGA CLAIMS

1 This Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
2 (“Stipulation of Settlement” or “Settlement” or “Settlement Agreement”) is made and entered into by
3 and between Plaintiffs Ruben Hernandez and Diana Berber (hereinafter sometimes collectively
4 referred to as “Class Representatives” or “Plaintiffs”) individually and on behalf of the Class and
5 Aggrieved Employees (as defined below), and Defendant Delano Farms Company (“Defendant”)
6 (Plaintiff and Defendant hereinafter collectively referred to as the “Parties”).

7 THE PARTIES STIPULATE AND AGREE as follows:

8 **DEFINITIONS**

9 1. “**Action**” collectively means the above captioned, consolidated lawsuits, identified as
10 *Ruben Hernandez et al. v. Delano Farms Company et al.*, Kern County Superior Court Case No. BCV-
11 20-101130, and *Diana Berber et al. v. Delano Farms Company et al.*, Kern County Superior Court
12 Case No. BCV-20-101243.

13 2. “**Class Counsel**” means Nazo Koulloukian of the Koul Law Firm, Sahag Majarian, II
14 of Law Offices of Sahag Majarian II, and Farrah Mirabel of the Law Office of Farrah Mirabel.

15 3. “**Class Members**” shall mean all current and former hourly-paid, non-exempt
16 employees of Defendant employed by Defendant in the state of California at any time during the Class
17 Period, except those individuals that signed individual settlement agreements with Defendant as
18 explained in Paragraph 26.

19 4. “**Class Period**” shall mean May 13, 2016 through the date of entry of an order of
20 Preliminary Approval of the Settlement.

21 5. “**Class Released Claims**” shall have the meaning ascribed to it in Paragraph 60 below.

22 6. “**Class Representatives**” or “**Plaintiffs**” shall collectively mean Plaintiff Ruben
23 Hernandez and Plaintiff Diana Berber.

24 7. “**Court**” shall mean the Superior Court of the State of California for the County of
25 Kern.

26 8. “**Court’s Final Order and Judgment**” means the Final Order Approving Class Action
27 and PAGA Settlement, and Judgment in a form to be agreed upon by the Parties and approved by the
28 Court.

1 9. **“Defendant’s Counsel”** shall mean Ian B. Wieland and Paul Parvanian of Sagaser,
2 Watkins & Wieland PC.

3 10. **“Effective Date”** shall have the meaning ascribed to it in Paragraph 36, below.

4 11. **“Final Approval Hearing”** shall mean the hearing during which the Court shall
5 consider, without limitation, any timely objections to the Settlement from Settlement Class Members,
6 testimony from the Parties or their counsel, declarations regarding the notice process from the
7 Settlement Administrator, and otherwise make a final determination regarding the fairness of the
8 Settlement as set forth herein.

9 12. **“Incentive Award”** shall mean the payments made to Plaintiffs in their capacity as
10 Class Representatives, which sum is over and above their Individual Settlement Payment.

11 13. **“Individual Settlement Payment”** will be the portion of the Net Settlement Amount
12 payable to a Settlement Class Member.

13 14. **“Net Settlement Amount”** shall have the meaning ascribed to it in Paragraph 40,
14 below.

15 15. **“Notice of Proposed Settlement”** or **“Notice”** means the Notice of Class Action
16 Settlement in substantially the form attached hereto as Exhibit A, and as approved by the Court.

17 16. **“PAGA”** shall mean the California Labor Code Private Attorneys General Act, Labor
18 Code §§ 2698 *et seq.*

19 17. **“PAGA Employees”** or **“Aggrieved Employees”** means as all current and former non-
20 exempt employees of Defendant employed by Defendant in the State of California at any time during
21 the PAGA Period. Aggrieved Employees may not opt-out of the portion of the PAGA Payment
22 (\$5,000 as described in paragraph 41) allocated to Aggrieved Employees. The \$5,000 allocated to the
23 PAGA Payment shall be distributed to the Aggrieved Employees on a pro rata basis based on the
24 number of pay periods for each Aggrieved Employee from March 19, 2019 until the date the Court
25 grants Preliminary Approval of the Settlement.

26 18. **“PAGA Payment”** means the payment to the State of California LWDA and the PAGA
27 Employees in settlement of all claims for PAGA penalties.

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19. **“PAGA Employee Payments”** means the payment issued to each PAGA Employee for his/her/their share of the PAGA Payment.

20. **"PAGA Period"** shall mean March 19, 2019 through the date of entry of an order of Preliminary Approval of the settlement.

21. **“Parties”** shall refer to the Plaintiffs and Defendant, each of whom is a “Party.”

22. **“Payment Schedule”** shall refer to the schedule under which Defendant will fund the Gross Settlement Amount. The Gross Settlement Amount shall be funded within 30 days of the Court’s entry of final approval provided there are no appeals or objections.

23. **“Released Parties”** collectively shall encompass Defendant and its past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, members, affiliates, all those in privity with Defendant, and Defendant’s respective successors and predecessors in interest, subsidiaries, parents and attorneys.

24. **“Settlement Administrator”** shall mean CPT Group.

25. **“Settlement Class Members”** shall mean the Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion as described in Paragraph 53.

26. **“Gross Settlement Amount”** shall refer to Two Hundred Thirty-One Thousand Three Hundred Dollars (\$231,300.00), which constitutes the amount of \$275,000.00 minus the amount of \$43,700.00 which is the amount Defendant paid through individual settlements executed with past and current employees. The sum of \$231,300.00 is the maximum amount that Defendant will pay pursuant to this Settlement, excluding Defendant’s share of employer side payroll taxes, which shall be paid by Defendant separately and in addition to the Gross Settlement Amount.

RECITALS

27. This Action involves two lawsuits filed against Defendant. On July 12, 2019, Plaintiff Ruben Hernandez provided notice of claims against Defendant to the LWDA, with a subsequent letter alleging additional claims provided on May 5, 2020. Hernandez filed his class action and individual claims on May 13, 2020, and filed a first amended complaint on July 1, 2020 (all as a part of Kern County Superior Court No. BCV-20-101130). On March 19, 2020, Plaintiff Diana Berber provided

1 notice of her PAGA representative action claims. On May 28, 2020, Plaintiff Diana Berber filed her
2 representative action as a part of Kern County Superior Court Case No. BCV-20-101243. The cases
3 have recently been consolidated. Following exchange and extensive review of relevant documents
4 and class data, on April 23, 2021, the Parties attended a mediation session with retired Judge Howard
5 Broadman serving as mediator.

6 28. Defendant denies any liability or wrongdoing of any kind whatsoever associated with
7 the claims in the Action, and further denies that, for any purpose other than settling this Action, this
8 Action is appropriate for class action or representative treatment.

9 29. It is the Parties' desire to fully, finally and forever settle, compromise and discharge all
10 disputes and claims arising from or related to the allegations of the Action.

11 30. It is the Parties' intention that this Stipulation of Settlement shall constitute a full and
12 complete settlement and release of all Class Released Claims and all PAGA Claims (as explained in
13 Paragraphs 60, 61, and 62 below) against all Released Parties, except as to the alleged causes of action
14 for wrongful termination in violation of public policy and violation of Labor Code § 1102.5 in the
15 operative complaint filed by Plaintiff Ruben Hernandez as a part of the Action.

16 31. It is the Parties' intention that this Settlement shall not become effective until the
17 Effective Date, as defined in paragraph 36, below.

18 32. Class Counsel have conducted a thorough investigation into the facts of this Action,
19 including an extensive review of relevant documents and data, and have diligently pursued an
20 investigation of the Class Members' claims against Defendant. Based on their own independent
21 investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is
22 fair, reasonable and adequate and is in the best interest of the Class Members in light of all known
23 facts and circumstances, including the risks of significant delay, the class not being certified, and the
24 defenses asserted by Defendant.

25 33. The Parties agree to cooperate and take all steps necessary and appropriate to
26 consummate this settlement in accordance with the terms of this Stipulation of Settlement.

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1 TERMS OF SETTLEMENT

2 34. In consideration of the mutual covenants, promises and agreements set forth herein, the
3 Parties agree, subject to the Court's approval, to the terms herein.

4 35. It is agreed by and between Plaintiffs and Defendant that this Action and any claims,
5 demands, liabilities, penalties, damages or causes of action of any kind whatsoever claimed by
6 Plaintiffs on behalf of themselves, the Class Members, and/or the PAGA Employees arising out of the
7 disputes which are the subject of this Action, be settled and compromised, subject to the terms and
8 conditions set forth in this Stipulation of Settlement and the Court's approval.

9 36. Effective Date: The Settlement embodied in this Stipulation of Settlement shall
10 become effective when all of the following events have occurred (the "Effective Date"): (i) this
11 Stipulation of Settlement has been executed by Plaintiffs, Defendant, Class Counsel and Defendant's
12 Counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been sent
13 to the Class Members, providing them the opportunity to object to the Settlement, and the opportunity
14 to opt out of the Settlement; (iv) the Court has held a formal fairness hearing and entered the Court's
15 Final Order and Judgment; and (v) the later of the following events: (A) when the period for filing any
16 appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal,
17 writ or other appellate proceeding having been filed; (B) when any appeal, writ or other appellate
18 proceeding opposing the Settlement has been dismissed finally and conclusively with no right to
19 pursue further remedies or relief; or (C) when any appeal, writ or other appellate proceeding has upheld
20 the Court's Final Order and Judgment with no right to pursue further remedies or relief.
21 Notwithstanding the foregoing, if there are no objections to the Settlement, the Effective Date shall be
22 the date of entry of the Final Approval Order. If the Court declines to approve the Settlement, the
23 entire Stipulation of Settlement is deemed void and unenforceable as if no settlement of any claim was
24 ever reached. All negotiations, statements and proceedings and data relating thereto shall be
25 considered settlement and mediation privileged, protected by California Evidence Code § 1152 and
26 related laws, and shall be without prejudice to the rights of any of the Parties.

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1 37. Payroll Taxes: Defendant will pay the employer-side payroll taxes on the sum from
2 the Gross Settlement Amount allotted to wages. The Settlement Administrator shall calculate the total
3 employer-side payroll taxes due on the wage portion of the Net Settlement Amount after final approval
4 of the settlement and prior to Defendant's funding of the Gross Settlement Amount.

5 38. Gross Settlement Amount: To implement the terms of this Settlement, Defendant
6 agrees to pay a maximum of Two Hundred Thirty-One Thousand Three Hundred Dollars and No Cents
7 (\$231,300.00) (which is based on an overall settlement amount of \$275,000.00 minus the amount of
8 \$43,700.00 constituting individual settlements obtained by Defendant, as explained in more detail
9 herein), which includes payments to Settlement Class Members (excluding any appropriate and
10 lawfully required employer-side payroll taxes paid pursuant to section 37), an Incentive Award to the
11 Class Representatives, the PAGA Payment, the Settlement Administrator's fees and costs, approved
12 attorneys' fees and litigation costs, and any other payments provided by this Settlement. Except as
13 otherwise specified herein, Defendant shall not be required to pay any additional monies beyond the
14 amount of the Gross Settlement Amount plus the employer-side payroll taxes on the wage portion of
15 the settlement (as set forth in paragraph 37). Further, no portion of the Gross Settlement Amount shall
16 revert to Defendant, and any amount of the Gross Settlement Amount not required to pay the above
17 referenced amounts shall be paid to the Settlement Class Members on a pro rata basis according to the
18 formula contained herein.

19 39. Funding of Settlement Amount: Defendant shall transfer to the Settlement
20 Administrator the Gross Settlement Amount pursuant to the Payment Schedule. The delivery of the
21 entire Gross Settlement Amount and the employer's share of payroll taxes (as explained in Paragraph
22 37) to the Settlement Administrator shall constitute full and complete discharge of the entire obligation
23 of Defendant under this Settlement. Once Defendant has made such payments, Defendant will be
24 deemed to have satisfied all terms and conditions under this Settlement, shall be entitled to all
25 protections afforded to Defendant under this Settlement, and shall have no further obligations under
26 the terms of the Settlement regardless of what occurs with respect to those sums.

27 40. Allocation of the Gross Settlement Amount: Subject to Court approval and the
28 conditions specified in this Agreement, and in consideration of the mutual covenants and promises set
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1 forth herein, the Parties agree the Gross Settlement Amount shall encompass the following: (1) Class
2 Counsel's fees and expenses; (2) the Plaintiffs' Incentive Awards; (3) the Settlement Administrator's
3 costs; (4) the PAGA Payment (including both the PAGA payment to the LWDA and the PAGA
4 Settlement Checks); and (5) the Net Settlement Amount. After the deduction of the amounts approved
5 for the Incentive Award to the Class Representatives, the PAGA Payment, the Settlement
6 Administrator's costs, Class Counsel's fees and expenses, the remainder shall be referred to as the Net
7 Settlement Amount.

8 A. The Net Settlement Amount shall be allocated as follows:

9 i. First, the Settlement Administrator will calculate the number of pay periods for
10 each Class Member during the Class Period by reviewing Defendant's employment records;

11 ii. Second, the Settlement Administrator will then aggregate the total number of
12 pay periods for each Class Member to determine the total pay periods by the entire Class;

13 iii. Third, the Settlement Administrator will then divide the number of pay periods
14 for each Class Member by the total pay periods for the entire Class to determine each Class Member's
15 Individual Settlement Percentage; and

16 iv. Finally, the Settlement Administrator will then calculate the dollar amount
17 rounded to the nearest cent for each Class Member based on their respective Individual Settlement
18 Percentage of the Settlement Distribution Pool.

19 B. The Parties agree that if any Settlement Class Member disputes the basis for
20 determining their share of the Settlement, Defendant's records shall presumptively control unless the
21 Settlement Class Member can produce written evidence and/or documentation of other pay periods
22 during the relevant time period. The Parties further agree that any dispute that cannot be resolved by
23 Class Counsel and Defendant's counsel may be brought before the Court before final approval of the
24 Class Settlement.

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1 C. To the extent that amounts in Paragraphs 44 and 45 below are not approved by the
2 Court, such amounts will be reallocated to the Net Settlement Amount unless allocated otherwise by
3 agreement of the Parties, with approval of the Court.

4 D. Ten percent (10%) of the Net Settlement Amount distributed to each Settlement Class
5 Member will be considered wages, and will be reported as such to each Settlement Class Member on
6 an IRS Form W-2. The Parties agree that ninety percent (90%) of the Net Settlement Amount
7 distributed to each Settlement Class Member will be considered penalties, premiums and/or interest,
8 and will be reported as such to each Settlement Class Member on an IRS Form 1099 misc., if
9 applicable. The Parties further agree that the PAGA payment distributed to each PAGA Employee
10 will be treated entirely as civil penalties, and will be reported as such to each PAGA Employee on an
11 IRS Form 1099-Misc, if applicable.

12 E. Within fifteen (15) calendar days of the transfer of the entire Gross Settlement Amount
13 to the Settlement Administrator, and only upon the Effective Date being met, the Settlement
14 Administrator shall issue to each Settlement Class Member his/her/their Individual Settlement
15 Payment.

16 F. Any portion of the Net Settlement Amount not cashed within one-hundred eighty (180)
17 days from the date of issuance of the check shall be paid to the *cy pres* recipient, the California
18 Farmworker Foundation.

19 41. PAGA Payment: Subject to the Court's Approval, up to a maximum of Twenty
20 Thousand Dollars and Zero Cents (\$20,000.00) shall be allocated as the PAGA Payment. Fifteen
21 Thousand Dollars and Zero Cents (\$15,000.00), representing 75% of the PAGA Payment, shall be
22 paid to the LWDA. Five Thousand Dollars and Zero Cents (\$5,000.00), representing 25% of the
23 penalties paid pursuant to PAGA, shall be distributed to the PAGA Employees as PAGA Employee
24 Payments. The PAGA Employees shall release their PAGA claims in their entirety and may not opt
25 out of or object to the PAGA release. To arrive at the PAGA Employee Payments, the portion of the
26 PAGA Payment allocated to the PAGA Employees shall be divided among the PAGA Employees on
27 a pro-rata basis, based upon the number of pay periods for each PAGA Employee during the PAGA
28 Period consistent with the formula set forth in paragraph 40, above.

1 42. Individual Settlement Payments Do Not Trigger Additional Benefits: All Individual
2 Settlement Payments, PAGA Employee Payments, and the Incentive Award shall not be utilized to
3 calculate any additional benefits under any benefit plans to which any Plaintiff, Settlement Class
4 Members and/or PAGA Employee may be eligible including, but not limited to: retirement plans,
5 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
6 PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that this Settlement
7 Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Settlement Class
8 Members and PAGA Employees may be entitled under any benefit plans. This Settlement Agreement
9 will also not affect any rights, contributions, or amounts relating to Defendant under any benefits plans
10 or cause Defendant to pay any amounts associated with any benefit plans.

11 43. Settlement Administrator: The Settlement Administrator shall be CPT Group (the
12 "Settlement Administrator"). The Settlement Administrator will maintain acceptable electronic and
13 physical security protocols to adequately protect and safeguard the private employee information it
14 will have access to as a result of the claims process. The fees and expenses of the Settlement
15 Administrator, which is currently estimated at approximately Fifteen Thousand Dollars and Zero Cents
16 (\$15,000.00), shall be paid through the Gross Settlement Amount.

17 44. Attorneys' Fees and Attorneys' Costs: Subject to the Court's approval, Class Counsel
18 shall seek attorneys' fees, which collectively shall not exceed thirty-five percent (35%) of \$275,000.00
19 or Ninety-Six Thousand Two Hundred Fifty Dollars (\$96,250.00), plus reasonable costs/expenses not
20 to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). Defendant will not object to Class
21 Counsel's application for attorneys' fees and costs in these amounts. The amount set forth above will
22 cover all work performed and all fees and costs incurred to date, and all work to be performed and all
23 fees and costs to be incurred in the future in connection with the approval by the Court of this
24 Stipulation of Settlement, and the administration of the Settlement. Should Class Counsel collectively
25 request a lesser amount, or should the Court approve a lesser amount of attorneys' fees and/or
26 attorneys' costs, the difference between the lesser amount and the maximum amount set forth above
27 shall be added to Net Settlement Amount. No Class Counsel shall be entitled to further fees or costs
28 from Defendant if it or they elect to appeal any reduction in the requested fee or cost award. Any
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1 reduction by the Court of Class Counsel's claimed attorneys' fees and/or reasonable costs/expenses
2 shall not be sufficient grounds to void the Settlement. Plaintiffs and Defendant shall bear their own
3 attorney's fees and costs, except as provided herein.

4 45. Class Representatives' Incentive Award: Subject to the Court's approval, the Class
5 Representatives (i.e. Ruben Hernandez and Diana Berber) will be paid an Incentive Award in an
6 amount up to a maximum of Seven Thousand Five Hundred Dollars (\$7,500.00) each for their service
7 as Class Representatives, which shall be paid from the Gross Settlement Amount. Defendant will not
8 object to Class Counsel's application for Court approval of an Incentive Award to the Class
9 Representatives in the total amount of Fifteen Thousand Dollars total (\$15,000.00), or Seven
10 Thousand Five Hundred Dollars (\$7,500.00) for each Class Representative. It is understood that the
11 Incentive Award is in addition to any claimed Individual Settlement Payment or PAGA Employee
12 Payment to which Plaintiff is entitled. The Incentive Award shall not be deemed wages and will be
13 reported on an IRS Form 1099-Misc, if applicable.

14 46. Tax Forms: The Settlement Administrator shall be responsible for issuing the payments
15 and withholding all required state and federal taxes in accordance with this Stipulation of Settlement.
16 The Settlement Administrator will issue IRS Forms W-2 with respect to the amounts paid as wages to
17 the Settlement Class Members, and IRS Forms 1099 with respect to the amounts paid as interest and
18 penalties to the Settlement Class Members and PAGA Employees. The Settlement Administrator will
19 also issue IRS Forms 1099 to: (1) Plaintiff for the Incentive Award; and (2) Class Counsel for the
20 amount paid for approved fees and costs. The Settlement Administrator will be responsible for
21 preparing these forms correctly. The Settlement Administrator shall also be responsible for submitting
22 Defendant's share of payroll taxes to the appropriate government agencies on behalf of Defendant.
23 Plaintiff and Class Counsel will be responsible for correctly characterizing this compensation for tax
24 purposes and for paying any taxes on the amounts received.

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1 47. Indemnification: Plaintiffs and Class Counsel acknowledge and agree that they are and
2 will be responsible for the payment of any and all Federal, State, and Local taxes or penalties
3 associated with their respective allocated portions of the payments described herein, and agree to
4 indemnify, defend, and hold the Released Parties harmless from any and all claims by any Federal,
5 State, or Local taxing authority that Plaintiff or Class Counsel failed to pay or underpaid his/her/their
6 taxes associated with the payments set forth in this Settlement. The Parties acknowledge and agree
7 that Class Counsel is not responsible for the payment of any Federal, State, and Local taxes or penalties
8 associated with payments to Plaintiffs and Class Members.

9 NOTICE TO THE SETTLEMENT CLASSES

10 48. Within twenty (20) calendar days of preliminary approval of this Settlement by the
11 Court, Defendant shall provide to the Settlement Administrator the following information ("Class
12 Member List"):

13 a. The full name, and last known address and full social security number of all
14 Class Members and PAGA Members; and

15 b. The information necessary to determine the estimated settlement allocation to
16 each Class Member, which is: (i) the total number of pay periods for each Class Member within the
17 Class Period; and (ii) the total number of pay periods for each PAGA Employee within the PAGA
18 Period.

19 49. The Settlement Administrator (along with any of its agents) shall represent and warrant
20 that it will: (1) provide reasonable and appropriate administrative, physical and technical safeguards,
21 including a reasonable security protocol, for any personally identifiable information including without
22 limitation the information contained in Paragraph 48 (collectively defined as "PII"), which it receives
23 from Defendant's Counsel and/or Class Counsel; (2) not disclose the PII to third parties, including
24 agents or subcontractors, without Defendant's consent; (3) not disclose or otherwise use the PII other
25 than to carry out its duties as set forth herein; and (4) promptly provide Defendant with notice if PII is
26 subject to unauthorized access, use, disclosure, modification, or destruction. The Settlement
27 Administrator may provide notice to both parties if the PII is subject to unauthorized access, use,
28 disclosure, modification or destruction; however, all additional communications from the Settlement

1 Administrator regarding the scope, circumstances, and substance shall be communicated solely to
2 Defendant. The PII will otherwise remain confidential by Plaintiff and Class Counsel, and will not be
3 disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the
4 reasonable efforts to administer this Settlement, pursuant to Defendant's express written authorization,
5 or by order of the Court. All PII will be used for settlement notification and settlement administration
6 and shall not be used for any other purpose by Class Counsel. This provision shall not be construed
7 to impede Class Counsel's ability to discharge their fiduciary duties to the Class Members, and if
8 additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant
9 and/or an order from the Court.

10 50. The Settlement Administrator shall send a Notice to each Class Member by first class
11 mail within fifteen (15) calendar days of receipt of the Class Member List. Prior to mailing the Notice,
12 the Settlement Administrator shall update the addresses of the Class Members by reference to the
13 National Change of Address Database maintained by the United States Postal Service. If a Notice is
14 returned as non-deliverable but with a forwarding address, the Settlement Administrator shall resend
15 the Notice to the forwarding address. If a Notice is returned as non-deliverable with no forwarding
16 address, the Settlement Administrator shall conduct an advanced skip trace to locate the most current
17 address of the person to whom the Notice was addressed, and shall resend within five (5) calendar
18 days the Notice to any updated address. Upon completion of these steps, the Parties shall be deemed
19 to have satisfied their obligations to provide the Notice to the affected Class Members.

20 51. The Settlement Administrator shall provide to the Court, concurrently with Plaintiffs'
21 Motion for Final Approval, a declaration of due diligence and proof of mailing with regard to the
22 mailing of the Notices.

23 52. The Settlement Administrator shall also be responsible for:

- 24 a. Mailing the Notice to Class Members as directed by the Court;
- 25 b. Consulting with counsel for the Parties concerning any relevant issue, including
26 (without limitation) the estimated amounts of approximate Individual Settlement Payments, PAGA
27 Employee Payments, and the acceptance of any late or deficient disputes;

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- 1 c. Keeping track of timely and proper requests for exclusion;
- 2 d. Calculation of the Individual Settlement Payments, PAGA Employee
- 3 Payments, and the PAGA Payment to the LWDA;
- 4 e. Providing weekly status reports to counsel for the Parties, including: (a) the
- 5 number of Notices mailed (including information regarding undeliverable Notices); (b) the number of
- 6 disputes received (and sending copies of said disputes); (c) the number of objections received; and,
- 7 (d) the number of requests for exclusion received;
- 8 f. Notifying Counsel for Defendant of the wiring instructions to fund the
- 9 Settlement Amount as approved by the Court;
- 10 g. Preparing the checks containing the Individual Settlement Payments;
- 11 h. Distributing and paying the Incentive Award, Individual Settlement Payments,
- 12 PAGA Employee Payments, the PAGA Payment to the LWDA, and fees and costs awarded to Class
- 13 Counsel;
- 14 i. Issuing tax forms and addressing employer and employee-side payroll taxes;
- 15 and
- 16 j. Such other tasks as the Parties mutually agree or the Court orders the Settlement
- 17 Administrator to perform, including responding to questions from Class Members.

18 **REQUESTS FOR EXCLUSION**

19 53. Each Class Member shall have sixty (60) calendar days from the mailing of the Notice

20 within which to complete and postmark a written request for exclusion, for return to the Settlement

21 Administrator. The request need not be in any particular form and will be considered a valid request

22 for exclusion so long as it communicates a clear desire by the Class Member not to be included in the

23 Settlement and/or Settlement Class, and identifies his/her/their full name and date of birth, and current

24 address along with his/her/their signature. No requests for exclusion shall be accepted if postmarked

25 after the sixty (60) calendar day period for the filing of exclusions. Class Members are responsible to

26 maintain a photocopy of their request for exclusion, reflecting that it was submitted in a timely manner.

27 Any disputes regarding the timeliness of a request for exclusion or whether a written communication

28 constitutes a valid request that cannot be resolved between the Parties shall be determined by the Court,

1 whose determination shall be final. Class Members shall have no right to request exclusion from the
2 PAGA release or PAGA Payment

3 54. Any Class Member who validly excludes himself/herself/themselves from this
4 Settlement shall not be bound by this Settlement Agreement and shall not be entitled to any portion of
5 the Net Settlement Amount, except for his or her inclusion in the PAGA release and his or her portion
6 of the PAGA Payment if applicable.

7 55. If ten percent (10%) or more of the Class Members opt out of the Settlement by
8 submitting valid and timely requests for exclusion, Defendant shall have the sole and absolute
9 discretion to rescind/void the Settlement Agreement within thirty (30) days after receiving from the
10 Settlement Administrator the final list of requests for exclusion. In the event that Defendant elects to
11 rescind/void the Settlement Agreement, the Defendant shall provide written notice of such rescission
12 to the Plaintiffs. Such rescission shall have the same effect as a termination of the Settlement
13 Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become
14 null and void and have no further force or effect. The Parties specifically agree not to solicit opt-outs,
15 directly or indirectly, through any means.

16 **OBJECTIONS TO THE SETTLEMENT**

17 56. Each Class Member shall have sixty (60) calendar days from the mailing of the Notice,
18 or such number of days as the Court shall specify, within which to postmark an objection, for return
19 to the Settlement Administrator. Any Class Member, who does not affirmatively opt-out of the
20 Settlement by submitting a valid and timely request for exclusion, may object to the approval of class
21 action settlement ("Objecting Class Member"). Any Class Member who makes a timely request for
22 exclusion waives his/her/their right to object. The Objecting Class Member shall inform the Court
23 and the Parties in the objection of (1) full name and current address of the Objecting Class Member;
24 (2) the specific reason(s) for the objection; and (3) shall also provide any and all evidence and
25 supporting papers (including, without limitation, all briefs, written evidence, and declarations) to be
26 considered by the Court.

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1 57. Any Objecting Class Member who wishes to appear at the Final Approval Hearing and
2 be heard orally in support of, or in opposition to the class action settlement, need not state so in the
3 objection.

4 58. Counsel for the Parties shall file any response to the objections submitted by Objecting
5 Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

6 59. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
7 Class Members to submit written objections to the Settlement or to appeal from the Court's Final
8 Order and Judgment. Class Counsel shall not represent any Class Members with respect to any such
9 objections to this Settlement.

10 **RELEASE OF CLAIMS BY CLASS REPRESENTATIVES, SETTLEMENT CLASS**

11 **MEMBERS, AND PAGA EMPLOYEES**

12 60. The "Class Released Claims". Upon the date Defendant funds the Gross Settlement
13 Amount, Plaintiff and all Class Members will release the Released Parties from all claims, rights,
14 demands, liabilities, and causes of action based on the factual allegations, demands, and causes of
15 action that were pled, or which could have been pled in the Action including, without limitation, claims
16 for: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide
17 meal periods or compensation in lieu thereof; (c) failure to provide rest periods or compensation in
18 lieu thereof; (d) failure to provide complete, accurate wage statements; (e) failure to pay wages timely
19 at time of termination or resignation; (f) failure to pay for all hours worked, (g) failure to provide
20 timely pay wages during employment; (h) violations of Business & Professions Code § 17200 et seq.;
21 (i) failure to maintain required payroll records, (j) failure to pay for sick days, (k) failure to provide
22 cool down rest periods, (l) failure to provide potable drinking water, (m) failure to provide adequate
23 shade, (n) failure to provide legally compliant bathrooms, (o) all claims under the California Labor
24 Code, PAGA, and/or for civil penalties that could have been premised on the claims, causes of action
25 or legal theories described above or any of the claims, causes of action or legal theories of relief
26 pleaded in the operative complaints including but not limited to Labor Code sections 210, 226.3,
27 1197.1, 558, and 2699, and (p) any and all wage and hour claims and that were asserted or could have
28 been asserted based on the allegations contained in the Action, arising at any time during the Class
16.

1 Period. The claims set forth hereinabove shall be collectively referred to as the "Class Released
2 Claims." Plaintiff Ruben Hernandez is not releasing his purported causes of action for wrongful
3 termination in violation of public policy or violation of Labor Code § 1102.5 in the operative complaint
4 he filed as a part of the Action.

5 61. Release of PAGA Claims. Upon the date Defendant funds the Gross Settlement
6 Amount, Plaintiffs and the PAGA Employees hereby do and shall be deemed to have fully, finally,
7 and forever released, settled, compromised, relinquished and discharged any and all of the Released
8 Parties of and from any and all civil penalty claims and PAGA claims predicated on the claims that
9 were asserted or could have been asserted based on the allegations contained in the Action. The PAGA
10 Employees will be issued a check for their share of the PAGA Payment and will not have the
11 opportunity to opt out of the PAGA Payment and release of the PAGA Claims set forth in this
12 Paragraph. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether
13 they cash or deposit their PAGA Employee Payment.

14 62. Release of Claims by Class Representatives. Upon the date Defendant funds the Gross
15 Settlement Amount, and as a condition of receiving any portion of their Incentive Award, the Class
16 Representatives, for themselves only, agree to the additional following General Release: In
17 consideration of Defendant's promises and agreements as set forth herein, the Class Representatives
18 hereby fully release the Released Parties from any and all Class Released Claims and also generally
19 release and discharge the Released Parties from any and all any claims for wages, bonuses, severance
20 pay, vacation pay, penalties, employment benefits, stock options, violation of any personnel policy,
21 any claims based on discrimination, harassment, unlawful retaliation, violation of public policy, or
22 damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied,
23 any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of
24 negligence, any theory of retaliation, any legal restriction on any Defendant's right to terminate the
25 employment relationship, or any federal, state, or other governmental statute, executive order,
26 regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided
27 by law. Plaintiff Ruben Hernandez is not releasing his alleged causes of action for wrongful
28 termination in violation of public policy or violation of Labor Code § 1102.5 in the operative complaint

1 he filed as a part of the Action. The Class Representatives shall be deemed to have, and by operation
2 of the Court's Final Order and Judgment shall have, expressly waived and relinquished to the fullest
3 extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil
4 Code, or any other similar provision under federal or state law that purports to limit the scope of a
5 general release, except as may otherwise be provided herein. The Class Representatives, for
6 themselves, have read Section 1542 of the Civil Code of the State of California, which provides as
7 follows:

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

14 The Class Representatives understand that Section 1542 gives the right not to release existing claims
15 of which they are not now aware unless the Class Representatives voluntarily choose to waive this
16 right. Having been so apprised, the Class Representatives nevertheless voluntarily waive the rights
17 described in Section 1542, and elect to assume all risks for claims that now exist in their favor, known
18 or unknown. The release of the claims of the Class Representatives as set forth in this Paragraph is a
19 condition precedent to enforcement of this Stipulation of Settlement. The release of the claims as set
20 forth in this Paragraph specifically excludes the alleged causes of action for wrongful termination in
21 violation of public policy and violation of Labor Code § 1102.5 in Plaintiff Ruben Hernandez's
22 operative complaint in the Action.

23 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL/CLASS CERTIFICATION**

24 63. For settlement purposes only, the Parties agree that the Class as defined in Paragraph 3
25 herein, and which will run through the end of the Class Period, may be certified in the Action. The
26 Parties are not certifying any PAGA claims. In support of this Agreement, Plaintiffs will request that
27 the Court certify for settlement purposes the Class as to all non-PAGA claims that have been asserted,
28 which Defendant shall not oppose or object to.

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1 64. Class Counsel shall promptly submit this Stipulation of Settlement to the Court in
2 support of Plaintiffs' Motion for Preliminary Approval and for determination by the Court as to
3 whether the proposed Settlement is within the range of possible judicial approval. Promptly upon
4 execution of this Stipulation of Settlement, Class Counsel shall apply to the Court for the entry of an
5 order substantially in the following form:

6 a. Scheduling of the Final Approval Hearing, which will not be scheduled any
7 earlier than April 1, 2022, on the question of whether the proposed Settlement, including payment of
8 attorneys' fees and costs and the Incentive Award should be finally approved as fair, reasonable and
9 adequate as to the Settlement Class Members and for approval of the PAGA Settlement;

10 b. Certifying the Settlement Class;

11 c. Approving the Notice of Class Action Settlement attached hereto as **Exhibit A**;

12 d. Approving the Opt Out Form attached hereto as **Exhibit B**;

13 e. Directing the mailing of the Notice by first class mail to the Class Members and
14 PAGA Employees; and

15 f. Preliminarily approving the Settlement subject only to the objections of the
16 Class Members and final review by the Court.

17 65. The Parties will work cooperatively to mutually agree upon the form and content of the
18 Notice, as well as the Proposed Order Granting Preliminary Approval.

19 66. The Class Representatives and Class Counsel will not make any public disclosure of
20 the Settlement until after the filing of the motion for preliminary approval of the Settlement, and the
21 filing of the motion for preliminary approval of the Settlement shall be the only public disclosure made
22 by the Class Representatives and Class Counsel. The Class Representatives and each Class Counsel
23 represent that they have not made any such disclosure. The Class Representatives and Class Counsel
24 shall not encourage any Class Members to opt-out. Class Counsel will take all steps necessary to
25 ensure that the Class Representatives are aware of, and will instruct the Class Representatives to adhere
26 to, the restriction against any public disclosure of the Settlement pursuant to this paragraph. Class
27 Counsel and the Class Representatives agree not to publicize the terms of this Settlement to the public
28 or with the media, including but not limited to, any newspaper, journal, magazine, website, or online
19.

1 reporter of settlements.

2 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

3 67. Following final approval by the Court of the Settlement provided for in this Stipulation
4 of Settlement, Class Counsel shall submit a proposed Final Order and Judgment in approximately the
5 following form and with input from Defendant's Counsel: Approving the Settlement, adjudging the
6 terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and
7 provisions including the approval of Class Counsel's application for an award of attorneys' fees and
8 costs and the Incentive Awards to the Class Representatives. The Parties will work cooperatively to
9 mutually agree upon the form and content of the Proposed Order Granting Final Approval of the Class
10 Settlement and Approval of the PAGA Settlement and Judgment.

11 **VOIDING OF AGREEMENT IF SETTLEMENT NOT FINALIZED**

12 68. Subject to the obligations of mutual full cooperation set forth herein, either the Class
13 Representatives or Defendant may terminate this Settlement if after submitting the settlement for
14 approval to the Court, the Court declines to enter the preliminary approval order, the final approval
15 order, or judgment in substantially the form submitted by the Parties, or if the Stipulation of Settlement
16 as agreed does not become final because of appellate court action. The terminating Party shall give to
17 the other Party (through counsel) written notice of its decision to terminate no later than fourteen (14)
18 calendar days after receiving notice that one of the enumerated events has occurred. Termination shall
19 have the following effects:

20 a. The Settlement Agreement shall have no effect, and no Party shall be bound by
21 any of its terms.

22 b. In the event the Settlement Agreement is terminated, Defendant shall have no
23 obligation to make any payments to any party, Settlement Class Member, PAGA Employee or Class
24 Counsel.

25 c. The preliminary approval order, final approval order and judgment shall be
26 vacated.

27 ///

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1 d. The Stipulation of Settlement and all negotiations, statements and proceedings
2 relating thereto shall all be considered mediation and settlement privileged to the fullest extent provided
3 by law, and without prejudice to the rights of any of the Parties, all of whom shall be restored to their
4 respective positions prior to the Settlement.

5 e. Except as otherwise discoverable, neither this Stipulation of Settlement nor any
6 ancillary documents, actions, statements or filings in furtherance of settlement or potential settlement
7 (including all matters associated with the mediation) shall be admissible or offered into evidence in the
8 Action or any other action for any purpose whatsoever.

9 f. The Party electing to terminate the agreement shall be responsible for paying
10 Settlement Administration costs incurred, if any.

11 PARTIES' AUTHORITY

12 69. The signatories hereto hereby represent that they are fully authorized to enter into this
13 Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

14 ESCALATOR CLAUSE

15 70. In the event the total number of Class Members exceeds 240, then the Gross Settlement
16 Amount shall be increased proportionally for each Class Member over 240, which increase will be an
17 additional \$963.75 per class member, calculated as the gross settlement amount divided by 240 class
18 members.

19 MUTUAL FULL COOPERATION

20 71. The Parties agree to fully cooperate with each other to accomplish the terms of this
21 Stipulation of Settlement, including, but not limited to, execution of such documents and taking of
22 such action as reasonably may be necessary to implement the terms of this Stipulation of Settlement.
23 The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts
24 contemplated by this Stipulation of Settlement and any other efforts that may become necessary by
25 order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth
26 herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall
27 take all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

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1 To Plaintiffs, the Settlement Class and Class Counsel:

2 Nazo Koulloukian
3 Koul Law Firm
4 3435 Wilshire Boulevard, Suite 1710
5 Los Angeles, California 90010
6 E-Mail: nazo@koullaw.com

7 Attorneys for Plaintiff, DIANA BERBER

8 Sahag Majarian
9 Law Offices of Sahag Majarian
10 18250 Ventura Boulevard
11 Tarzana, California 91356

12 Attorneys for Plaintiff, DIANA BERBER

13 Farrah Mirabel
14 Law Offices of Farrah Mirabel
15 1070 Stradella Road
16 Los Angeles, California 90077
17 E-Mail: fmesq@fmirabel.com

18 Attorneys for Plaintiff, RUBEN HERNANDEZ

19 To Defendant and Defendant's Counsel:

20 Ian B. Wieland
21 ian@sw2law.com
22 Paul Parvanian
23 paulp@sw2law.com
24 **SAGASER, WATKINS & WIELAND PC**
25 5260 North Palm Avenue, Suite 400
26 Fresno, California 93704
27 Telephone: (559) 421-7000
28 Facsimile: (559) 473-1483

29 **CONSTRUCTION**

30 76. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement
31 are the result of lengthy, intensive arms-length negotiations between the Parties, and this Stipulation
32 of Settlement shall not be construed in favor of or against any party by reason of the extent to which
33 any Party or their counsel participated in the drafting of this Stipulation of Settlement.

34 **CAPTIONS AND INTERPRETATIONS**

35 77. Paragraph titles or captions contained herein are inserted as a matter of convenience
36 and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of
37 23.

1 Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not
2 merely a recital.

3 MODIFICATION

4 78. This Stipulation of Settlement may not be changed, altered or modified, except in
5 writing and signed by the Parties hereto and approved by the Court. This Stipulation of Settlement
6 may not be discharged except by performance in accordance with its terms or by a writing signed by
7 the Parties hereto.

8 INTEGRATION CLAUSE

9 79. This Stipulation of Settlement, and the Exhibits attached hereto and incorporated herein
10 by reference, contain the entire agreement between the Parties relating to the settlement and transaction
11 contemplated hereby, and all prior or contemporaneous agreements, understandings, representations
12 and statements, whether oral or written, and whether by a Party or such Party's legal counsel, are
13 merged herein. No rights hereunder may be waived except in writing.

14 BINDING ON ASSIGNS

15 80. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
16 Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

17 CLASS MEMBER SIGNATORIES

18 81. It is agreed that because the Class Members are so numerous, it is impossible or
19 impractical to have each member execute this Stipulation of Settlement. The Notice of Class Action
20 Settlement, a copy of which is attached as Exhibit "A", will advise the Class Members of the binding
21 nature of the release, and the release shall have the same force and effect as if this Stipulation of
22 Settlement were executed by each member.

23 COUNTERPARTS

24 82. This Stipulation of Settlement may be executed in counterparts and by facsimile
25 signatures, and when each party has signed and delivered at least one such counterpart, each
26 counterpart shall be deemed an original and, when taken together with other signed counterparts, shall
27 constitute one Stipulation of Settlement binding upon and effective as to all parties.

28 ///

NO TAX ADVICE

83. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability. All Parties are independently relying on their own accountants and/or tax professionals in connection with all accounting and tax-related matters.

LIMITATION ON PUBLIC STATEMENTS

84. The Plaintiffs and Class Counsel will keep the Action, all documents, discovery, and pleadings in the Action, this Settlement, and this Settlement Agreement confidential through preliminary approval by the court of this Settlement. Thereafter, Plaintiffs and Class Counsel agree to keep the Action, all documents, discovery, and pleadings in the Action, this Settlement, and this Settlement Agreement confidential with respect to third parties, and not disclosed or publicized to any third parties. Confidentiality shall include, without limitation, no disclosures of any kind to the media, on any websites, or in any form of social media. Should the Plaintiffs or Class Counsel be asked by any third parties about any matters associated with the Action, this Settlement, and/or this Settlement Agreement, the response shall be that "the matter is resolved to the satisfaction of the Parties." Exceptions to the obligation of confidentiality are (i) as is necessary to comply with the law, (ii) for tax preparation, (iii) order of a court subpoena or as otherwise permitted by law, and (iv) as is reasonably necessary to give notice to the Class Members and/or seek settlement approval from the Court.

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

Dated: 3/25/2022, 2022

DocuSigned by:
Diana Berber
5B1F789802EA14F8...
Diana Berber
Plaintiff and Class Representative

Dated: _____, 2022

Ruben Hernandez
Plaintiff and Class Representative

NO TAX ADVICE

83. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability. All Parties are independently relying on their own accountants and/or tax professionals in connection with all accounting and tax-related matters.

LIMITATION ON PUBLIC STATEMENTS

84. The Plaintiffs and Class Counsel will keep the Action, all documents, discovery, and pleadings in the Action, this Settlement, and this Settlement Agreement confidential through preliminary approval by the court of this Settlement. Thereafter, Plaintiffs and Class Counsel agree to keep the Action, all documents, discovery, and pleadings in the Action, this Settlement, and this Settlement Agreement confidential with respect to third parties, and not disclosed or publicized to any third parties. Confidentiality shall include, without limitation, no disclosures of any kind to the media, on any websites, or in any form of social media. Should the Plaintiffs or Class Counsel be asked by any third parties about any matters associated with the Action, this Settlement, and/or this Settlement Agreement, the response shall be that "the matter is resolved to the satisfaction of the Parties." Exceptions to the obligation of confidentiality are (i) as is necessary to comply with the law, (ii) for tax preparation, (iii) order of a court subpoena or as otherwise permitted by law, and (iv) as is reasonably necessary to give notice to the Class Members and/or seek settlement approval from the Court.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

Dated: _____, 2022

Diana Barber
Plaintiff and Class Representative

Dated: 3-28, 2022

Ruben Hernandez
Ruben Hernandez
Plaintiff and Class Representative

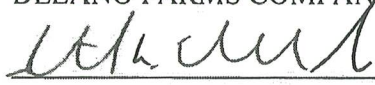
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JOINT STIPULATION AND SETTLEMENT AGREEMENT OF CLASS ACTION AND PAGA CLAIMS

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DELANO FARMS COMPANY

Dated: _____, 2022



By: Chairman

APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2022

Farrah Mirabel
Counsel for Plaintiff Ruben Hernandez

Dated: _____, 2022

Nazo Koulloukian
Counsel for Plaintiff Diana Berber

Dated: _____, 2022

Sahag Majarian, II
Counsel for Plaintiff Diana Berber

Dated: _____, 2022

Ian B. Wieland
Counsel for Defendant Delano Farms Company

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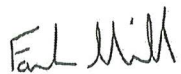
DELANO FARMS COMPANY

Dated: _____, 2022

By: _____

APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2022



Farrah Mirabel
Counsel for Plaintiff Ruben Hernandez

Dated: _____, 2022

Nazo Koulloukian
Counsel for Plaintiff Diana Berber

Dated: _____, 2022

Sahag Majarian, II
Counsel for Plaintiff Diana Berber

Dated: _____, 2022

Ian B. Wieland
Counsel for Defendant Delano Farms Company

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By: _____

APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2022

Farrah Mirabel
Counsel for Plaintiff Ruben Hernandez

Dated: 3/25/2022, 2022

DocuSigned by:
Nazo Koulloukian

Nazo Koulloukian
5F97388919414C7...
Counsel for Plaintiff Diana Berber

Dated: 3/25/2022, 2022

DocuSigned by:
Sahag Majarian

Sahag Majarian, II
3142D8828E6E4A2...
Counsel for Plaintiff Diana Berber

Dated: 4/4, 2022

Ian B. Wieland
Counsel for Defendant Delano Farms Company

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Ruben Hernandez et al. v. Delano Farms Company et al.
(Kern County Superior Court Case No. BCV-20-101103)

Diana Berber et al. v. Delano Farms Company et al.
(Kern County Superior Court Case No. BCV-20-101243)

You are not being sued. This is not an ad. This notice affects your rights. Please read it carefully.

YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice of Class Action Settlement because Delano Farms Company (“Defendant”) records show you are a “Class Member” and may be entitled to take part in this proposed class action settlement (“Settlement”). Class Members are all current and former hourly-paid, non-exempt employees of Defendant employed by Defendant in the State of California at any time during the period from May 13, 2016 through **date of preliminary approval** (the “Class Period”).

On **date of preliminary approval**, the Honorable **_____** of the Superior Court of California for the County of Kern granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. There has been no determination by the Court or any other factfinder on the merits. Defendant denies all allegations of wrongdoing and maintains that it complied at all times with all applicable laws, rules, and regulations at issue in this litigation.

Unless you choose not to participate in the Settlement (in other words, you choose to “opt out”) by following the procedures described below, you will be considered a Settlement Class Member, and if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement fund. The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at **_____**.m. on **_____**, in Department **_____** at Superior Court of California County of Kern, 1415 Truxtun Avenue, Bakersfield, California 93301.

You are not required to attend the hearing, but you are welcome to do so.

IF YOU STILL WORK FOR DEFENDANT, PARTICIPATION IN THIS SETTLEMENT WILL NOT AFFECT, NOR DISRUPT YOUR WORK IN ANY MANNER.

YOU WILL NOT BE RETALIATED AGAINST BY DEFENDANT FOR YOUR PARTICIPATION. California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking any adverse action against or otherwise targeting, retaliating, or discriminating against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement.

Questions? Contact the Settlement Administrator toll free at 1-***-***-********

You can view the proposed Final Approval Order, Final Judgment, and payment schedule at www.xxxxxxx.com

What Is This Case About?

This matter involves two civil lawsuits (collectively, the “Action”) filed against Defendant Delano Farms Company. On May 13, 2020, Plaintiff Ruben Hernandez filed his initial complaint. On May 27, 2020, Plaintiff Diana Berber filed her complaint. The cases have been consolidated and together, Plaintiffs allege various wage-and-hour-related claims brought under the Labor Code and Unfair Competition Law, on behalf of the Plaintiffs and anyone who worked as a non-exempt employee of Defendant in the Class Period.

The claims alleged are (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide meal periods or compensation in lieu thereof; (c) failure to provide rest periods or compensation in lieu thereof; (d) failure to provide complete, accurate wage statements; (e) failure to pay wages timely at time of termination or resignation; (f) failure to pay for all hours worked, (g) failure to provide timely pay wages during employment; (h) violations of Business & Professions Code § 17200 et seq., (i) failure to maintain required payroll records, (j) failure to pay for sick days, (k) failure to provide cool down rest periods, (l) failure to provide potable drinking water, (m) failure to provide adequate shade, and (n) failure to provide legally compliant bathrooms. Plaintiffs brought these claims under the California Labor Code and Unfair Competition Law. Plaintiffs also brought claims under the Private Attorneys General Act on behalf of themselves and other Aggrieved Employees for civil penalties based on the same labor code violations.

Defendant strongly denies it engaged in any alleged unlawful conduct. Defendant asserts, among other things, that it compensated its employees properly and in full, provides all requisite breaks and premiums, and furnishes compliant pay stubs. Defendant further asserts it has, and had, during the Class Period, lawful wage and hour policies, practices, and procedures. The Court has made no ruling on the merits of Plaintiffs’ claims.

Attorneys for Plaintiffs and the Class Members (“Class Counsel”) are:

LAW OFFICES OF FARAH MIRABEL

Farrah Mirabel
1070 Stradella Road
Los Angeles, California 90077
Telephone: (714) 747-4447
Facsimile: (949) 417-1796

KOUL LAW FIRM

Nazo Koulloukian
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Tel: (213) 761-5484
Fax: (213) 561-3938

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian, II
18250 Ventura Blvd.
Tarzana, CA 91356
Tel: (818) 609-0807
Fax: (818) 609-0892

The Parties and their attorneys have conducted extensive investigations of the facts and law during the litigation of this Action, have engaged in formal and informal discovery and negotiations, and have extensively reviewed and analyzed payroll and timekeeping records of the Class Members. The Parties and their attorneys have thoroughly analyzed the applicable law as it relates to Plaintiffs' allegations, the defenses thereto, and the damages claimed by Plaintiffs. There has been no determination by any court, administrative agency, or other tribunal as to the truth or validity of the factual or legal allegations made by Plaintiffs in the Action.

Class Counsel has diligently pursued an investigation of Plaintiffs' claims against Defendant. Based on the forgoing data, and on their own independent investigation and evaluation, Class Counsel is of the opinion that settlement with Defendant for the consideration and on the terms set forth in the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of additional delay and uncertainty associated with litigation, that class certification will not be granted as to some or all claims, that Defendant could be successful in various defenses, and that numerous issues could be ripe for additional appeals. In addition to the above, Class Counsel has weighed the monetary benefit under the Settlement to the Class Members and Aggrieved Employees against the expenses and length of continued proceedings that would be necessary to prosecute the Action against Defendant through trial and possible appeals.

Thus, the Plaintiffs and Class Counsel, with the assistance of an experienced mediator, engaged in extensive arm's length negotiations with Defendant and its attorneys. The negotiations led to the proposed Settlement. The Plaintiffs and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class Members and Aggrieved Employees. The parties' agreement has been documented in a Joint Stipulation and Settlement Agreement of Class and PAGA Claims ("Joint Stipulation"). The Court has preliminarily approved the Joint Stipulation. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

Defendant denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class action treatment. Neither the Parties' Joint Stipulation, nor any document referred to in it, nor any actions taken pursuant to the Joint Stipulation, is or should be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. There has been no determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class should be certified. Nonetheless, Defendant has concluded that further conduct of the Action would be protracted, distracting, and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendant has also taken into account

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

the uncertainty and risks inherent in any litigation. Defendant has therefore determined that it is desirable and beneficial to settle the Action in the manner and upon the terms and conditions set forth in the Joint Stipulation.

Summary of the Settlement Terms

Without admitting any wrongdoing, Defendant has agreed to pay up to the maximum settlement amount of \$ [REDACTED] to resolve the Action, which includes payment of all expenses and fees of the Claims Administrator to administer the Settlement (not to exceed \$15,000); recovery by Settlement Class Members; court-approved Class Counsel's attorneys' fees (not to exceed \$91,650.50); the Enhancement Award made to each Plaintiff (not to exceed \$7,500 each); a PAGA Payment totaling \$20,000, and verified litigation costs (not to exceed \$20,000).

After deducting the Enhancement Award to each Plaintiff, the Settlement Administration Costs, the PAGA Payment, and attorneys' fees and costs/expenses, the remaining funds (referred to as the "Net Settlement Amount") will be available to Class Members who do not opt out of the Settlement. The remaining 25% of the PAGA Payment will be available to Class Members who worked during the PAGA Period. The PAGA Period is defined as March 19, 2019 through date of preliminary approval.

Plan of Distribution to Class Members

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Participating Class Member actually worked during the Class Period ("Pay Periods"). Specific calculations of Individual Settlement Payments will be made as follows:

The Net Settlement Amount shall be allocated as follows: _____.

According to Defendant's records, you had [REDACTED] pay periods during the Class Period. Your estimated payment is approximately \$ [REDACTED].

The 25% of the PAGA Payment allocated to Class Members employed during the PAGA Period ("PAGA Employees") shall be divided among PAGA Employees on a pro-rata basis, based upon the following: _____.

According to Defendant's records, you had [REDACTED] pay periods during the PAGA Period. Your estimated PAGA Payment is approximately \$ [REDACTED].

Your total estimated payment is thus \$ [REDACTED].

If you believe the information provided above as to the number of your weeks worked is incorrect and wish to dispute it, please contact the Settlement Administrator at [REDACTED] no later than 60 days after the date this Notice of Class Action Settlement was mailed to you. If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes,

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

along with supporting documentation (“Disputes”), must be postmarked no later than [60 days from mailing].

DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

Class Member Tax Matters

IRS Forms W-2 and 1099-MISC will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments Class Members receive under the Settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this Settlement, 10% of each Individual Settlement Payment will be allocated to alleged unpaid wages, and 90% will be allocated as alleged unpaid penalties and interest. The PAGA payment distributed to each PAGA Employee will be treated entirely as civil penalties, and will be reported as such to each PAGA Employee on an IRS Form 1099-Misc. Again, please consult a tax advisor regarding the significance of how each Individual Settlement Payment is allocated between wages, penalties, and interest. This notice is not intended to provide legal or tax advice. To the extent this notice or any of its attachments is interpreted to contain or constitute advice regarding any tax issue, such advice is not intended or written to be used, and cannot be used, by any person for any tax or tax-related advice.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your Individual Settlement Payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1** and the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement funds. Upon the Effective Date, and upon funding of the Gross Settlement Amount and the employer-side payroll taxes, Plaintiffs and all Participating Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties any and all Class Released Claims and Release of PAGA Claims. The Released Parties means Defendant and its past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, members, affiliates, all those in privity with Defendant, and Defendant’s respective successors and predecessors in interest, subsidiaries, parents and attorneys. The Class Released Claims means all claims, rights, demands, liabilities, and causes of action based on the factual allegations, demands, and causes of action that were pled, or which could have been pled in the Action including, without limitation, claims for: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide meal periods or compensation in lieu thereof; (c) failure to provide rest periods or compensation in lieu thereof; (d) failure to provide complete, accurate wage statements; (e) failure to pay wages timely at time of termination or resignation; (f) failure to pay for all hours worked, (g) failure to provide

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

timely pay wages during employment; (h) violations of Business & Professions Code § 17200 et seq.; (i) failure to maintain required payroll records, (j) failure to pay for sick days, (k) failure to provide cool down rest periods, (l) failure to provide potable drinking water, (m) failure to provide adequate shade, (n) failure to provide legally compliant bathrooms, (o) all claims under the California Labor Code, PAGA, and/or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaints including but not limited to Labor Code sections 210, 226.3, 1197.1, 558, and 2699, and (p) any and all wage and hour claims and that were asserted or could have been asserted based on the allegations contained in the Action, arising at any time during the Class Period. The Release of PAGA Claims includes any and all civil penalty claims and PAGA Claims predicated on the claims that were asserted or could have been asserted based on the allegations contained in the Action. Plaintiff Ruben Hernandez is not releasing his claims for wrongful termination in violation of public policy or violation of Labor Code § 1102.5 in connection with the Settlement.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written “Request for Exclusion from The Class Action Settlement” letter or card to the Settlement Administrator postmarked no later than [Response Deadline]. The request need not be in any particular form and will be considered a valid request for exclusion so long as it communicates a clear desire by the Settlement Class Member not to be included in the Settlement and/or Settlement Class, and identifies the Class Member’s full name and date of birth, and current address along with the Class Member’s signature. You may also use the enclosed Opt-Out Form.

Sign, date, and mail your written request for exclusion by U.S. First-Class Mail or equivalent, to the address below.

Settlement Administrator
c/o [Name]
[Address]
Telephone: 1-888-XXX-XXXX

The written request to be excluded from the Settlement must be postmarked to the Settlement Administrator not later than [Response Deadline]. If you submit a request for exclusion which is not postmarked by [Response Deadline], your request for exclusion will be rejected, and you will be included in the Settlement Class. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

If you choose **Option 2**, you will no longer be a Class Member. Therefore, you (1) will not receive any payment from the Settlement (except for the PAGA Payment, if applicable), (2) will not be deemed to have released any claims due to this Settlement (except for the release of PAGA claims, if applicable), and (3) will be barred from filing an objection to the Settlement. However, your Request for Exclusion will not be valid with respect to PAGA claims, and you will remain a

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

settlement member for the PAGA claims and will have released your PAGA claims regardless of whether you choose to opt out.

Option 3 – *File an Objection to the Settlement*

If you wish to object to the Settlement, you should mail a written objection to the Settlement Administrator. Your objection shall inform the Court and the Parties of (1) full name and current address of the Objecting Class Member; (2) the specific reason(s) for the objection; and (3) shall also provide any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) to be considered by the Court. Your objection should be mailed to the Settlement Administrator on or before [Response Deadline].

You may also appear at the Final Fairness and Approval Hearing set for [redacted] at [redacted].m. Department [redacted] at the Superior Court of California County of Kern, 1415 Truxtun Avenue, Bakersfield, California 93301, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing at your own expense.

If you choose **Option 3**, you may still be entitled to the money from the Settlement. You will remain a member of the Settlement Class, and if the Court overrules your objections and approves the Settlement, you will receive your Individual Settlement Payment and will be bound by the terms of the Settlement in the same way as Class Members who do not object, including being deemed to have released the Released Claims. You cannot both object to the settlement and exclude yourself. You must choose one option only.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Superior Court of California for the County of Kern, 1415 Truxtun Avenue, Bakersfield, California 93301, during regular business hours of each court day.

All questions by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

You can view the final approval order and final judgment and payment schedule at www.xxxxxxx.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE
WITH QUESTIONS.**

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

EXHIBIT B

OPT-OUT FORM

Ruben Hernandez et al. v. Delano Farms Company et al.
(Kern County Superior Court Case No. BCV-20-101103)

Diana Berber et al. v. Delano Farms Company et al.
(Kern County Superior Court Case No. BCV-20-101243)

I have received the Notice of Class Action Settlement for the above lawsuits. I hereby request to opt-out from this class action settlement. I understand that because of this request, I will not receive any settlement payment.

BY SIGNING BELOW, I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT I AM THE PERSON WHOSE NAME APPEARS BELOW, AND THAT THE FOREGOING IS TRUE AND ACCURATE.

x _____
(Signature)

Date

(Print Name Clearly)

(Street Address)

(City / State / Zip Code)

(Telephone Number)

TO BE EFFECTIVE, THIS OPT-OUT FORM MUST BE MAILED TO THE CLASS ADMINISTRATOR AND POSTMARKED BY [REDACTED] (SIXTY (60) DAYS FROM THE DATE OF THE MAILING OF THE NOTICE OF CLASS ACTION SETTLEMENT.)

(Si a usted le gustaria hablar con alguien hacerca de este aviso en español, por favor llame al siguiente numero de teléfono: **[Insert number]**)