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Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

KAREN SAN JUAN, an individual, and
ARGELIA B. REYES SAN JUAN, an
individual, on behalf of themselves and all others
similarly situated,

Plaintiff,

v.

SAN MARCOS GROWERS, a California
Corporation; and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: 56-2020-00542257-CU-OE-VTA

Assigned to Hon. Matthew P. Guasco

CLASS ACTION

**DECLARATION OF MEHRDAD
BOKHOUR IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Reservation No.: 2549569

HEARING INFO

Date: April 12, 2021

Time: 8:30 a.m.

Dept.: 20

DECLARATION OF MEHRDAD BOKHOUR

I, Mehrdad Bokhour, say and declare, as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am the principal of Bokhour Law Group, P.C. and I serve as attorney of record for Plaintiffs Karen San Juan and Argelia B. Reyes (collectively “Plaintiffs”) and the Putative Class. I am familiar with the file in this matter and if called as a witness I could and would competently testify to the following facts of my own personal knowledge. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. I have been a member, in good standing, of the State Bar of California since 2012. I am admitted to practice before all California state courts, and the United States District Court for the Central District, Eastern District, and Southern District and have litigated class action and Private Attorney General Act (“PAGA”) representative action cases in various courts in California.

3. I graduated from the University of California, Berkeley in 2007. I received my Juris Doctorate from Loyola Law School—Los Angeles in 2012. I began my legal career focusing on plaintiff-side employment litigation with an emphasis on disability discrimination and harassment matters under the Fair Employment and Housing Act. After practicing for several years practicing in an amorphous range of civil litigation on behalf of both plaintiffs and defendants, I opened my law firm in 2014 with an exclusive concentration in representation of employees against employers to recover unpaid wages and vindicate harassment, discrimination and retaliation claims in various contexts. The vast majority of my cases have been litigated as class actions, representative PAGA actions, or a combination of the two.

4. I am also an active member of the California Employment Lawyers' Association ("CELA") and have attended various Continuing Legal Education courses pertaining to advocacy on behalf of employees. My firm has the experience, resources, and means necessary to allow us to provide adequate representation as Class Counsel to all aggrieved employees in this litigation. Currently, my firm is acting as lead counsel in at least twenty-five wage-and-hour class actions and co-counsel in at least twenty other wage-and-hour class action.

1 5. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during the
2 years 2017, 2018, 2019, 2020, and 2021, a distinction that is reserved for the top 5 % of lawyers in
3 the practice area.

4 6. Through a contested but productive mediation, Plaintiffs and Defendant San Marcos
5 Growers (“Defendant”) (collectively, the “Parties”) entered into a Stipulated Settlement Agreement
6 and Release of Claims resolving the wage and hour claims of the Settlement Class (“Settlement
7 Agreement” and/or “Settlement”), which is attached hereto as **Exhibit A**. The Settlement Agreement
8 seeks to fully release and discharge Defendant from the claims brought against it in this matter in
9 exchange for Defendant’s agreement to pay \$300,000.00 on a non-reversionary, non-claims made
10 basis (each Settlement Class Member will receive his/her share of the Net Settlement Amount
11 without having to submit a claim form or taking action, except for those who opt-out). Plaintiffs seek
12 to represent a class of similarly situated non-exempt employees directly employed by Defendant San
13 Marcos Growers (the “Settlement Class” or “Settlement Class Members”) at any time during the
14 period of June 10, 2016, through December 31, 2020 (the “Class Period”).

15 7. Under the terms of the Settlement Agreement, Defendant will not oppose Class
16 Counsels’ application for a reasonable award of Attorney’s Fees not to exceed 33.33% of the
17 Settlement Amount, Class Counsels’ litigation Costs not to exceed \$12,000.00, Settlement
18 Administration Costs not to exceed \$10,000.00, PAGA penalties of \$5,000.00 (of which \$3,750 or
19 75% will be paid to the LWDA and the remaining \$1,250.00 or 25% will be paid to the Settlement
20 Class Members), and Service Awards not to exceed \$10,000.00 to each of the named Plaintiffs. (S.A.
21 ¶ 44(a)-(h)), as follows:

	Total Amount
<i>Settlement Amount</i>	\$300,000.00
Attorneys’ Fees (33.33%)	\$100,000.00
Litigation Costs (not to exceed)	\$12,000.00
Administrator Costs (not to exceed)	\$5,000.00
PAGA payment to LWDA (75% of 5k award)	\$3,750.00
Plaintiffs’ Service Awards (not to exceed 10k each)	\$20,000.00
<i>Net Settlement Amount</i>	\$159,250.00

1 8. In terms of total recoveries, assuming a total class size of 74 Settlement Class
2 Members, the average payment to each Settlement Class Member will be approximately \$2,152. Of
3 course, those who worked more workweeks stand to recover proportionally more.

4 9. The Settlement is non-reversionary and Settlement Class Members will not be
5 required to submit claim forms to receive payment, but each Settlement Class Member will receive
6 the Notice Packet containing information about his/her share, the opportunity to dispute the
7 number of Weeks Worked by the Settlement Class Member, and the opportunity to opt-out or
8 object to the Settlement. All Settlement Class Members who do not affirmatively opt-out will
9 receive a settlement check upon the Court granting final approval (attached hereto as **Exhibit B**).

10 10. My office has performed considerable work and diligently investigated and
11 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
12 significant Settlement Amount for the benefit of the Settlement Class. We effectively
13 communicated and exchanged information informally with Defense counsel, which enabled the
14 Parties to successfully settle the case at mediation before Bruce Friedman, Esq. Because of the
15 risks involved in litigating the case and the contested legal and factual issues, Plaintiffs' counsel
16 believes this Settlement to be fair, reasonable, and adequate.

17 11. Because the Settlement is fair and reasonable and was negotiated at arm's length by
18 experienced counsel and an experienced mediator following a sufficient exchange of information
19 and documents in advance of mediation, it should be preliminarily approved. Plaintiffs respectfully
20 request that the Court enter an order preliminarily approving the Settlement, conditionally certifying
21 the Settlement Class under Code of Civil Procedure § 382 for settlement purposes, approving the
22 proposed Notice Packet, appointing Plaintiffs' counsel as Class Counsel, appointing Phoenix as the
23 Settlement Administrator, and scheduling a hearing for the final approval of the Settlement.

24 12. On June 10, 2020, Plaintiffs filed their Class Action Complaint against Defendant in
25 the Ventura Superior Court. Approximately 65 days after filing their Private Attorneys General Act
26 ("PAGA") Notice with the Labor and Workforce Development Agency ("LWDA"), Plaintiffs
27 amended their complaint to add a claim for civil penalties under PAGA. ("Operative Complaint")
28 The claims alleged in the Operative Complaint include (a) failure to pay overtime wages, (b) failure

1 to provide meal periods, (c) failure to provide rest breaks, (d) failure to provide accurate itemized
2 wage statements, (e) failure to reimburse business expenses, (f) failure to timely pay final wages
3 pursuant to Labor Code §§ 201 – 203, (g) failure to timely pay wages, (h) unfair and unlawful
4 competition, and (i) civil penalties under PAGA. San Marcos Growers, Inc. filed an Answer on
5 September 2, 2020.

6 13. Defendant retained counsel, denied the allegations, and vowed to vigorously defend
7 against it. However, before engaging in protracted litigation, the Parties agreed to explore resolution
8 through private mediation. In preparation for mediation, the Parties agreed to an informal discovery
9 process where information was exchanged relating to the applicable policies and procedures,
10 substantial payroll and time keeping records, size of the class, compensation policies and practices,
11 and potential value of the case. The sampling enabled Plaintiffs' counsel and its expert to fully
12 evaluate the potential claims and extrapolate the data to the entire Settlement Class. During this
13 process, Plaintiffs and their counsel analyzed, researched, and investigated the potential claims of
14 all similarly situated employees.

15 14. On December 2, 2020, Plaintiffs and Defendant participated in private mediation
16 before Bruce Friedman, Esq., who is an experienced class action mediator in California. After a
17 full-day mediation, the Parties reached a Settlement and then memorialized the terms of the
18 Settlement in a long-form Settlement Agreement.

19 15. Plaintiffs allege numerous wage and hour violations on behalf of the non-exempt
20 employees who worked at Defendant's facility during the Class Period. First, Plaintiffs allege they,
21 along with the Settlement Class were not compensated for all overtime and/or double-time hours
22 worked. Second, Plaintiffs allege that they, along with the Settlement Class were not provided timely
23 compliant meal periods and were not provided with a one-hour wage premium pursuant to Labor
24 Code § 226.7 on each such occasion. Specifically, Defendant maintained an unlawful policy and/or
25 practice that required Plaintiffs and the Settlement Class to work shifts over 5 hours and shifts over
26 10 hours without receiving timely, off-duty, and/or otherwise compliant meal periods.

27 16. Next, Plaintiffs alleges that Plaintiffs and the Settlement Class were not provided with
28 complaint rest periods and were not provided with a one-hour wage premium pursuant to Labor

1 Code § 226.7 on each such occasion. Plaintiffs allege that Defendant's regularly required Settlement
2 Class Members to work through their rest periods. Plaintiffs allege that Defendant does not maintain
3 an expense reimbursement policy and/or practice stated that Defendant will affirmatively reimburse
4 Plaintiffs and the Settlement Class for a reasonable portion of their monthly personal cell phone bills
5 and other expenses necessarily incurred in the discharge of their duties.

6 17. Finally, Plaintiffs allege that Defendant failed to provide accurate itemized wage
7 statements, failed to provide timely pay upon separation of employment, and alleged various PAGA
8 claims arising out of the alleged labor code violations.

9 18. Defendant contested and denied each of Plaintiffs' material allegations on the merits
10 and as to the propriety of the class and representative action. First, Defendant argued that its overtime
11 policies did not result in any underpayments and that it paid Class Members for all hours worked.
12 Defendant also argued that its meal and rest period policies were compliant with California law, that
13 it provided and made available 30-minute meal and 10 minute rest breaks to all employees, and that
14 employees did in fact take their required meal and rest periods.

15 19. As it pertains to Plaintiff's rest period claims, Defendant argued that it was permitted,
16 and authorized rest breaks and employees were allowed to leave the premises.

17 20. Further, Defendant argued that claims for wage statements, waiting time penalties
18 and PAGA penalties were derivative of other claims, which it argued have no merit. Defendant
19 further contended that Plaintiffs' waiting time penalty and wage statement claims based on the
20 underlying meal and rest period violations were unfounded based on the recent authority in *Naranjo*,
21 *et al. v. Spectrum Security Services, Inc.* (2019) No. B256232, holding that "Labor Code section
22 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226."

23 21. Defendant also contended that Plaintiffs' claims were not suitable for class
24 certification because individual inquiries would be required to establish, amongst other things, which
25 employees, if any, took meal periods of less than 30-minutes and why a particular employee received
26 a meal period of less than 30-minutes on a particular shift.

27 22. Based on Plaintiffs' expert's review of the data obtained through informal discovery
28 and information exchanges, and factoring in claim certification probabilities and liability

1 probabilities, Class Counsel formulated detailed damages models to evaluate the claims in
2 preparation for mediation and in order to reach a realistic and reasonable resolution as further
3 detailed below.

4 23. Plaintiffs first allege that Plaintiffs and the other Settlement Class Members were not
5 paid all minimum and overtime wages owed due to Defendant's policies and/or practices. Based on
6 data and information gathered in discovery and informally prior to mediation, as well as an analysis
7 of such data by a retained expert, Plaintiffs allege that the Settlement Class Members were underpaid
8 for approximately 657 overtime hours. Because the average hourly rate is approximately \$14.21,
9 the maximum potential damages for the overtime claims are \$14,000 (657 x \$21.31).

10 24. This maximum figure ignores Defendant's multiple defenses to the underpayment of
11 overtime claims. As such, Defendant argued that this constituted precisely the type of individualized
12 inquiry that is not appropriate for certification because the court would have to conduct a person-by-
13 person analysis to determine if the Settlement Class Member was correctly paid.

14 25. Based on this argument, and others, Plaintiffs assigned a 10% risk that the Court
15 would deny class certification on the underpayment of overtime claims. Additionally, Defendant
16 alleged that, if certification were granted, it would defeat the overtime claims on the merits at
17 summary judgment or at trial because its policies and/or practices were, always, facially neutral in
18 compliance with *See's I*. Plaintiffs assigned an additional 10% discount for risks at the merits stage,
19 resulting in a total risk-adjusted value for the overtime claims of \$11,343.

20 26. With respect to the waiting time penalty claim, there were approximately 26
21 Settlement Class Members that separated from their employment with Defendant during the
22 statutory period. As such, the maximum potential penalty under Labor Code § 201 – 203 is
23 \$94,212.30 (26 employees x 8.5 hours per day¹ x average rate of \$14.21 x 30 days). However,
24 Defendant argued that it would defeat the waiting time penalty claim as to Plaintiffs' underpayment
25 of overtime claims because the failure to pay wages, if any, was not willful given Defendant's
26 alleged facially neutral policy. Furthermore, Defendant argued that it would defeat liability as to

27
28 ¹ As extrapolated from the pre-mediation sampling provided by Defendant.

1 waiting time penalties arising out of the other unpaid wage claims as well as unavailability of
2 derivative claims for meal and rest violations. Plaintiffs applied a 20% risk of defeat at the class
3 certification stage, and an additional 25% risk of defeat at the summary judgment stage or on the
4 merits, resulting in the risk-adjusted value of \$56,527 for waiting time penalty claims.

5 27. With respect to Plaintiffs' meal and rest break claims, the Settlement Class Members
6 worked 59,430 shifts during the applicable period. Based on an alleged 84.4% violation rate for the
7 meal period and rest period claims, as extrapolated from the pre-mediation sampling, the maximum
8 potential damages are \$1,425,516, respectively.

9 28. However, Defendant vehemently opposed these claims based on the argument that
10 Plaintiffs' meal and rest period claims fall directly into the category of "individualized issues,"
11 claiming that its policies were compliant, and the employees had ample latitude regarding whether,
12 when, and how they took their breaks. Therefore, Defendant asserted that a fact-finder would have
13 to determine for each Settlement Class Member whether a break was missed and why, and why a
14 break was noncompliant/nonexistent, because if it was by the employee's choice, no liability
15 attaches to the Defendant. Based on these arguments, Plaintiffs believe there is a 40% risk that the
16 Court would deny class certification on these meal period claims and a 40% risk as to the rest break
17 claims.

18 29. Defendant also argued that, even if certification were granted, it would defeat these
19 claims on the merits because Defendant utilized compliant policies and practices and it would
20 present sufficient evidence that the workers were properly provided with all breaks. Moreover,
21 Defendant argued that Plaintiffs would be unable to present sufficient evidence establishing the
22 number of meal and rest period violations in order to allow a fact-finder to appropriately determine
23 damages. Plaintiffs acknowledged the risks and incorporated a further 50% reduction. Plaintiffs
24 therefore calculate the risk-adjusted value of the meal and rest claims to be \$256,592.

25 30. Finally, Plaintiffs estimate that the maximum potential penalties for the wage
26 statement claims as \$159,350.00 (based on approximately 1,624 allegedly violative wage statements
27 issued during the Class Period). In calculating Defendant's exposure, Plaintiffs gave Defendant the
28 benefit of assuming Plaintiffs could only obtain the "initial" wage statement penalty of \$50 per

violation, for a total of \$159,350.00 in potential wage statement penalties. (*Id.*; see also Lab. Code § 226(e) (providing for \$50 penalty for “initial” violations); *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1207 (2008) (finding that “initial” violation rate applies until the employer has been notified that it is violating a Labor Code provision.)

31. In response to Plaintiffs’ wage statement claims, Defendant contended that any alleged violations were not “knowing and intentional,” that Plaintiffs could not establish that they or anyone else suffered “injury” as a result of any alleged wage statement violations, and that no wage statement penalties can be recovered for failure to pay meal and rest period premium wages pursuant to *Gustavo Naranjo, et al. v. Spectrum Security Services, Inc.*, holding that “section 226.7 actions do not entitle employees to pursue the derivative penalties in section 203 and 226.” Further, Defendant relied on its defenses to Plaintiffs’ underlying claims both on the merits and to class certification. As such, Plaintiffs discounted the calculated maximum exposure by 50% for risk of non-certification, and by an additional 50% for risk of being unsuccessful on the merits, to arrive at an estimated total of \$39,837.50.

In sum when factoring in defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

• Unpaid Overtime Claim:	\$11,343
• Labor Code §§ 201 – 203 Claims:	\$56,527
• Meal and Rest Period Claims:	\$256,592
• Wage Statement Claims:	\$39,837.50
• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$364,299

32. Plaintiff also sought PAGA penalties for each violation for which they are available. Assuming that a PAGA penalty is available in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA penalty would be \$384,900 per claim for the 3,849 pay periods in the PAGA period. See Cal. Lab. Code. § 2699(f)(2). However, this maximum figure fails to account for numerous unclear issues relating to PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties). Second, the maximum figure fails to acknowledge that courts have wide

1 latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular
2 case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal.
4 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be
5 “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the
6 employer did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits
7 to employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
8 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because “there
9 is no straight answer to the question.”).

10 33. Given the realistic value of Plaintiffs’ claims, the \$300,000 Settlement is an excellent
11 result for the Settlement Class, considering that the Settlement amount totals approximately 82% of
12 Plaintiffs’ risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement
13 will provide significant monetary relief to the Settlement Class.

14 34. The Parties concluded that further litigation of the case would be protracted and
15 expensive, and that it is desirable that the case be fully and finally settled in order to limit further
16 risk, expense and protracted litigation. The Settlement was the product of extensive arm’s length
17 negotiations between counsel and was facilitated by an experienced wage-and-hour class action
18 mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-
19 collusive in nature. The Settlement reached is the product of substantial effort by the Parties and
20 their counsel. Although Plaintiffs and counsel believe that there was a possibility of certifying the
21 claims, they recognized the potential risk, expense, and complexity posed by litigation, such as
22 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages
23 awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant
24 prevailed on any of their defenses, the employees may not have received any substantial monetary
25 recovery.

26 35. The Settlement will result in a fair payment to each Settlement Class Member based
27 on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and
28 their counsel have diligently investigated the claims and defenses on behalf of the Settlement Class

1 Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding
2 further expenditure of Attorneys' Fees and Costs. After evaluating the significant risks attendant
3 with further litigation described above and weighing them against the benefits of a known
4 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed
5 to is believed to be in the best interest of Plaintiffs and the Settlement Class, and is a fair and
6 reasonable resolution of the claims alleged.

7 36. Plaintiffs' counsel brought to bear a great deal of collective experience in negotiating
8 the settlement of this case. As detailed herein, Plaintiffs' counsels engaged in necessary informal
9 discovery, investigation, sampling and expert evaluation, making it possible to exercise informed
10 judgment throughout the settlement process, including significant document review (e.g., documents
11 pertaining to Defendant's policies and procedures, personnel documents, wage statements, time
12 records, among others) and conducted an extensive analysis and extrapolation of the sampling of
13 class-wide data provided by Defendant.

14 37. Based on our experience in other cases, including wage and hour matters, I believe
15 Jonathan Melmed and I are qualified to evaluate the class claims and viability of defenses in this
16 class action. In this case, the recovery for each Settlement Class Member is reasonable, fair and
17 adequate, and a settlement at this time is in the best interest of the Settlement Class. The Settlement
18 provides each Settlement Class Member with compensation for the alleged violations when viewed
19 in relation to the costs and risks inherent in obtaining class certification and proceeding to trial.

20 38. Plaintiffs' counsels, as well as Defendant's counsel, fully endorse the terms and
21 conditions of the Settlement as set forth in the abovementioned Settlement Agreement.

22 39. Of course, the Settlement Amount represents a compromise figure, taking into
23 account the various risks surrounding class certification and the merits of Defendant's asserted
24 defenses. Nevertheless, the Settlement provides for fair and adequate payments to the Settlement
25 Class Members, with no reversion to Defendant.

26 40. Plaintiffs seeks Service Awards of \$10,000.00 each, which we believe is fair and
27 warranted. Plaintiffs agreed to come forward in an effort to effectuate a policy and practice change
28 that benefitted all other Settlement Class Members, and to recover unpaid wages and penalties. They

1 assumed significant risk in bringing this litigation, namely, had they lost, they would have been
2 ordered to pay Defendant's costs.

3 41. Plaintiffs provided invaluable assistance to the investigation and prosecution of this
4 case, including: providing factual background for the Class Complaint; reviewing the litigation
5 documents; providing information and documentation about Defendant's policies and practices;
6 participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement
7 documents. Plaintiffs agreed to participate in this case with no guarantee of personal benefit.
8 Plaintiffs' comprehensive declarations setting forth all of the reasons why they believes that the
9 Service Awards should be approved have been filed herewith.

10 42. As set forth above, I have handled upwards of 50 class and representative actions,
11 have been appointed as class counsel and have successfully litigated and resolved several class
12 actions, and many others remain pending.

13 43. When this case was taken on a contingency fee basis, with our firms agreeing to
14 assume responsibility for all litigation costs, the ultimate result was far from certain. In the course
15 of this litigation, we paid all costs including the filing fees, court costs, research/database fees,
16 mediation costs, and expert costs. There was never a guarantee that our firms would recoup these
17 expenditures.

18 44. It is our experience that attorneys' fee awards of one-third of a common fund
19 settlement are the standard in California. In this case, Plaintiffs' counsels agreed to seek one-third
20 of the Settlement Amount for Attorneys' Fees. Defendant does not oppose this fee request. The fee
21 is further warranted because it is within the range of reasonableness typically awarded in class
22 actions. Our firm's Costs will not exceed \$12,000 and will be based on the actual amount incurred
23 at the time of final approval.

24 45. Subject to the Court's approval, the parties stipulated to Simpluris to serve as the
25 Settlement Administrator. Simpluris is experienced in administering class action settlements and
26 will cost less than \$5,000 to administer this class action Settlement.

27 46. Plaintiffs have concurrently submitted the Settlement to the LWDA in accordance
28 with Labor Code Section 2699(1)(2). The proof of submission is attached hereto as **Exhibit "C"**.

47. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the Settlement as being fair, reasonable, and in the best interests of the Settlement Class, as well as preliminarily approve the requested Attorneys' Fees and Costs, and Service Awards to the Class Representatives.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct on this 18th day of March 2021, at Los Angeles, California.

/s/ Mehrdad Bokhour

By: _____
Mehrddad Bokhour, Esq.

EXHIBIT “A”

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individual, on behalf of themselves and all
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Plaintiff,

v.

SAN MARCOS GROWERS, a California
Corporation; and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: 56-2020-00542257-CU-OE-VTA

CLASS ACTION

**STIPULATED SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Stipulated Settlement Agreement and Release of Claims is entered into by and between
2 Plaintiffs Karen San Juan and Argelia B. Reyes San Juan, individually and on behalf of all others
3 similarly situated, and Defendant San Marcos Growers, Inc. and is approved by their respective
4 counsel of record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 1. "Action" or "Lawsuit" means and refers to the case entitled *Karen San Juan et al. v.*
7 *San Marcos Growers*, Ventura County Superior Court Case No. 56-2020-00542257-CU-OE-VTA.

8 2. "Agreement," "Stipulation," "Stipulation of Settlement," "Settlement Agreement,"
9 or "Stipulation and Agreement" shall mean this Stipulation for Class Action Settlement and Release
10 of Claims, including any attached Exhibits.

11 3. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
12 Jonathan Melmed of Melmed Law Group P.C.

13 4. "Class Data" means a complete list of all Settlement Class Members that Defendant
14 will diligently and in good faith compile from its records and provide to the Settlement
15 Administrator within ten (10) days after entry of the Preliminary Approval Order. The Class List
16 shall be on one spreadsheet and shall include the Settlement Class Members' full names; last known
17 addresses; telephone numbers; Social Security Numbers; and the total Weeks Worked during the
18 Class Period for each Settlement Class Member.

19 5. "Class Period" is deemed to be any time during the period of June 10, 2016, through
20 December 31, 2020.

21 6. "Class Representatives" or "Plaintiffs" means and refers to Karen San Juan and
22 Argelia B. Reyes.

23 7. "Complaint" refers to the Class Action Complaint filed in the Ventura County
24 Superior Court on or about June 10, 2020, in the matter of *Karen San Juan et al. v. San Marcos*
25 *Growers*, Ventura County Superior Court Case No. 56-2020-00542257-CU-OE-VTA.

26 8. "Court" (or "Judge") means the California Superior Court, County of Ventura.

27 9. "Defendant" means and refers to San Marcos Growers, Inc.
28

1 10. “Defendant’s Counsel” or “Defense Counsel” means and refers to Jill L. Friedman.
2 of Myers, Widders, Gibson, Jones & Feingold LLP.

3 11. “Effective Date” means the latest of the following dates: (i) if no Class Member
4 timely and properly intervenes or files a motion to vacate the judgment approving the Stipulation of
5 Settlement under Code of Civil Procedure § 663, then the date the Court enters an order granting
6 Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the
7 judgment approving the Stipulation of Settlement, then sixty-one (61) calendar days following the
8 date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a timely
9 appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or
10 petitions for *certiorari*), resulting in final judicial approval of the Settlement.

11 12. “Final Approval” refers to the order of the Court granting final approval of this
12 Stipulation of Settlement and entering a judgment approving this Agreement on substantially the
13 terms provided herein or as the same may be modified by subsequent written agreement of the
14 Parties.

15 13. “Final Settlement Class” means, collectively, all Settlement Class Members who
16 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

17 14. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
18 44(c) below.

19 15. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 44(b)
20 below.

21 16. “Notice” means the notice of proposed class settlement and setting of a Final
22 Approval Hearing that will be sent to the Settlement Class Members.

23 17. “Notice Packet” means the Notice to be sent to all Settlement Class Members.

24 18. “Notice Response Deadline” is 45 calendar days from the date the Notice Packet is
25 mailed to the Settlement Class Members.

26 19. “Objecting Settlement Class Member” means a Settlement Class Member, other than
27 Plaintiffs, who submits a valid and timely objection to the terms of this Agreement, pursuant to
28 Paragraph 64(c) below.

1 20. “Participating Class Member” means any and all Settlement Class Members who are
2 deemed to participate and receive an Individual Settlement Amount and do not opt-out by submitting
3 timely valid Requests for Exclusion.

4 21. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and Defendant,
5 collectively.

6 22. “Preliminary Approval Date” means the date the Court approves the Stipulation of
7 Settlement, and the exhibits thereto, and enters the Preliminary Approval Order.

8 23. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
9 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
10 providing for the issuance of the Notice Packet to the Settlement Class, an opportunity to opt out of
11 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing
12 on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Defendant
13 will not object to Plaintiffs’ motion for preliminary approval, but will be provided with an
14 opportunity to review and comment upon the motion before it is filed.

15 24. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator
16 for the benefit of the Final Settlement Class.

17 25. “Released Claims” by the Participating Class Members upon the date Defendant
18 fully funds the settlement will include all claims alleged in the operative Complaint along with
19 related claims that could have been alleged based on the facts alleged in the operative Complaint
20 including (a) failure to pay overtime wages, (b) failure to provide meal periods, (c) failure to provide
21 rest breaks, (d) failure to provide accurate itemized wage statements, (f) failure to timely pay final
22 wages pursuant to Labor Code §§ 201–203 (g) failure to timely pay wages, (h) failure to reimburse
23 business expenses (i) unfair and unlawful competition, (j) all other civil and statutory penalties,
24 including those recoverable under the Private Attorneys General Act, Labor Code § 2698 *et seq.*
25 (“PAGA”), and applicable IWC Order(s), based on the facts or claims alleged in the operative
26 Complaint. The release shall include a release under California Labor Code §§ 201, 202, 203, 204,
27 210, 226(a), 226.3, 226.7, 510, 512(a), 558, 1194, 1194.2, 1197, and 2802, Business and Professions
28 Code §§ 17200 *et seq.*

1 26. “Released Parties” means Defendant and its present and former officers, directors,
2 members, managers, shareholders, agents, subsidiaries, insurers, operators, partners, professional
3 employment organizations, successors and assignees.

4 27. “Release Period” shall be the time period governing the Released Claims which shall
5 be any time from June 10, 2016, through December 31, 2020.

6 28. “Release” shall mean the release and discharge of the Released Claims by Plaintiffs
7 and all of the Participating Class Members, and their assignees.

8 29. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 64(a)
9 below.

10 30. “Service Payment” or “Service Award” means the amount approved by the Court to
11 be paid to the Class Representatives in addition to their Individual Settlement Amounts as a
12 Participating Class Member.

13 31. “Settlement Administrator” means and refers to the third-party class action
14 settlement administrator mutually agreed to by the Parties, who will provide the Notice Packet to
15 the Class Members and distribute the settlement amounts as described in this Stipulation.

16 32. “Settlement Administration Costs” means the costs payable from the Settlement
17 Amount to the Settlement Administrator for administering this Settlement, including, but not limited
18 to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the
19 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties.
20 The Settlement Administration Costs shall be paid from the Settlement Amount, including, if
21 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
22 being the maximum costs necessary to administer the Settlement.

23 33. “Settlement Amount” shall have the meaning ascribed to it in Paragraph 44(a) below.

24 34. “Settlement Class” or “Covered Position” is defined as all current and former non-
25 exempt employees employed by Defendant San Marcos Growers, Inc. at any time during the Class
26 Period.

27 35. “Settlement Class Member” or “Class Members” refers to individual members of the
28 Settlement Class.

1 36. “Weeks Worked” for each Settlement Class Members means any week in which the
2 Settlement Class Member worked at least one (1) shift during the Class Period.

3 **B. General Terms**

4 37. The Complaint was filed on June 10, 2020, in the Court and alleges class action
5 claims, including: (a) failure to pay overtime wages, (b) failure to provide meal periods, (c) failure
6 to provide rest breaks, (d) failure to provide accurate itemized wage statements, (e) failure to
7 reimburse business expenses, (f) failure to timely pay final wages pursuant to Labor Code §§ 201 –
8 203, (g) failure to timely pay wages, (h) unfair and unlawful competition, and (i) civil penalties
9 under PAGA. San Marcos Growers, Inc. filed an Answer on September 2, 2020.

10 38. Defendant denies Plaintiffs' claims and allegations and contends that the Action is
11 not suitable for class certification.

12 39. The Class Representatives believe they can proceed with their representative and
13 class claims, that the Action is meritorious, and that class certification is appropriate.

14 40. The Parties have conducted a thorough investigation into the facts of the Action.
15 This includes conducting an extensive exchange of informal discovery, including Defendant’s
16 written policies and practices and the production of a sampling of payroll and timekeeping records
17 for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive
18 research with respect to the applicable law and potential defenses to the claims of the Settlement
19 Class. Class Counsel has diligently pursued an investigation of the Class Members’ claims against
20 Defendant. Based on the foregoing data and on their own independent investigation and evaluation,
21 Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the
22 terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best
23 interest of the Class Members in light of all known facts and circumstances, including the risk of
24 significant delay and uncertainty associated with litigation, various defenses asserted by Defendant,
25 and numerous potential appellate issues.

26 41. On December 2, 2020, Plaintiffs and Defendant participated in private mediation
27 before Bruce Friedman, Esq., who is an experienced class action mediator in California. After a full-
28 day mediation, the Parties reached a settlement.

1 42. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to
2 be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement,
3 shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or
4 law or liability on the claims or allegations in the Action.

5 43. Stipulation for Class Certification. For settlement purposes only, Defendant will
6 stipulate that the Settlement Class Members described herein who do not Request Exclusion from
7 the Settlement Class may be conditionally certified as a settlement class. This stipulation to
8 certification is in no way an admission that class action certification is proper and shall not be
9 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.
10 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class
11 certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing
12 on, and shall not be admissible in connection with the issue of whether or not certification would be
13 appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it
14 would continue to oppose class certification and the substantive merits of the case should the Court
15 fail to issue Final Approval. Plaintiffs expressly reserve their rights and declare that they will
16 continue to pursue class certification and a trial should the Court fail to issue Final Approval.

17 **C. Terms of Settlement**

18 44. The financial terms of the Settlement are as follows:

19 (a) Gross Settlement Amount: The Parties agree to settle this Action for Three Hundred
20 Thousand Dollars and Zero Cents (\$300,000) ("the Settlement Amount"). The Settlement Amount
21 is the maximum amount that will be paid, and includes Individual Settlement Amounts, attorneys'
22 fees of Class Counsel, costs and expenses, the Service Payments to the Class Representatives, all
23 Settlement Administration Costs, and payment to the LWDA for PAGA penalties. Notwithstanding
24 the foregoing, Defendant shall separately pay their share of payroll taxes and withholdings on the
25 portion of the Individual Settlement Amounts that is allocated and treated as wages.

26 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Settlement
27 Amount less attorneys' fees and litigation costs as approved and awarded by the Court, the Service
28 Payments to the Class Representatives as awarded by the Court, the Settlement Administration

1 Costs, and payment to the LWDA for PAGA penalties. In the event that the Court reduces the
2 attorneys' fees, costs, expenses or Service Awards, the difference shall be placed in the Net
3 Settlement Amount and allocated to the Settlement Class.

4 (c) Individual Settlement Amounts for the Settlement Class: The Individual Settlement
5 Amount for each Settlement Class Member will be calculated by the Settlement Administrator using
6 the Class Data provided by Defendant as follows. Compensable workweeks will be all Weeks
7 Worked by the Settlement Class Members during the Class Period. The dollars per compensable
8 workweek will be calculated by dividing the total Weeks Worked by Settlement Class Members
9 into the Net Settlement Amount to determine a per workweek value ("Workweek Value"). The
10 Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class
11 Member during the Class Period to determine the distribution, prior to legal deductions, for each
12 Participating Class Member. If there are any timely submitted Requests for Exclusion, the
13 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each
14 Participating Class Member so that the amount actually distributed to Participating Class Members
15 equals 100% of the Net Settlement Amount.

16 (d) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
17 will be allocated based on the allegations in the Action as follows: twenty percent (20%) will be
18 paid as wages subject to withholding of all applicable local, state and federal taxes; and eighty
19 percent (80%) will be paid as interest and as penalties from which no taxes will be withheld. The
20 Settlement Administrator will issue to each Settlement Class Member an Internal Revenue Service
21 Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
22 respect to the penalties and interest allocations.

23 (e) Service Payments to Class Representatives: The amount awarded to the Class
24 Representatives as Service Payments will be set by the Court in its discretion, not to exceed \$10,000
25 for each named class representative. Defendant agrees not to oppose this request. The Service
26 Payments to Plaintiffs will be paid out of the Gross Settlement Amount. The Class Representatives
27 will be bound by a General Release, set forth below, in exchange for this payment and will be issued
28 IRS Form 1099 in connection with this payment. Plaintiffs shall be solely and legally responsible

1 to pay any and all applicable taxes on these payments. The Parties agree that any amount awarded
2 as the Service Payments to Plaintiffs less than the requested amount shall not be a basis for Class
3 Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service
4 Payments, the difference shall be added to the Net Settlement Amount to be distributed to the
5 Participating Class Members.

6 (f) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by Class
7 Counsel to the Court for an award of attorneys' fees of up to one-third (33.33%) of the Settlement
8 Amount, plus reasonable litigation costs not to exceed \$12,000, and provided that Class Counsel
9 submits a declaration substantiating the costs. Defendant agrees not to oppose any contention by
10 Class Counsel that attorneys' fees should be based on the common fund theory. Should the Court
11 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the
12 Net Settlement Amount to be distributed to the Participating Class Members. Any Court order
13 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
14 Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall issue
15 to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by
16 the Court.

17 (g) Settlement Administration Costs: The fees and other charges of the Settlement
18 Administrator will be paid from the Settlement Amount not to exceed \$10,000.

19 (h) PAGA Penalties: The Parties agree that \$5,000 is allocated to PAGA Penalties, and
20 is to be paid from the Settlement Amount, subject to Court approval. Of this amount, \$3,750 (75%)
21 shall be paid to the LWDA in satisfaction of Plaintiffs' claims for penalties under the Private
22 Attorney General Act of 2004 ("PAGA") and \$1,250 (25%) will be included in the Net Settlement
23 Amount, payable to the Settlement Class Members.

24 (i) Tax Liability: Class Counsel and Defendant make no representation as to the tax
25 treatment or legal effect of payments called for hereunder, and Plaintiffs and the Settlement Class
26 Members are not relying on any statement or representation by Class Counsel or Defendant in this
27 regard. Plaintiffs and Participating Class Members understand and agree that they will be solely
28 responsible for the payment of any taxes and penalties assessed on their respective payments

1 described herein. Defendant, through the Settlement Administrator, shall be responsible for
2 reporting and paying the employer's share of payroll taxes (e.g. UI, ETT, Social Security and
3 Medicare taxes) which are to be paid by Defendant separately from and in addition to the Gross
4 Settlement Amount. Defendant, through the Settlement Administrator, will report each payment
5 made on the Gross Settlement Amount to government authorities including the Internal Revenue
6 Service as required by law, and it shall make all required deductions and/or withholdings.
7 Defendant, through the Settlement Administrator, will also retain the amount due for payroll taxes
8 and will pay the amounts to the pertinent government authorities in the manner and the time
9 prescribed by law. Defendant, through the Settlement Administrator, shall report payments to the
10 Internal Revenue Service (and other relevant government agencies) as wage income in the year of
11 payment on a form W-2 and as penalty and interest income on a Form 1099, as appropriate.

12 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
13 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO
14 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
15 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
16 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
17 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
18 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
19 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
20 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
21 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
22 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
23 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
24 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
25 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
26 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
27 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
28 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR

1 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
2 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
3 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
4 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
5 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
6 CONTEMPLATED BY THIS AGREEMENT.

7 45. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no
8 circumstances will any portion of the Settlement Amount revert to Defendant. Participating Class
9 Members will not have to make a claim in order to receive an Individual Settlement Amount.
10 Distributions, in the form of Individual Settlement Amounts, will be made directly to each
11 Participating Class Member. As set forth in Paragraph 67 below, the Settlement Administrator shall
12 handle any unclaimed funds as a result of a Participating Class Member not cashing an Individual
13 Settlement Amount by the check cashing deadline and send uncashed checks to the State of
14 California Unclaimed Property Fund, subject to Court approval.

15 46. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and
16 will so represent the same to the Court.

17 **D. Release by the Settlement Class**

18 47. Upon the date Defendant fully funds the settlement and entry of the Final Approval
19 Order, and except as to such rights or claims as may be created by this Stipulation of Settlement, the
20 Settlement Class (other than those who submit a valid Request for Exclusion) and each member of
21 the Settlement Class who does not timely opt-out, will forever completely release and discharge the
22 Released Parties from the Released Claims for the Release Period.

23 48. Each Settlement Class Member will be deemed to have made the foregoing Release
24 as if by manually signing it.

25 49. Plaintiffs and Defendant intend that the Settlement described in this Agreement will
26 release and preclude any further claim, whether by lawsuit, administrative claim or action,
27 arbitration, demand, or other action of any kind, by each and all of the Participating Class Members
28 to obtain a recovery based on, arising out of, and/or related to any and all of the Released Claims.

1 The Class Members shall be so notified in the Notice Packet. This paragraph does not apply to any
2 Class Member who timely and validly opts out of the Settlement.

3 50. Class Representatives, on behalf of themselves and the Settlement Class,
4 acknowledge and agree that the claims for unpaid wages in the Action, and untimely payment of
5 wages in the Action, are disputed, and that the payments set forth herein constitute payment of all
6 sums allegedly due to them. Class Representatives, on behalf of themselves and the Settlement
7 Class, acknowledge and agree that California Labor Code Section 206.5 is not applicable to the
8 Parties hereto. That section provides in pertinent part as follows:

9 An employer shall not require the execution of any release of any claim
10 or right on account of wages due, or to become due, or made as an advance
11 on wages to be earned, unless payment of those wages has been made.

12 **E. Release by Class Representatives**

13 51. As a material inducement to Defendant to enter into this Settlement Agreement,
14 Class Representative do hereby, for themselves and for each respective spouses, heirs, successors,
15 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
16 personal representatives, and assigns forever and completely release and discharge the Released
17 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
18 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
19 expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary
20 damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time
21 through the execution of this Stipulation, whether known or unknown, suspected or unsuspected,
22 including but not limited to all claims arising out of, based upon, or relating to Class Representatives'
23 employment with Defendant or the remuneration for or termination of such employment
24 (collectively, the "Class Representatives' Claims").

25 52. Without limiting the generality of the foregoing, Class Representatives expressly
26 release all claims or rights against Released Parties arising out of or relating to alleged violations of
27 any contracts, express or implied (including but not limited to any contract of employment); any
28 contract or covenant of good faith and fair dealing (express or implied); any tort, including any claim

1 for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages,
2 unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged “off
3 the clock” work under federal and state law, including California Labor Code Sections 204 and 558,
4 waiting time penalties pursuant to California Labor Code Section 203, damages or penalties
5 pursuant to California Labor Code Section 226, meal period and rest break payments and penalties
6 pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage
7 statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to
8 California Labor Code Sections 210, unfair competition and unfair business practices pursuant to
9 Business and Professions Code Section 17200 et seq., interest and costs pursuant to California Civil
10 Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to
11 attorneys’ fees and costs, including those pursuant to California Labor Code Section 1194 et seq.;
12 claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the
13 alleged violation or breach of any other state or federal statute, rule and or regulation; including all
14 applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including
15 but not limited to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys’
16 fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional
17 infliction of emotional distress, and defamation; any “wrongful discharge,” “constructive
18 discharge,” and “retaliation” claims; any claims relating to any breach of public policy; any legal
19 restrictions on Defendant’s right to discharge employees; and any federal, state, or other
20 governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the
21 Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment,
22 including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981
23 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) (equal pay); (4) Americans with
24 Disabilities Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (5) Family and Medical Leave
25 Act, 29 U.S.C. § 2601 et seq. (family/medical leave); (6) California Fair Employment and Housing
26 Act, Cal. Government Code § 12900 et seq. (discrimination or harassment in employment and/or
27 housing, including discrimination or harassment based on race, religious creed, color, national
28 origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation

1 for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government
2 Code § 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720
3 et seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color,
4 religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age
5 discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap
6 discrimination); (12) the Fair Labor Standards Act; and (13) Employee Retirement Income Security
7 Act, 29 U.S.C. § 1000 et seq. (employee benefits).

8 53. Class Representatives expressly waive and relinquish all rights and benefits afforded
9 by Section 1542 of the Civil Code of the State of California and do so understanding and
10 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of
11 the State of California states:

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

18 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
19 and complete release and discharge of all parties, Class Representatives and Class Counsel expressly
20 acknowledge that this Settlement Agreement is intended to include in its effect, without limitation,
21 all claims that Class Representatives knew of, as well as all claims that they do not know or suspect
22 to exist in her favor against the Released Parties, or any of them, for the time period from the
23 beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement
24 contemplates the extinguishment of any such Class Representatives' claims.

25 **F. Interim Stay of Proceedings**

26 54. Pending completion of all of the prerequisites necessary to effectuate this Settlement,
27 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such
28 as are necessary to effectuate the Settlement.

1 **G. Notice Process**

2 55. Appointment of Settlement Administrator. The Parties have agreed to the
3 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
4 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
5 independently reviewing and verifying documentation associated with any claims or opt-out
6 requests, resolving any disputes regarding the calculation or application of the formula for
7 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
8 Participating Class Members, issuing W-2 and 1099 Tax Forms, and performing such other tasks as
9 set forth herein or as the Parties mutually agree or that the Court orders.

10 56. Disputes Regarding Settlement Administration. Any and all disputes relating to
11 administration of the Settlement by the Settlement Administrator (except for disputes regarding
12 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over
13 the terms and conditions of this Stipulation of Settlement, until Plaintiffs and Defendant notify the
14 Court that all payments and obligations contemplated by this Stipulation of Settlement have been
15 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
16 good faith to resolve the dispute without the necessity of Court intervention. The Settlement
17 Administrator shall also be responsible for issuing to Plaintiffs, Settlement Class Members, and
18 Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid
19 pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up
20 all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate
21 government authorities.

22 57. Class Data. Within ten (10) days after entry of the Preliminary Approval Order,
23 Defendant shall provide to the Settlement Administrator on one spreadsheet a list of all Settlement
24 Class Members, including the Class Members' full names, last known addresses, telephone
25 numbers, last four digits of social security numbers, and the total Weeks Worked by each Class
26 Member during the Class Period. The Settlement Administrator will run a check of the Class
27 Members' addresses against those on file with the U.S. Postal Service's National Change of Address
28 List.

1 58. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
2 Settlement Administrator to the Settlement Class Members, by first class mail, in English and
3 Spanish, within ten (10) calendar days following the Settlement Administrator's receipt of the Class
4 Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain
5 forwarding addresses of Settlement Class Members if any envelopes are returned.

6 59. Returned Notice Packets. The Settlement Administrator will take steps to ensure that
7 the Notice Packet is received by all Settlement Class Members, including utilization of the National
8 Change of Address Database maintained by the United States Postal Service to review the accuracy
9 of and, if necessary, update a mailing address. Notices will be re-mailed to any Class Member for
10 whom an updated address is located within ten (10) calendar days following both the Settlement
11 Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall
12 be identical to the original Notice, except that it shall notify the Class Member that the exclusion
13 (opt-out) request or objection must be returned by the later of the Notice Response Deadline or
14 fifteen (15) days after the re-mailing of the Notice Packet.

15 60. Disputes Regarding Class Data. Class Members are deemed to participate in the
16 Settlement, unless they opt-out. The Notice Packet will inform Class Members of his/her estimated
17 Individual Settlement Amount and the number of weeks he/she worked during the Class Period.
18 Class Members may dispute their Weeks Worked if they feel they worked more weeks in the Class
19 Period in California than Defendant's records show by timely submitting evidence to the Settlement
20 Administrator. Defendant's records will be presumed determinative absent reliable evidence to
21 rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted
22 by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel
23 who agree to meet and confer in good faith about the evidence to determine the Class Member's
24 actual number of workweeks and estimated Individual Settlement Amount. If Class Counsel and
25 Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement
26 Administrator to render a final decision. Class Members will have until the Notice Response
27 Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

1 61. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
2 for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
3 diligence and proof of mailing with regard to the mailing of the Notice Packet.

4 62. Settlement Class Members' Rights. Each Settlement Class Member will be fully
5 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request
6 exclusion from the Settlement. The Notice Packet will inform the Settlement Class Members of the
7 Court-established deadlines for filing objections or requesting exclusion from the Settlement in
8 accordance with the following guidelines:

9 (a) Requests for Exclusion from Settlement Class. Any Settlement Class Member, other
10 than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for
11 Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline.
12 The Request for Exclusion should state:

13 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
14 IN THE SAN JUAN ET AL. V. SAN MARCOS GROWERS, INC.
15 LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED
16 FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
17 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

18 Any Request for Exclusion must include the full name, address, telephone number, last four
19 digits of the social security number or date of birth, and signature of the Settlement Class Member
20 requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement
21 Administrator at the specified address. Any such Request must be made in accordance with the
22 terms set forth in the Notice Packet. A Request for Exclusion will be timely only if postmarked by
23 the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class
24 Member who timely requests exclusion in compliance with these requirements: (i) will not have
25 any rights under this Agreement, including the right to object, appeal or comment on the Settlement;
26 (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound
27 by this Agreement, or the Judgment.

1 (b) Binding Effect on Final Settlement Class Members. Except for those Settlement
2 Class Members who exclude themselves in compliance with the procedures set forth above, all
3 Settlement Class Members will: (i) be deemed to be Participating Class Members for all purposes
4 under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the
5 Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
6 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
7 of the Settlement.

8 (c) Objections to Settlement. Any Settlement Class Member, other than Plaintiffs, may
9 object to the terms of this Agreement. To object, a Settlement Class Member shall inform the
10 Settlement Administrator, in writing, of his or her objection that must be postmarked by the Notice
11 Response Deadline at the address set forth in the Notice. Such objection shall include the full name,
12 address, telephone number, dates of employment with Defendant of the Objecting Settlement Class
13 Member, the case name and number, the basis for the objection, including any legal support and
14 each specific reason in support of the objection, as well as any documentation or evidence in support
15 thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and
16 address of his or her counsel. The Settlement Administrator shall provide objections, if any, to Class
17 Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator
18 shall attach the same to its declaration of due diligence and file with the Court prior to the Final
19 Approval Hearing. Any Participating Class Member who files an objection remains eligible to
20 receive monetary compensation from the Settlement. Plaintiffs and Defendant shall not be
21 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel
22 related to any objections to the Settlement. Submitting an objection does not preserve the right to
23 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by
24 timely and properly intervening or filing a motion to vacate the judgment under Code of Civil
25 Procedure § 663.

26 (d) Failure to Object. Any Settlement Class Member who desires to object but fails to
27 timely submit a written objection waives any right to object and will be foreclosed from making any
28 objection to this Settlement. Any Settlement Class Member who does not timely and properly

1 become a party of record by intervening or filing a motion to vacate the judgment waives any and
2 all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
3 appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
4 California Code of Civil Procedure section 473, and extraordinary writs.

5 (e) Responses to Objections. Counsel for the Parties may file a response to any
6 objections submitted by Objecting Settlement Class Members at least five (5) court days before the
7 date of the Final Approval Hearing.

8 63. Settlement Class Members will have until the Notice Response Deadline to object or
9 submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
10 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
11 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
12 Counsel or Defense Counsel.

13 64. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
14 the QSF of the Settlement Amount, as described in Paragraph 44(a) that is necessary to make all
15 payments required under this Settlement, within ten (10) days after Final Approval of the Settlement,
16 plus Defendant shall separately pay its share of employer payroll taxes as calculated and directed
17 by the Settlement Administrator.

18 65. Distribution of Funds. No later than ten (10) calendar days after the deposit of each
19 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
20 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment
21 to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the
22 Settlement Administration Costs.

23 66. Deadline for Cashing Settlement Checks. Participating Class Members shall have
24 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If
25 any Participating Class Member's check is not cashed within that period, the check will be void and
26 a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to
27 the State of California Unclaimed Property Fund. In the event that any settlement check is returned
28 to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will,

1 within five (5) business days of receipt of the returned settlement check, perform a skip trace to
2 locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address
3 is located by these means, the Administrator will have ten (10) business days to re-issue the check.
4 Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement Administrator
5 will have any liability for lost or stolen settlement checks, forged signatures on settlement checks,
6 or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
7 Participating Class Member notifies the Settlement Administrator that he or she believes that a
8 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
9 payment on such check. If the check in question has not been negotiated prior to the stop payment
10 order, the Settlement Administrator will issue a replacement check.

11 **H. Duties of the Parties Prior to the Court's Approval**

12 67. Promptly after execution of this Stipulation of Settlement, Plaintiffs will move the
13 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
14 accomplishing the following:

15 (a) Scheduling the Final Approval Hearing on the issue of whether this Settlement
16 should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing
17 on fees, costs and the Service Payments;

18 (b) Approving as to form and content the proposed Notice Packet, attached hereto as
19 Exhibit A;

20 (c) Directing the mailing of the Notice Packet by first class mail to the Settlement Class
21 Members;

22 (d) Preliminarily approving this Settlement; and

23 (e) Preliminarily certifying the class for purposes of this Settlement.

24 **I. Duties of the Parties Following Court's Final Approval**

25 68. In connection with the Final Approval Hearing provided for in this Stipulation of
26 Settlement, Class Counsel shall submit a proposed Final Approval Order:

27 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
28 adequate, and directing consummation of its terms and provisions;

1 (b) Approving Class Counsel's application for an award of attorneys' fees and
2 reimbursement of litigation costs and expenses, the Service Payments to the Class Representatives,
3 and the payment to the Settlement Administrator for costs of administering the settlement; and

4 (c) Entering judgment approving settlement, thereby permanently barring all Settlement
5 Class Members from prosecuting any Released Claims against any of the Released Parties.

6 **J. Voiding the Agreement**

7 69. If the Court fails or refuses to issue the Final Approval Order or fails to approve any
8 material condition of this Stipulation of Settlement which effects a fundamental change of the
9 Settlement, the entire Stipulation of Settlement shall be rendered voidable and unenforceable as to
10 all Parties herein at the option of either Party.

11 70. If the Settlement is voided or fails for any reason, Plaintiffs and Defendant will have
12 no further obligations under the Settlement, including any obligation by Defendant to pay the
13 Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

14 71. If the Settlement is voided or fails for any reason, any costs incurred by the
15 Settlement Administrator shall be borne equally by Defendant and Plaintiffs, unless otherwise
16 specified in this Agreement.

17 72. Notwithstanding any other provision of this Agreement, Defendant shall retain the
18 right, in the exercise of its sole discretion, to nullify the Settlement within thirty (30) days after the
19 expiration of the opt-out period set forth above if more than ten percent (10%) of the Class Members
20 opt-out of this Settlement.

21 **K. Other Terms**

22 73. Waiver. The waiver by one Party of any breach of this Agreement by another Party
23 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

24 74. Parties' Authority. The signatories hereto represent that they are fully authorized to
25 enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions
26 hereof.

27 75. News Media. The Parties agree that no party shall issue any press release to the news
28 media, or communicate in any way with any news media, concerning the settlement or litigation.

1 76. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
2 accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of
3 such documents and to take such other action as may reasonably be necessary to implement the
4 terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their
5 best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts
6 that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of
7 Settlement and the terms set forth herein. As soon as practicable after execution of this Stipulation
8 of Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and
9 Defendant's counsel, take all necessary steps to secure the Court's preliminary and final approval
10 of the settlement, and the final entry of judgment.

11 77. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
12 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,
13 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
14 action or rights released and discharged by this Stipulation of Settlement.

15 78. No Admission. Defendant denies any and all liability to Plaintiffs and/or any
16 Settlement Class Member in this Action, as to any and all causes of action that were asserted or that
17 might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise
18 the matters at issue in the Complaint to avoid further substantial expense and the inconvenience and
19 distraction of protracted and burdensome litigation. Defendant also has taken into account the
20 uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that
21 it has asserted or could assert against Plaintiff, has determined that it is desirable and beneficial that
22 Plaintiffs' claims be settled in the manner and upon the terms and conditions set forth in this
23 Agreement.

24 79. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
25 Order, nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
26 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
27 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
28 Stipulation of Settlement with the intention of avoiding further disputes and litigation with the

1 attendant inconvenience and expenses. This Stipulation of Settlement is a settlement document, and
2 it, along with all related documents such as the notices, and motions for preliminary and final
3 approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence
4 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the
5 settlement, and/or interpret or enforce this Stipulation of Settlement. The stipulation for class
6 certification as part of this Stipulation of Settlement is for settlement purposes only and if, for any
7 reason the settlement is not approved, the stipulation will be of no force or effect.

8 80. Notices. Unless otherwise specifically provided herein, all notices, demands or other
9 communications given hereunder shall be in writing and shall be deemed to have been duly given
10 as of the third business day after mailing by United States registered or certified mail, return receipt
11 requested, addressed:

12 To the Settlement Class:

13 Mehrdad Bokhour, Esq.
14 Bokhour Law Group, P.C.
15 1901 Avenue of the Stars, Suite 450
16 Los Angeles, California 90067
17 Tel: (310) 975-1493; Fax: (310) 675-0861

18 Jonathan Melmd, Esq.
19 Melmed Law Group, PC
20 1801 Century Park East, Suite 850
21 Los Angeles, California 90067
22 Tel: (310) 824-3828; Fax: (310) 862-6851

23 To Defendant:

24 Jill Friedman, Esq.
25 Myers, Widders, Gibson, Jones & Feingold, LLP
26 5425 Everglades St.
27 Ventura, California 93003
28 (805) 644-7188

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

1 Stipulation of Settlement. Plaintiffs and Defendant expressly waive the common-law and statutory
2 rule of construction that ambiguities should be construed against the drafter of an agreement and
3 further agree, covenant, and represent that the language in all parts of this Agreement shall be in all
4 cases construed as a whole, according to its fair meaning.

5 82. Captions and Interpretations. Paragraph titles or captions contained herein are
6 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe
7 the scope of this Stipulation of Settlement or any provision hereof. Each term of this Stipulation of
8 Settlement is contractual and not merely a recital.

9 83. Modification. This Stipulation of Settlement may not be changed, altered, or
10 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
11 Stipulation of Settlement may not be discharged except by performance in accordance with its terms
12 or by a writing signed by all of the Parties hereto.

13 84. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this
14 Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written
15 notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiffs and
16 Defendant agree to seek the help of the mediator Bruce Friedman to resolve any dispute they are
17 unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and
18 costs. This provision shall not apply to any legal action or other proceeding instituted by any person
19 or entity other than Plaintiffs or Defendant.

20 85. Choice of Law. This Settlement Agreement shall be governed by and construed,
21 enforced and administered in accordance with the laws of the State of California, without regard to
22 its conflicts-of-law rules.

23 86. Integration Clause. This Stipulation of Settlement contains the entire agreement
24 between the Parties relating to the settlement and transaction contemplated hereby, and all prior or
25 contemporaneous agreements, understandings, representations, and statements, whether oral or
26 written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder
27 may be waived except in writing.

1 87. Binding On Assigns. This Stipulation of Settlement shall be binding upon and inure
2 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
3 successors and assigns.

4 88. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
5 because the members of the Settlement Class are numerous, it is impossible or impractical to have
6 each Class member execute this Stipulation of Settlement. The Notice Packet will advise all
7 Settlement Class Members of the binding nature of the release provided herein and such shall have
8 the same force and effect as if each Settlement Class Member executed this Stipulation of
9 Settlement.

10 89. Counterparts. This Stipulation of Settlement may be executed in counterparts, and
11 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
12 deemed an original, and, when taken together with other signed counterparts, shall constitute one
13 fully-signed Stipulation of Settlement, which shall be binding upon and effective as to all Parties.
14 Electronic signatures shall have the same force and effect as an original.

15
16 Dated: January __, 2021

CLASS REPRESENTATIVE:

17
18 _____
19 Karen San Juan

20 Dated: January __, 2021

CLASS REPRESENTATIVE:

21
22 _____
23 Argelia B. Reyes San Juan

24 Dated: January 4, 2021

DEFENDANT:

25 
26 By: Randolph F. Baldwin
27 Its: President
28 San Marcos Growers, Inc.

1 **APPROVED AS TO FORM**

2 DATED: January __, 2021

BOKHOUR LAW GROUP, P.C.

5 BY: _____

MEHRDAD BOKHOUR

Attorneys for Plaintiffs and the Putative Class

7 DATED: January __, 2021

MELMED LAW GROUP PC

10 BY: _____

JONATHAN MELMED

Attorneys for Plaintiffs and the Putative Class

12 DATED: January S, 2021

MYERS, WIDDERS, GIBSON, JONES & FEINGOLD
LLP

16 By:  _____

JILL E. FRIEDMAN

Attorneys for Defendant SAN MARCOS GROWERS **INC.**

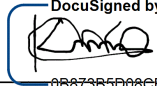
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88. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class member execute this Stipulation of Settlement. The Notice Packet will advise all Settlement Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if each Settlement Class Member executed this Stipulation of Settlement.

89. Counterparts. This Stipulation of Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Stipulation of Settlement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

21
Dated: January __, 2021

CLASS REPRESENTATIVE:

DocuSigned by:

0B873B5D08CF45E...
Karen San Juan

21
Dated: January __, 2021

CLASS REPRESENTATIVE:

DocuSigned by:

3D337AF4FAF44B8...
Argelia B. Reyes San Juan

Dated: January __, 2021

DEFENDANT:

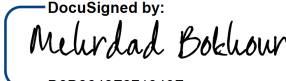
By: _____
Its: _____
San Marcos Growers, Inc.

APPROVED AS TO FORM

21

DATED: January __, 2021

BOKHOUR LAW GROUP, P.C.

BY: 
MEHRDAD BOKHOUR
Attorneys for Plaintiffs and the Putative Class

21
DATED: January __, 2021

MELMED LAW GROUP PC

BY: 
JONATHAN MELMED
Attorneys for Plaintiffs and the Putative Class

DATED: January __, 2021

MYERS, WIDDERS, GIBSON, JONES & FEINGOLD
LLP

By: _____
JILL L. FRIEDMAN
Attorneys for Defendant SAN MARCOS GROWERS

EXHIBIT “B”

Superior Court of the State of California for the County of Ventura

If you are or were an employed by San Marcos Growers, Inc. you could get a payment from a class action settlement.

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

- Two former employees sued San Marcos Growers, Inc. (“San Marcos Growers”) claiming it did not pay all wages, did not provide meal and rest periods, failed to timely pay final wages upon separation of employment and failed to issue accurate wage statements.
- The court allowed the lawsuit to be a class action on behalf of all California residents who are or were employed by San Marcos Growers from June 10, 2016 through December 31, 2020.
- The Court did not decide whether San Marcos Growers did anything wrong.
- The lawsuit was settled for \$300,000. The settlement pays money to employees and releases San Marcos Growers from liability.
- Court-appointed lawyers for the non-exempt, hourly employees will ask the Court for up to \$100,000 as fees for investigating the facts, litigating the case, and negotiating the settlement and for reimbursement of expenses of the lawsuit.
- Your legal rights are affected whether you act, or do not act. Read this notice carefully.

Your Legal Rights and Options in this Settlement	
Do Nothing	Stay in this lawsuit. Receive a share in the settlement amount.
Ask To Be Excluded	Get out of this lawsuit. Get No Benefits from it. Keep rights. If you ask to be excluded, you will not share in the settlement amount. But you keep any rights to sue San Marcos Growers about the same legal claims in this lawsuit.
Object	Write to the Court about why you do not like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

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

What This Notice Contains

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1. Why did I get this notice package?

San Marcos Growers' records show that you currently work, or previously worked, as a non-exempt hourly employee at some point from June 10, 2016 through December 31, 2020.

You have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement allows. You will be informed of the progress of the settlement.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the California Superior Court for the County of Ventura, and the case is known as *Karen San Juan, et al. v. San Marcos Growers*, Case No. 56-2020-00542257-CU-OE-VTA. The person who sued are called the Plaintiffs, and the company they sued, San Marcos Growers is called the Defendant.

2. What is this lawsuit about?

This lawsuit covers San Marcos Growers' non-exempt, hourly employees in California from June 16, 2016 through December 31, 2020. The lawsuit claims San Marcos Growers failed to pay all wages, provide meal periods; failed to authorize and permit rest periods; failed to pay wages final wages upon separation of employment; failed to pay all wages owed in a timely manner; failed to issue adequate wage statements; engaged in unfair business practices violations based on foregoing and PAGA civil penalties for the underlying violations.

San Marcos Growers denies that it did anything wrong.

3. Why is this a class action?

In a class action, one or more people called a Class Representative (in this case Karen San Juan and Argelia B. Reyes San Juan), sue on behalf of people who have similar claims. All these people are Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. California Superior Court Judge Matthew P. Guasco is overseeing this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and the attorneys think the settlement is best for all Class Members.

5. How do I know if I am part of the settlement?

Judge Matthew P. Guasco decided that everyone who fits this description is a Class Member:

All individuals who are or were employed by San Marcos Growers in California who worked as a non-exempt hourly employee from June 16, 2016 through December 31, 2020.

The Settlement Benefits – What You Get

6. What does the settlement provide?

San Marcos Growers has agreed to create a \$300,000 fund to be divided among all Class Members who do not “exclude” themselves from the settlement. A description of how to “exclude” yourself is provided below, in Questions 11 and 12.

7. How much will my payment be?

Your share of the fund will depend on the number of Class Members that participate (*i.e.*, the number of Class Members who do not “exclude” themselves), and how many weeks you worked for San Marcos Growers. Here’s how it works:

A “workweek” is considered to be any week that you worked for San Marcos Growers from June 16, 2016 through December 31, 2020 that you worked at San Marcos Growers.

Phoenix Settlement Administrators (which is going to be the administrator of this settlement, if the court approves the settlement) are gathering all the data necessary to calculate how many “workweeks” there are in *total* among *all* of the Class Members.

After fees and costs are paid out of the settlement amount (the fees and costs are discussed in Questions 17 and 18, below), the leftover amount of money that will be distributed to the Class is called the Net Settlement Amount. Phoenix Settlement Administrators will then divide the Net Settlement Amount by the total amount of workweeks to figure out how much money each class member will receive for *each* workweek that they worked for San Marcos Growers. This amount of money is called the “Workweek Value.”

Each Class Member will receive an amount of money which is equal to the number of Workweeks he or she worked for San Marcos Growers multiplied by the workweek value.

For example, if the Workweek Value is \$75 and a Class Member worked for 100 Workweeks, that Class Member will receive \$7,500.

One-third of your individual settlement amount will be considered “wages,” which means that you will be issued a Form W-2 and payroll taxes will be taken out of that payment. One-third of your individual settlement amount will be considered “penalties” which means that you will be issued a Form 1099 (and payroll taxes will not be taken out), and one-third of your individual settlement amount will be considered “interest” which also means that you will be issued a Form 1099 (and payroll taxes will not be taken out).

You should remember that you are responsible for your own tax obligations that are associated with any money that you get from this settlement.

The number of workweeks you worked as a non-exempt hourly employee for San Marcos Growers from June 16, 2016 through December 31, 2020 will be calculated based on San Marcos Growers’ records. If you feel that you were not credited with the correct number of workweeks worked, you may submit evidence to the Settlement Administrator on or before [*insert date of Response Deadline*] with documentation to establish the number of pay periods you claim to have actually worked during the Class Period. The Plaintiffs and the Defendant and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should be credited

to you. The Settlement Administrator will make the final decision as to how many weeks are credited and report the outcome to you. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

8. What if my address changes?

If you move after receiving this notice or if it was misaddressed, please complete the Change of Address portion of the Share Form (which you should have received in this notice packet) and mail it to the Settlement Administrator at:

[Insert Phoenix Settlement Administrators address]

It is important that you send in your Change of Address form so that future notices and/or the settlement payment can reach you.

You Do Not Need To Do Anything In Order To Get Your Payment

9. How can I get a payment?

You do not need to do anything to get your payment. If you are a Class Member (as defined above in Question #5), and received this notice, you are automatically included in the settlement and do not need to take any further action to receive a payment.

10. When would I get my payment?

The Court will hold a hearing on [insert final approval hearing date] to decide whether to approve the settlement. If Judge Matthew P. Guasco approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who is a Class Member and who did not “exclude” themselves will be informed of the progress of the settlement. Please be patient.

11. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means that you can’t sue, continue to sue, or be part of any other lawsuit against San Marcos Growers about the legal issues in this case. It also means that all of the Court’s orders will apply to you and legally bind you. If you do not exclude yourself, then you will agree to a “Release of Claims.” These claims are exactly the legal claims that you give up if you get the settlement benefit, and they are:

The settlement includes a release by Class Members (other than those who submitted a timely request to be excluded) of Defendant and its affiliated entities, parents, subsidiaries, owners, officers, shareholders, executives and managers from all claims in the Complaint, and all wage & hour claims for (a) failure to pay overtime wages, (b) failure to provide meal periods, (c) failure to provide rest breaks, (d) failure to provide accurate itemized wage statements, (f) failure to timely pay final wages pursuant to Labor Code §§ 201–203 (g) failure to timely pay wages, (h) failure to reimburse business expenses (i) unfair and unlawful competition, (j) all other civil and statutory penalties, including those recoverable under the Private Attorneys

General Act, Labor Code § 2698 et seq. (“PAGA”), and applicable IWC Order(s), based on the facts or claims alleged in the operative Complaint. The release shall include a release under California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512(a), 558, 1194, 1194.2, 1197, and 2802, Business and Professions Code §§ 17200 et seq.

12. Can I get a settlement payment if I still work for San Marcos Growers?

Yes. If you are still working for San Marcos Growers, this settlement will not affect your employment.

California law strictly prohibits retaliation. San Marcos Growers will not take any adverse action against you, and will not target, retaliate, harass or discriminate against you or any other Class Member because of your decision to participate or not to participate in the settlement.

Excluding Yourself from the Settlement

13. How do I get out of the settlement?

If you **do not** want to take part in the settlement, you can exclude yourself. To exclude yourself from the settlement, you must send a letter or postcard postmarked no later than [insert response deadline] with your name, telephone number, and signature. The request for exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE SAN MARCOS GROWERS LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

Send the Request for Exclusion directly to the Settlement Administrator at the following address:

[Insert Phoenix Settlement Administrators address]

by no later than [insert response deadline]. Any person who files a timely request to be excluded from the settlement will, upon receipt, no longer be a Class Member, will not receive any money from the Settlement, and cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You maybe be able to sue (or continue to sue) San Marcos Growers in the future for the claims that were brought in this lawsuit.

14. If I do not exclude myself, can I sue San Marcos Growers for the same thing later?

No. Unless you exclude yourself, you give up any right to sue San Marcos Growers for the claims that this settlement resolves. If you have a pending lawsuit speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is [insert response deadline].

15. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive any money from the settlement. But you may sue, continue to sue, or be part of a different lawsuit against San Marcos Growers.

The Lawyers Representing You

16. Do I have a lawyer in this case?

The Court has appointed two law firms in Los Angeles, CA to represent you and the other Class Members: Bokhour Law Group, P.C. and Melmed Law Group P.C. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class counsel—which consists of attorneys from two separate law firms—have been prosecuting this lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, Class Counsel has aggressively litigated many aspects of the case including review of many documents, telephonic interviews and conferences, settlement efforts and a mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Counsel will collectively ask for fees of one third of the settlement amount (which equals \$100,000) of the Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit. Class Counsel also will ask for reimbursement of up to \$12,000 for the costs Class Counsel incurred in connection with the Lawsuit. The Court may award less than these amounts.

18. What other expenses are taken out of the total settlement amount?

San Marcos Growers has agreed to pay \$300,000 to resolve the claims that were brought in this lawsuit. Under the terms of the Settlement Agreement (which you can view at www.phoenixclassaction.com/xxxxx), \$5,000 will be paid from the settlement amount to Phoenix Settlement Administrators to act as the Settlement Administrator, who is sending this notice to you, and will perform all the administrative duties related to this settlement.

Class Counsel will also ask the Court to award Class Representatives Karen San Juan And Argelia B. Reyes San Juan a service payment in the amount of \$10,000 to each of them to compensate for their service and extra work provided on behalf of the Class Members. The Class Representative may also receive a share of the settlement as a class member.

Lastly, \$5,000 of the Settlement Amount will be allocated to Plaintiffs' penalty claim under the Private Attorneys General Act of 2004 ("PAGA"). Of this amount, \$3,750 will be paid to the California Labor Workforce Development Agency (the "LWDA") in satisfaction of the claims for penalties under PAGA as required by California law.

Objecting to the Settlement

You can tell the Court that you don't agree with the settlement or some part of it.

19. How Do I tell the court that I don't like the settlement?

If you're a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter or postcard to the Settlement Administrator with your name, telephone number, address and dates of employment with San Marcos Growers saying that you object to *Karen San Juan, et al. v. San Marcos Growers*, Case No. 56-2019-00534178-CU-OE-VTA.

Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection to the Settlement Administrator by no later than [insert response deadline] at:

[Insert Phoenix Settlement Administrators address]

20. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court's Fairness Hearing

The Court will hold a hearing to decide whether to approve the settlement.

21. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at [time] on [date] at the Superior Court of California for the County of Ventura, located at 800 South Victoria Avenue, Ventura, CA 93009. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Matthew P. Guasco will listen to Class Members who have asked to speak at the hearing. The Court may also decide how much money to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

22. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Matthew P. Guasco may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

23. May I speak at the hearing?

You may ask the for permission to speak at the Fairness Hearing. To do so, you must timely submit a written objection and notice of intention to appear at the Fairness Hearing, and serve a copy to Class Counsel at the following addresses:

CLASS COUNSEL

BOKHOUR LAW GROUP P.C.
Mehrddad Bokhour, Esq.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Telephone: (310) 975-1493
Fax: (310) 675-0861

MELMED LAW GROUP P.C.
Jonathan Melmed, Esq.
1801 Century Park East, Suite 850
Los Angeles, California 90067
Telephone: (310) 824-3828
Fax: (310) 862-6851

Your “Notice of Objection” must be postmarked no later than [insert response deadline].

You cannot speak at the hearing if you excluded yourself.

If You Do Nothing

24. What happens if I do nothing at all?

If you are a Class Member (as defined above in Question #5), and received this notice, you are automatically included in the settlement and do not need to take any further action to receive a payment. If you do nothing, and if the Court approves the settlement, then you will receive your payment in the mail, which will be your portion of the settlement. p

Getting More Information

25. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a document called the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting www.phoenixclassaction.com/xxxxx.

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: xxx-xxx-xxxx or by e-mail at _____. You may also contact Class Counsel at the address or phone number listed above.

EXHIBIT “C”