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Attorneys for Plaintiff, GERARDO PEREZ, individually
and on behalf of other individuals similarly situated

[ADDITIONAL COUNSEL ON FOLLOWING PAGE]

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

GERARDO PEREZ individually and on behalf
of other individuals similarly situated,

Plaintiff,

v.

LOEWY ENTERPRISES dba SUNRISE
PRODUCE, a California corporation, and
DOES 1-100 inclusive,

Defendant.

CASE NO: 30-2020-01152808-CU-OE-CXC
(Assigned Judge Hon. Glenda Sanders, Dept.
CX101)

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE**

Complaint Filed: July 23, 2020
Trial Date: None

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8 Attorneys for Defendant
9 LOEWY ENTERPRISES dba SUNRISE
10 PRODUCE COMPANY, a California
11 corporation (erroneously sued as LOEWY
12 ENTERPRISES dba SUNRISE PRODUCE, a
13 California corporation)
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1 This Joint Stipulation of PAGA Settlement and Release (“Settlement,” “Agreement” or
2 “Settlement Agreement”) is made and entered into by and between Plaintiff Gerardo Perez
3 (“Plaintiff” or “PAGA Representative”), and on behalf other Aggrieved Employees, as defined
4 below, and as a private general attorney on behalf of the State of California, and Defendant Loewy
5 Enterprises dba Sunrise Produce Company, a California corporation (“Defendant”) (collectively, the
6 “Parties”).

7 **SETTLEMENT BACKGROUND AND RECITALS**

8 On April 1, 2020, Plaintiff Gerardo Perez, on behalf of himself and other Aggrieved
9 Employees, gave written noticed by electronic submission to the Labor and Workforce Development
10 Agency (“LWDA”) and certified mail to Defendant on the specific provisions of the California
11 Labor Code alleged to have been violated. On July 23, 2020, Plaintiff filed a representative action
12 lawsuit in Orange County Superior Court, Case No. 30-2020-01152808-CU-OE-CXC (“the
13 Action”) which alleged the following single cause of action: “Penalties Pursuant to the Private
14 Attorneys’ General Act (Lab. Code §§ 2698, *et seq.*)” The Action alleged subclaims which include:
15 (1) failure to provide meal breaks; (2) failure to provide rest breaks; (3) failure to provide appropriate
16 wage statements; (4) failure to pay all wages owed at termination; and (5) failure to reimburse
17 incurred expenses.

18 The Parties informally exchanged discovery related to the Action, including discovery
19 related to Defendant’s policies and practices, the number of Aggrieved Employees, the number of
20 Pay Periods at issue in the PAGA Period, and alleged potential exposure. On February 23, 2022, the
21 Parties participated in a full day mediation with Hon. Peter D. Lichtman (Ret.), a distinguished and
22 highly regarded mediator, and reached a settlement.

23 Plaintiff’s Counsel has thoroughly investigated the facts relating to the claims alleged in the
24 Action, and analyzed the applicable legal principles with respect to the claims asserted against
25 Defendant. Based upon Plaintiff’s Counsel’s discovery, investigation, and legal evaluation, and
26 taking into account the sharply contested legal and factual issues involved and assessment of the
27 uncertainties of complex litigation and the relative benefits conferred upon the aggrieved employees
28 pursuant to this Settlement Agreement, Plaintiff’s Counsel has concluded that a settlement with

Defendant, on the terms set forth in this Settlement Agreement, is fair, reasonable, adequate, and in the best interests of Plaintiff and the Aggrieved Employees. In particular, Plaintiff's Counsel and Plaintiff understand the risk of the merits of defenses that Defendant has asserted.

Defendant denied, and continues to deny, the allegations set forth in the Action in their entirety and any and all liability arising out of the conduct alleged. Defendant also denies that the Action is suited for representative action treatment under PAGA. Defendant has asserted defenses to the claim and subclaims alleged in the Action. Moreover, Defendant has always maintained that it complied at all times with the California Labor Code, applicable Wage Orders of the Industrial Welfare Commission ("IWC"), the California Business and Professions Code, and that Plaintiff and the Aggrieved Employees have been properly provided all meal breaks and rest breaks, provided accurate wage statements, reimbursed any and all appropriately reimbursable expenses, and timely and properly paid all wages and/or any other payments owing under applicable federal and state law. Defendant has concluded that further defense of this Action would be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been expended, and unless this Settlement is made, will continue to be expended in defense of the claim and subclaims asserted in this Action. Therefore, Defendant has agreed to settle in the manner and upon the terms set forth in this Settlement Agreement to put to rest the claim and subclaims as set forth in the Action.

The Parties agree that Defendant's decision to settle the Action is not, and shall not be construed as, an admission of any wrongdoing whatsoever by Defendant against Plaintiff and/or any other Aggrieved Employee.

NOW THEREFORE, IT IS HEREBY AGREED, by and between the undersigned, that the Action shall be settled, subject to the approval of the Court, pursuant to the following terms and conditions:

DEFINITIONS

The following definitions are applicable to this Settlement Agreement.

Definitions contained elsewhere in this Settlement Agreement will also be effective:

- "Action" means the representative action titled *Gerardo Perez v. Loewy Enterprises dba Sunrise Produce Company*, pending in the Superior Court of the State of California, County of

Orange, Case No. 30-2020-01152808-CU-OE-CXC.

2. “Aggrieved Employees” means all employees who were or are currently employed by Defendant in California as “non-exempt” employees against whom one or more the alleged violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, and/or as otherwise set forth or alleged in the Action, at any time between July 23, 2019 until judgment.

3. “Aggrieved Employee Released Claims” means any and all claims for the recovery for civil penalties, attorneys’ fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have, against the Released Parties, arising out of the violations alleged both in the Complaint and the PAGA Notice or reasonably could have been alleged based on the facts contained in the both the Complaint and the PAGA Notice, including but not limited to, allegations regarding failure to provide compliant meal and rest breaks, failure to pay them all premium wages owed for short, late or missed meal and rest breaks or periods, failure to pay all wages owed at discharge or resignation; failure to provide complete and accurate wage statements; failure to reimburse necessary business-related expenses; and violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 512, 2698, *et seq.*, and 2802, (collectively, the “Released Claims”). This release shall apply to claims arising during the PAGA Period.

4. “Aggrieved Employee Information” means information regarding the Aggrieved Employees that Defendant shall in good faith compile from its records and shall be authorized by the Court to transmit in a secured manner in electronic format to the Settlement Administrator. Aggrieved Employee Information shall include each Aggrieved Employee’s full name, last known address, Social Security Number, and total number of Pay Periods worked.

5. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the Court for Counsel’s litigation and resolution of this Action.

6. “Defendant” means Loewy Enterprises dba Sunrise Produce Company.

7. “Effective Date” means the last to occur of the following: (a) if there are no objections to the settlement, then the date of approval by the Court; (b) if there are objections to the

settlement, and if an appeal, review or writ is not sought from the order granting approval of the settlement, the 31st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Prior to the effective date of the settlement, Defendant will not be required to fund this settlement, in whole or in part, through the claims administrator or any third party. Defendant will fund the settlement within 30 days of the Effective Date, and claims administrator will distribute the fund installments within 30 days of receipt.

8. "Gross Settlement Amount" is the amount of Two Hundred and Fifty Thousand Dollars and Zero cents (\$250,000.00), which is the maximum amount to be paid by Defendant pursuant to this Settlement Agreement. The Gross Settlement Amount includes the PAGA Representative Enhancement Payment, Plaintiff's Counsel's Fees and Costs, and the Settlement Administration Costs as specified in this Agreement. The Parties agree that Defendant will have no obligation to pay any amount in connection with this Settlement Agreement apart from the Gross Settlement Amount'. The Parties agree that payments made to the PAGA Members shall be classified as 100% non-taxable penalties and interest and that there is no portion of the settlement amount which constitutes wages and therefore no payroll taxes shall be due on any portion of the Gross Settlement Amount. The Parties also agree none of the Gross Settlement Amount will revert to Defendant.

9. "Individual PAGA Payment" means each Aggrieved Employee's share of the PAGA Payment, distributed to the Aggrieved Employees on a *pro rata basis*, based upon their respective number of Pay Periods as defined herein.

10. "LWDA Payment" means the amount that the Parties have agreed to pay to the California Labor and Workforce Development Agency ("LWDA") in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, "PAGA"). Pursuant to the PAGA, the Parties have agreed that seventy-five percent (75%) of the Net Settlement Amount shall be payable to the LWDA.

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11. "Net Settlement Amount" means the Gross Settlement Amount less the PAGA Representative Enhancement Payment, Plaintiff's Counsel's Fees and Costs, and the Settlement Administration Costs as specified in this Agreement. The Net Settlement Amount is estimated to be One Hundred Thirty-Nine Thousand Seven Hundred Sixty Dollars and Zero Cents (\$139,760).

12. "Non-Exempt Employees" means employees who Defendant has classified as nonexempt from the overtime wage provisions of the California Labor Code.

13. "Notice of PAGA Settlement" means the Notice of PAGA Settlement, substantially in the form attached hereto as "**Exhibit 1**," which shall be mailed to Aggrieved Employees along with their Individual PAGA Payments checks.

14. "Objection" means any written objection to this Settlement sent by an Aggrieved Employee to the Settlement Administrator as specified herein and in the Notice of Settlement. An Objection to Settlement must be sent to the Settlement Administrator within the time limitations set forth in this Stipulation.

15. "Order and Judgment" means the order and judgment to be entered by the Court upon granting approval of the Settlement and this Stipulation as binding upon the Parties and the Aggrieved Employees.

16. "PAGA" means the California Labor Code Private Attorneys General Act of 2004.

17. "PAGA Payment" means the amount the Parties have agreed to distribute among all Aggrieved Employees for settlement of claims for civil penalties under PAGA. Pursuant to the PAGA, the Parties have agreed that twenty-five percent (25%) of the Net Settlement Payment shall be distributed among all Aggrieved Employees.

18. "PAGA Period" means the period from January 23, 2019 until judgment.

19. "PAGA Representative Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiff in an amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00), which shall be paid to Plaintiff in addition to his respective Individual PAGA Payment, in recognition of Plaintiff's efforts and the risks in assisting with the prosecution of the Action.

20. "Parties" means Plaintiff and Defendant collectively.

21. "Plaintiff" means Gerardo Perez.

22. ““Plaintiff’s Counsel’s Fees and Costs’ means reasonable attorneys” fees for Plaintiff’s Counsel’s litigation and resolution of this Action in an amount not to exceed 33.3% of the Gross Settlement Amount, plus Plaintiff’s Counsel’s expenses and costs reasonably incurred in connection with the Action in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

23. ““Plaintiff’s Counsel”“ means Marcus J. Bradley, Esq. and Kiley L. Grombacher, Esq. of Bradley/Grombacher, LLP, 31365 Oak Crest Dr., Suite 240, Westlake Village, California 91361.

24. ““Plaintiff’s Released Claims”“ means any and all claims, demands, rights, liabilities, and/or causes, of any form whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiff in the Action, or the heirs, successors, and/or assigns of Plaintiff, whether directly, indirectly, representatively, derivatively, or in any other capacity, against Defendant or any of the other Released Parties, arising at any time prior to execution of the instant Agreement, including all claims arising from and relating to Plaintiff’s employment with Defendant or the separation thereof. Plaintiff’s Released Claims include, but are not limited to, all claims for breach of contract, breach of the covenant of good faith and fair dealing, wrongful termination in violation of public policy, infliction of emotional distress, negligent infliction of emotional distress, misrepresentation, fraud, negligent retention/supervision, assault, battery, claims under the Fair Credit Reporting Act, Title VII of the Civil Rights Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the California Labor Code, California Wage Orders, the Age Discrimination and Employment Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the United States Constitution and/or the California Constitution. This also includes, but is not limited to, all claims for unpaid wages, meal period or rest period premiums, civil or statutory penalties, waiting time penalties, liquidated damages, and/or any and all other associated penalties, including but not limited to claims under California Labor Code section 2698, *et seq.*, Labor Code sections 200, 201, 202, 203, 226(a), 226.7, 510, 512, 2698, *et seq.*, and 2802, any applicable IWC wage order, Business

1 and Professions Code section 17200, *et seq.*, as well as any claims or potential claims for attorneys”
2 fees, costs and/or interest, and/or any other claims relating to Plaintiff’s employment with Defendant
3 or the separation thereof. Nothing in this release will impact the Plaintiff’s standing to serve as a
4 PAGA representative in the Action. Plaintiff’s Released Claims do not include any claims that
5 cannot be released as a matter of law.

6 In addition to Plaintiff’s Released Claims, Plaintiff also expressly waives all rights and
7 benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads as follows:

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

14 Notwithstanding the provisions of section 1542, and for the purpose of implementing a
15 complete release and discharge of Plaintiff’s Released Claims, Plaintiff expressly acknowledges that
16 this Agreement is intended to include in its effect all claims which he does not know of or suspect
17 to exist in his favor at the time of execution hereof and acknowledges that this Agreement
18 contemplates the extinguishment of all such claims..

19 25. “Released Parties” means Defendant together with its past, present, and/or future,
20 officers, directors, employees, and agents.

21 26. “Settlement Administrator” means or any other third-party settlement administrator
22 approved by the Parties and the Court for the purposes of administering this Settlement. The Parties
23 each represent that they do not have a financial interest in the Settlement Administrator or otherwise
24 have a relationship with the Settlement Administrator that could create a conflict of interest.

25 27. “Settlement Administration Costs” includes all costs payable to the Settlement
26 Administrator for administering this Settlement, including, but not limited to: (a) printing,
27 distributing, and tracking Notice of PAGA Settlement and other documents for this Settlement; (b)
28 tax reporting; (c) setting up the interest-bearing Qualified Settlement Fund (“QSF”); (d) distributing

all payments to be made pursuant to this Settlement; and (e) providing necessary reports and declarations as requested by the Parties. The Settlement Administration Costs are currently estimated at \$6,990.00.

28. ““Settlement Approval Hearing”” means the hearing to be conducted by the Court after Plaintiff files an appropriate motion for approval of this Settlement, at which time Plaintiff will request that the Court approve the Notice to the Aggrieved Employees, the fairness, reasonableness and adequacy of the terms and conditions of Settlement, enter the Order and Judgment, and take other appropriate action.

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Aggrieved Employees, and Defendant agree as follows:

29. Funding of the Gross Settlement Amount. Defendant will make a single payment of \$250,000 into the QSF, which the Settlement Administrator will manage and establish, within thirty (30) days of the Effective Date. The Gross Settlement Amount will be used to pay: (a) the PAGA Representative Enhancement Payment to Plaintiff; (b) the Attorneys’ Fees and Costs to Plaintiff’s Counsel; (c) the Settlement Administration Costs to the Settlement Administrator; (d) The LWDA Payment to the LWDA; and (e) the PAGA Payment to be distributed among all Aggrieved Employees.

30. Attorneys’ Fees and Costs. Plaintiff’s Counsel will seek an award of Attorneys’ Fees and Costs of not more than \$83,250 in attorney’s fees (33.3% of the Gross Settlement Amount) and not more than \$15,000 in attorneys’ costs, and Defendant agrees not to oppose such application. All Attorneys’ Fees and Costs will be paid from the Gross Settlement Amount. Plaintiff and Plaintiff’s Counsel will not have the right to revoke this Settlement in the event the Court fails to approve the sum of Attorneys’ Fees and Costs sought by Plaintiff’s Counsel. Any portion of the Attorneys’ Fees and Costs not awarded to Counsel will be added to the Net Settlement Amount.

31. PAGA Representative Enhancement Payment. Plaintiff will apply to the Court for a PAGA Representative Enhancement Payment of not more than \$5,000 for his efforts and work in prosecuting the Action on behalf of Aggrieved Employees, and Defendant agrees not to oppose such application. The PAGA Representative Enhancement Payments, which will be paid from the Gross

Settlement Amount, will be in addition to Plaintiff's right to an Individual PAGA Payment pursuant to this Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the PAGA Representative Enhancement Payments and will hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payment. Plaintiff will not have the right to revoke this Settlement if the Court fails to approve the amount sought by Plaintiff as a PAGA Representative Enhancement Payment. Any portion of the PAGA Representative Enhancement Payment not awarded to the PAGA Representative will be added to the Net Settlement Amount.

32. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments. These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*: (a) the required tax reporting on the Individual PAGA Payments; (b) the issuing of 1099 IRS Forms; (c) preparing, distributing Notices of PAGA Settlement; (d) setting up the QSF; (e) calculating and distributing all payments to be made pursuant to the Settlement; and (f) providing necessary reports and declarations. The Settlement Administration Costs are currently estimated at \$6,990.00. All the Settlement Administration Costs shall be paid from the Gross Settlement Amount upon completion of all duties required to be performed by the Settlement Administrator under the terms of this Settlement, or as otherwise required by the Court. Any portion of the Settlement Administration Costs not awarded to the Settlement Administrator will be added to the Net Settlement Amount.

33. LWDA Payment and PAGA Payment. Pursuant to the PAGA, the Parties have agreed that seventy-five percent (75%) of the Net Settlement Amount shall be payable to the LWDA (LWDA Payment) and twenty-five percent (25%) of the Net Settlement Payment shall be distributed among all Aggrieved Employees (the PAGA Payment).

34. Individual PAGA Payment Calculations. Individual PAGA Payments to Aggrieved Employees will be calculated and apportioned from the PAGA Payment, or twenty-five percent (25%) of the Net Settlement Amount (currently estimated at \$34,940), based on the number of Pay Periods an Aggrieved Employee worked during the PAGA Period as a non-exempt employee in California. Calculations of Individual PAGA Payments will be made as such:

1 34(a). The Settlement Administrator will first calculate the total number of Pay
2 Periods worked by each Aggrieved Employees as a non-exempt employee in California during the
3 PAGA Period and the aggregate total number of Pay Periods worked by all Aggrieved Employees as
4 non-exempt employees in California during the PAGA Period.

5 34(b). To determine each Aggrieved Employee's estimated Individual PAGA
6 Payment, the Settlement Administrator will use the following formula: the PAGA Payment will be
7 divided by the aggregate total number of Pay Periods worked by all Aggrieved Employees during
8 the PAGA Period, resulting in the Pay Period Value for Aggrieved Employees. Each Aggrieved
9 Employee's Individual PAGA Payment will then be calculated by multiplying each individual
10 Aggrieved Employee's total number of Pay Periods by the Pay Period Value for Aggrieved
11 Employees.

12 34(c). The entire Net Settlement Amount will be disbursed as a LWDA Payment to
13 the LWDA and Individual PAGA Payments to Aggrieved Employees. Additionally, all interest
14 accrued from Defendant's payments into the QSF during the funding process and through
15 distribution will be added to the Net Settlement Amount and the LWDA Payment and Individual
16 Settlement Payments will be proportionally increased on a pro rata basis.

17 35. Settlement Administration Process. The Parties agree to cooperate in the
18 administration of the Settlement and to make all reasonable efforts to control and minimize the costs
19 and expenses incurred in administration of the Settlement. Defendant agrees to fund the QSF by
20 making the above-described payment through the Settlement Administrator. The schedule and timing
21 of this Settlement is intended for the QSF to be fully funded at the point in time following the Court's
22 approval of the Settlement and the effective date of the Settlement, and after distribution of the
23 approved payments has been approved and ordered by the Court.

24 36. Funding of the Qualified Settlement Fund. To facilitate the funding of the QSF for
25 distribution as detailed above, Defendant will make a single payment of the Gross Settlement
26 Amount of \$250,000.00 into the QSF, which the Settlement Administrator will manage and establish,
27 within thirty (30) days of the Effective Date. The Settlement Administrator will notify Defendant's
28 counsel of the account information to which Defendant will wire or otherwise provide payment into

1 the QSF to fund the Gross Settlement Amount. Upon establishing the QSF, the Settlement
2 Administrator will maintain the fund through Settlement approval and settlement administration.

3 37. Delivery of the Aggrieved Employee Information List. Within twenty-one (21)
4 calendar days of entry of the Court's Order Granting Settlement Approval, Defendant will provide
5 the Aggrieved Employee Information List to the Settlement Administrator.

6 38. Confirmation of Contact Information in the Aggrieved Employee Information List
7 and Undeliverable Notices. Prior to mailing, the Settlement Administrator will perform a search
8 based on the National Change of Address Database for information to update and correct for any
9 known or identifiable address changes. Any Notice of PAGA Settlement returned to the Settlement
10 Administrator as non-deliverable will be sent promptly via regular First-Class U.S. Mail to the
11 forwarding address affixed thereto, and the Settlement Administrator will indicate the date of such
12 re-mailing on the Notice of PAGA Settlement.

13 39. Notice by First-Class U.S. Mail. Within ten (10) days after the Settlement
14 Administrator receives the list of Aggrieved Employees from Defendant, the Settlement
15 Administrator will mail a Notice of PAGA Settlement to all Aggrieved Employees via regular First-
16 Class U.S. Mail, using the most current, known mailing addresses identified in the list.

17 40. Disputed Information in the Notice of PAGA Settlement. In determining each
18 Aggrieved Employee's number of Pay Periods, Defendant's pay period data will be presumed to be
19 correct, unless an Aggrieved Employee proves otherwise by providing credible documentary
20 evidence. All disputes concerning Pay Periods will be resolved and decided by the Settlement
21 Administrator. The Settlement Administrator shall determine the eligibility for, and the amounts of,
22 each Individual PAGA Payment under the terms of this Stipulation. The Settlement Administrator's
23 determination of the eligibility for and amount of each Individual PAGA Payment shall be binding
24 upon the Aggrieved Employee and the Parties, yet subject to review by Plaintiff's Counsel,
25 Defendant's Counsel and the Court.

26 41. Distribution and Timing of Payments: Within thirty (30) days after Defendant has
27 fully funded the QSF with the Gross Settlement Amount, the Settlement Administrator will issue
28 payments to: (a) all Aggrieved Employees, including any Aggrieved Employee whose Notice of

PAGA Settlement was returned as undeliverable; (b) Plaintiff; (c) Plaintiff's Counsel; and (d) the LWDA. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement. The Settlement Administrator will pay the Individual PAGA Payments from the PAGA Payment, or the twenty-five percent (25%) portion of the Net Settlement Amount (currently estimated at \$34,940), to all Aggrieved Employees. The Settlement Administrator will submit these payments by sending a check in the appropriate amount to the Aggrieved Employee at the address indicated in the list of Aggrieved Employees' names and addresses provided by Defendant, or as subsequently determined by the Settlement Administrator to be correct.

42. Uncashed Settlement Checks. Aggrieved Employees will receive checks for their Individual PAGA Payments. Checks will remain negotiable for one hundred eighty (180) calendar days ("Check-Cashing Deadline"). Any check not cashed within one hundred eighty (180) calendar days will be void. The funds from the uncashed checks shall be distributed by the Settlement Administrator to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Aggrieved Employees who did not cash their checks until such time that they claim their property. No later than ten (10) calendar days after the expiration of the 180-day period, the Settlement Administrator shall deposit the total amounts contained in the settlement checks to the Controller of the State of California.

43. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and the Parties' counsel.

44. Allocation of Individual PAGA Payments. All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. The Settlement Administrator will be responsible for issuing Aggrieved Employees an IRS Form 1099 if the Eligible Aggrieved Employee's Individual Settlement Payment exceeds \$600.

45. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Aggrieved Employees, and Plaintiff's Counsel tax forms as may be required by law for all amounts paid pursuant to this Settlement.

46. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein and will defend, indemnify, and hold Defendant free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages.

47. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS PARAGRAPH, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX

STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
CONTEMPLATED BY THIS AGREEMENT.

48. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

49. Nullification of Settlement Agreement. If the Court does not approve the Settlement as provided herein, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

50. Motion for Approval of PAGA Settlement. Plaintiff shall file a Motion for Approval of PAGA Settlement and request that a Settlement Approval Hearing be conducted to determine whether to grant approval of the Settlement, including determining the amounts properly payable for: (i) the Plaintiff's Counsel's Fees and Costs; (ii) the PAGA Enhancement Payment; (iii) Settlement Administration Costs; and (iv) the LWDA Payment. If the Court grants approval of the Settlement, the Settlement Administrator shall post notice of the Order and Judgment on its website within seven (7) calendar days of entry of the Order and Judgment.

51. Judgment and Continued Jurisdiction. The Parties agree that following entry of the Final Order and Judgment, this Settlement Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Action and over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement. This Settlement Agreement may be pleaded or asserted by or on behalf of Defendant or the Released Parties as a defense and complete bar to any action or claim that may be brought against or involve Defendant and/or the Released Parties by anyone acting or purporting to act on behalf of Plaintiff and/or the Aggrieved Employees with respect to any matters within the scope of this Settlement Agreement and excepting only the obligations of the Parties under this Settlement Agreement.

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1 52. General Release by Plaintiff. In consideration for the consideration set forth in this
2 Agreement, Plaintiff, for himself, his heirs, successors and assigns, does waive, release, acquit and
3 forever discharge the Released Parties, from any and all claims, demands, rights, liabilities, and/or
4 causes, of any form whatsoever, whether known or unknown, unforeseen, unanticipated,
5 unsuspected or latent, that have been or could have been asserted by Plaintiff in the Action, or the
6 heirs, successors and/or assigns of Plaintiff, whether directly, indirectly, representatively,
7 derivatively or in any other capacity, against Defendant or any of the other Released Parties, arising
8 at any time prior to execution of the instant Agreement, including all claims arising from and relating
9 to Plaintiff's employment with Defendant or the separation thereof. Plaintiff's Released Claims
10 include, but are not limited to, all claims for breach of contract, breach of the covenant of good faith
11 and fair dealing, wrongful termination in violation of public policy, infliction of emotional distress,
12 negligent infliction of emotional distress, misrepresentation, fraud, negligent retention/supervision,
13 assault, battery, claims under the Fair Credit Reporting Act, Title VII of the Civil Rights Act, the
14 California Fair Employment and Housing Act, the Family and Medical Leave Act, the California
15 Family Rights Act, the Fair Labor Standards Act, the California Labor Code, California Wage
16 Orders, the Age Discrimination and Employment Act, the Employee Retirement Income Security
17 Act of 1974, the California Business and Professions Code, the United States Constitution or the
18 California Constitution. This also includes, but is not limited to, all claims for unpaid wages, meal
19 period or rest period premiums, civil or statutory penalties, waiting time penalties, liquidated
20 damages, and all other associated penalties, including but not limited to claims under California
21 Labor Code section 2698 *et seq.*, Labor Code sections 200 201, 202, 203, 226(a), 226.7, 510, 512,
22 2698, *et seq.*, and 2802, any applicable IWC wage order, Business and Professions Code section
23 17200, *et seq.*, as well as claims or potential claims for attorneys' fees and costs and interest, and
24 any other claims relating to Plaintiff's employment with Defendant or the separation thereof.
25 Nothing in this release will impact the Plaintiff's standing to serve as PAGA representatives in the
26 Action. Plaintiff's Released Claims do not include any claims that cannot be released as a matter of
27 law.

28 ///

1 In addition to Plaintiff's Released Claims, Plaintiff also expressly waive all rights and
2 benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads as follows:

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

9 Notwithstanding the provisions of section 1542, and for the purpose of implementing a
10 complete release and discharge of Plaintiff's Released Claims, Plaintiff expressly acknowledge that
11 this Agreement is intended to include in its effect all claims which they do not know of or suspect to
12 exist in their favor at the time of execution hereof and that this Agreement contemplates the
13 extinguishment of all such claims.

14 53. Release by All Aggrieved Employees. Plaintiff and all Aggrieved Employees, on
15 behalf of himself or herself, his or her heirs, descendants, dependents, executors, administrators,
16 assigns, and successors, fully and finally release and discharge the Released Parties from any and all
17 of the Released Claims within the PAGA Period. This waiver and release will be final and binding
18 on the Effective Date and will have every preclusive effect permitted by law. Plaintiff and Aggrieved
19 Employees may hereafter discover facts or legal arguments in addition to or different from those
20 they now know or currently believe to be true with respect to the Released Claims. The discovery of
21 new facts or legal arguments shall in no way limit the scope or definition of the Released Claims.
22 By virtue of this Agreement, Plaintiff and Aggrieved Employees shall be deemed to have, and by
23 operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled
24 and released all of the Released Claims. The Parties understand and agree that the scope of the release
25 described in this paragraph: (a) is a material part of the consideration for this Agreement; (b) was
26 critical in justifying the agreed upon economic value of this settlement and without it Defendant
27 would not have agreed to the consideration provided; and (c) is narrowly drafted and necessary to
28 ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or

could have been alleged based on the facts, causes of action, and legal theories contained in the operative complaints in the Action.

54. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by reference as though fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

55. Publicity Agreement. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential Aggrieved Employees and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this paragraph means Plaintiff and Plaintiff's Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. But for the limited purpose of allowing Plaintiff's Counsel to prove adequacy as counsel in other actions, Plaintiff's Counsel may disclose the name of the Parties and the venue/case number of this Action (but not any other settlement details).

56. No Unalleged Claims. Plaintiff and Plaintiff's Counsel represent that they are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the operative complaints in this Action. Plaintiff and Plaintiff's Counsel will further represent that, other than the instant Action, they have no current intention of asserting any other claims against Defendant in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel will further represent that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties further acknowledge, understand, and agree that the representations

described in this paragraph are essential to the Settlement and that this Settlement would not have been entered into were it not for this representation.

57. Escalator Clause. It is estimated that there are approximately three hundred seventy-three (373) Aggrieved Employees. The total pay periods worked by the PAGA Members from July 23, 2019 to February 23, 2022 is approximately 11,764. Should the number of pay periods increase by more than 25% at the date of the Order granting approval, the Gross Settlement Amount will increase proportionately by one percent for each percent that the actual pay periods are more than 25% above 11,764 (i.e., meaning if the pay periods increase by 26% the settlement will increase by 1%).

58. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. This provision has no application or impact on any arbitration agreements, confidentiality agreements, employee handbooks and/or policies executed by Plaintiff and/or the Aggrieved Employees during his or her employment with Defendant, which remain in full force and effect.

59. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties' counsel or their successors-in-interest.

60. Authorization to Enter Into the Settlement Agreement. The Parties' counsel warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties shall refer the matter to Mediator Hon. Peter D. Lichtman (Ret.) for resolution.

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

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

63. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument if the Parties' counsel will exchange among themselves original signed counterparts.

64. Acknowledgement that the Settlement Agreement is Fair and Reasonable. The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, considering all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement. In addition, the mediator may execute a declaration supporting the Settlement and the reasonableness of the Settlement. The Court may, in its discretion, contact the mediator to discuss the Settlement and whether the Settlement is objectively fair and reasonable.

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

66. Waiver of Certain Appeals. The Parties agree to waive appeals for purposes of this Settlement only. Plaintiff or Plaintiff's Counsel may appeal any reduction in Counsel's Fees and Costs that are below the amount they request from the Court, and either Party may appeal any court order that materially alters the Settlement Agreement's terms.

67. Non-Admission of Liability. The Parties enter this Settlement to resolve the dispute and/or disputes that have arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering this Settlement, Defendant does not admit, and specifically denies, that it: (a) violated any federal, state, local or other law; (b) violated any regulations or guidelines

promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; (c) breached any contract; (d) violated or breached any duty; (e) engaged in any misrepresentation or deception; or (d) engaged in any other unlawful conduct with respect to their employees. Neither this Settlement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such alleged violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

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

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

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

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

72. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

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

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

SO AGREED AND STIPULATED.

Dated: 4/21/2022

PLAINTIFF

DocuSigned by:



Gerardo Perez

DEFENDANT

Dated: _____

Loewy Enterprises
dba Sunrise Produce Company.

By:
Title:

DATED: 4/22/22

BRADLEY/GROMBACHER, LLP

By


Marcus J. Bradley
Attorneys for Gerardo Perez, and all others
similarly situated

DATED: _____

VARNER & BRANDT LLP

By

Richard D. Marca
Christopher S. Milligan
Attorneys for Defendant
Loewy Enterprises dba Sunrise Produce
Company

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SO AGREED AND STIPULATED.

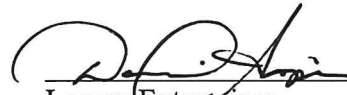
PLAINTIFF

Dated: _____

Gerardo Perez

DEFENDANT

Dated: 4/15/2022



Loewy Enterprises
dba Sunrise Produce Company.

By:
Title:

BRADLEY/GROMBACHER, LLP

DATED: _____

By _____

Marcus J. Bradley
Attorneys for Gerardo Perez, and all others
similarly situated

DATED: 4/15/22

VARNER & BRANDT LLP

By  _____

Richard D. Marca
Christopher S. Milligan
Attorneys for Defendant
Loewy Enterprises dba Sunrise Produce
Company