

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Nazario Martinez Santiago (“Plaintiff”), individually and on behalf of all members of the Settlement Class, defined below, on the one hand, and Defendants JNM Contracting, Inc. (“JNM”), EGC Investments, Inc. (“EGC”), EBC Farms (“EBC”), and E & C Farms, LLC (“E & C”) (collectively JNM, EGC, EBC, and E & C are referred to herein as “Defendants”) on the other. Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Daniel J. Brown and Ethan C. Surls of Stansbury Brown Law (“Class Counsel”). JNM is represented by Margot Parker and David C. Chang of Freeman Mathis & Gary, LLP. EGC, EBC, and E & C are represented by Christina C. Tillman and Justin G. Donner of McCormick Barstow Sheppard Wayte & Carruth, LLP.

Plaintiff filed a Class Action Complaint (“Complaint”) against JNM and EGC on May 11, 2020 in Tulare County Superior Court, Case No. VCU282822, which alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse necessary business expenses; (6) wage statement violations; (7) waiting time penalties; and (8) unfair competition.

Plaintiff filed a First Amended Class and Representative Action Complaint (“FAC”) on August 17, 2020, to add an additional cause of action for civil penalties under the Private Attorneys General Act (“PAGA”) pursuant to Labor Code Sections 2698 *et seq.* As a condition of settlement, Plaintiff will request the Court approve the filing of a Second Amended Class and Representative Action Complaint (“SAC”) to add EBC and E & C as named defendants in this lawsuit. Together the Complaint, FAC, and SAC are referred to hereinafter as the “Lawsuit”.

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

1. Certification for Settlement Purposes. For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class:

Settlement Class – All current and former non-exempt employees of Defendant JNM Contracting, Inc. in California who were subject to Wage Order 14 and performed work for Defendants EGC Investments, Inc., and/or EBC Farms and/or E & C Farms, LLC at any time during the period of May 11, 2016, to March 15, 2021 (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Releases.

- A. **Releases by Settlement Class Members.** Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendants, their past and present officers, directors, shareholders, members, owners, employees, agents, insurers, reinsurers, principals, heirs, trustees, representatives, and their respective successors and predecessors in interest, and attorneys (collectively the “Released Parties”) for all claims that were pled or could have been pled based on the factual allegations in the proposed SAC, including: (a) minimum wage violations (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) failure to reimburse necessary business expenses; (f) wage statement violations; (g) waiting time penalties; (h) all claims arising out of unfair business practices under Business & Professions Code § 17200, *et seq.* that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC; and (i) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been based on the factual allegations in the SAC. (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from May 11, 2016, to March 15, 2021 (“Class Period”).
- B. **Plaintiff’s Release of Unknown Claims.** In light of his Class Representative Enhancement Payment, Plaintiff, Nazario Martinez Santiago, has agreed to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers’ compensation claims), then those claims will not be released.

3. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendant JNM agrees to pay One Hundred Ten Thousand Dollars and Zero Cents (\$110,000.00) and Defendants EGC, EBC and E & C agree to pay a combined total of \$20,000.00. The total amount of One Hundred and Thirty Thousand Dollars (\$130,000.00) shall be the “Maximum Settlement Amount” in full and complete settlement of this matter, as follows:

- A. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within fifteen (15) days after the date the Court enters an order

granting final approval of the settlement or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review; (“the Final Effective Date”).

B. This is a non-reversionary settlement. The Maximum Settlement Amount includes:

- (1) All payments to the Settlement Class;
- (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, which are anticipated to be no greater than Fifteen Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Six Cents (\$15,996.96);
- (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Enhancement Payment, subject to Court approval, in recognition of Plaintiff’s general release of claims, contributions to the Lawsuit, and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding;
- (4) Up to one-third of the Maximum Settlement Amount in attorneys’ fees, which is currently estimated to be Forty-Three Thousand Two Hundred Ninety Dollars and Zero Cents (\$43,290.00), plus up to Ten Thousand Dollars and Zero Cents (\$10,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel’s requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding; and
- (5) Five Thousand Dollars and Zero (\$5,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) will be payable to the Settlement Class as the “PAGA Amount.”

C. Defendants’ share of payroll taxes shall be paid by Defendant JNM separately from, and in addition to, the Maximum Settlement Amount.

D. **Escalator Clause.** Defendants represent that as of March 15, 2021, class members worked a combined 2,654 weekly pay periods during the Class Period. If the actual number of weekly pay periods worked as of March 15, 2021 is thirteen percent (13%) more than 2,654, i.e., 2,999 weekly pay periods, Defendants shall increase

the Maximum Settlement Amount on a pro-rata basis equal to the increase in the number of weekly pay periods (e.g., if the number of weekly pay periods increases by 25%, Defendants will increase the Maximum Settlement Amount by 25%). Defendants agree that if there is any increase to the Maximum Settlement Amount that JNM shall be responsible for 85% of the amount of the increase and EGC, EBC and E&E shall be collectively responsible for 15% of the increase.

4. **Settlement Award Procedures.** Settlement Class Members are not required to submit a claim form to receive their Individual Settlement Award. Individual Settlement Awards will be determined and paid as follows:
 - A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for the Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment. The remaining amount shall be known as the "Net Settlement Fund."
 - B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Award.

Settlement Awards shall be based on the following formula:

- i. Waiting Time Amount: Twenty percent (20%) of the Net Settlement Fund shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member who separated their employment from JNM Contracting, Inc. at any time from May 11, 2017, to March 15, 2021, shall receive an equal, pro-rata share of the Waiting Time Amount.
- ii. Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Fund shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by JNM Contracting, Inc. at any time from May 11, 2019, to March 15, 2021, shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked during the period from May 11, 2019, to March 15, 2021.
- iii. PAGA Amount: Each participating Settlement Class Member who was employed by JNM Contracting, Inc. at any time from May 11, 2019, to March 15, 2021, shall receive a portion of the One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) of the Net Settlement Fund that has been designated as the "PAGA Amount" proportionate to the number of pay periods that he or she worked during the period from May 11, 2019, to March 15, 2021.
- iv. The remainder of the Net Settlement Fund shall be distributed to each participating Settlement Class Member based on their proportionate share of Eligible Workweeks (defined below) during the Class Period, by multiplying the remaining Net Settlement Fund by a fraction, the numerator

of which is the participating Settlement Class Member's Eligible Workweeks during the Class Period, and the denominator of which is the total Eligible Workweeks of all participating Settlement Class Members during the Class Period.

An "Eligible Workweek" shall be any workweek in which the Class Member worked at least one day for JNM performing work for EGC and/or EBC and/or E & C during the workweek based on JNM Contracting, Inc.'s records.

- C. Within ten (10) days following the funding of the Maximum Settlement Amount with the Settlement Administrator by JNM Contracting, Inc., the Settlement Administrator will calculate Individual Settlement Award amounts and will prepare and mail Individual Settlement Awards to participating Settlement Class Members.
- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each Individual Settlement Award shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each Individual Settlement Award shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class Member who receives an Individual Settlement Award must negotiate the settlement check within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Settlement Class Members whose checks are not negotiated within one hundred eighty (180) days period will not be reissued and will escheat to the non-profit organization Central California Legal Services, which provides free civil legal assistance to low-income individuals, families, organizations, and communities throughout the Central Valley, including Tulare County.
- F. Neither Plaintiff nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by her or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Class Counsel's Attorneys' Fees and Litigation Costs.** Defendants will not object to a request for a total award of attorneys' fees to Class Counsel of one-third of the Maximum Settlement Amount, which is currently estimated to be Forty-Three Thousand Two Hundred Ninety Dollars and Zero Cents (\$43,290.00), plus up to Ten Thousand Dollars and Zero Cents (\$10,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. These amounts will cover any and all work performed and any and all costs incurred in connection

with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Plaintiff's Enhancement Payment.** Defendants will not object to a request for a Class Representative Enhancement Payment for Plaintiff of Five Thousand Dollars and Zero Cents (\$5,000.00) in exchange for the general release of his claims, his time, and risks in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff's Individual Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payment to the Plaintiff is for his services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancements constitute wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by JNM Contracting, Inc. from the Enhancement paid under this Settlement Agreement. In addition, Plaintiff shall hold Defendants, Released Parties and Class Counsel harmless and indemnify Defendants, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendants by reason of any claims relating to the non-withholding of taxes from the Enhancement.

7. **Settlement Administrator.** Defendants will not object to the appointment of ILYM Group, Inc. as Settlement Administrator nor to Class Counsel seeking Court approval to pay up to Fifteen Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Six Cents (\$15,996.96) From the Maximum Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating each Class Member's Individual Settlement Award amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E). The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all Settlement Class Members.

8. **Preliminary Approval.** Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown and Ethan C. Surls of Stansbury Brown Law as Class Counsel;
- C. Appointing Nazario Martinez Santiago as Class Representative for the Settlement Class;

- D. Approving ILYM Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Objection Form), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice Procedures.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fifteen (15) days after entry of an order preliminarily approving this Settlement Agreement, JNM Contracting, Inc. will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Settlement Class Members, as well as the total workweeks worked by each member of the Settlement Class during the Class Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Settlement Class Member at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. The Settlement Administrator shall use its best professional efforts, including utilizing a “skip trace,” to track any Settlement Class Member’s mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
- D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response

Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection.

- E. **Opt-Out/Request for Exclusion Procedures.** Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Request for Exclusion Form must: (1) contain the name, address, telephone number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the class settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form fails to comply with items (1)-(3), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion Form not containing a Class Member’s telephone number will be deemed valid. The date of the postmark on the Request for Exclusion Form, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to their of the PAGA Amount) or have any right to object, intervene, appeal or comment thereon. Any Settlement Class Member who does not submit a Request for Exclusion Form is automatically deemed a participating Settlement Class Member.
- F. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant’s counsel as well as filing them with the Court). Defendants’ counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant’s counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class member’s full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) Objections must be postmarked on or before the Response Deadline.
- G. **Challenges to Individual Settlement Award Calculations.** Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member’s estimated Settlement Award as well as all of the information that was used from Defendant’s records in order to calculate the Settlement Award, including the Settlement Class Member’s number of Eligible Workweeks during

the Class Period, the number of pay periods worked during the PAGA/Wage Statement period, and whether the Settlement Class Member's employment ended during the period of May 11, 2017, and March 15, 2021. Settlement Class Members will have the opportunity, should they disagree with JNM Contracting, Inc.' records regarding the number of Eligible Workweeks and/or pay periods stated in their Notice Packet and/or whether their employment ended between May 11, 2017, and March 15, 2021, to challenge the data provided. In order to challenge JNM Contracting, Inc.'s data, the Settlement Class Member must provide documentation and/or an explanation demonstrating that JNM Contracting, Inc.'s data is incorrect and evidencing the correct number of Eligible Workweeks and or pay periods that the Settlement Class Member believes they should have been credited with and/or evidence of the correct date their employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt.

- H. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Settlement Class Member's Individual Settlement Awards, the allocation of W-2 wages, and the number of Eligible Workweeks and/or pay periods. Where the information submitted by JNM Contracting, Inc. from its records differs from the information submitted by the Settlement Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Settlement Award. Such determination shall be binding upon the Settlement Class Member and the Parties.

10. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's application for Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission.** Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, that they have any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in

this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses set forth below, or such other addresses as the Parties may designate in writing from time to time:

if to JNM Contracting, Inc.: Margot Parker
David C. Chang
FREEMAN MATHIS & GARY, LLP
550 S Hope St., Suite 2200
Los Angeles, CA 90071
mparker@fmglaw.com
dchang@fmglaw.com

if to EGC Investments, Inc.,
EBC Farms, or E & C Farms
LLC: Christina C. Tillman
Justin G. Donner
MCCORMICK BARSTOW SHEPPARD
WAYTE & CARRUTH, LLP
7647 N. Fresno Street
Fresno, CA 93720
christina.tillman@mccormickbarstow.com
justin.donner@mccormickbarstow.com

if to Plaintiff: Daniel J. Brown, Esq.
STANSBURY BROWN LAW
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
dbrown@stansburybrownlaw.com

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations,

presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

15. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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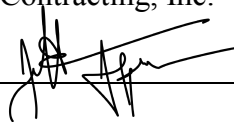
[SIGNATURES ON FOLLOWING PAGES]

EXECUTION BY PARTIES AND COUNSEL

DATED: April 22, 2021

JNM Contracting, Inc.

By: _____



Its: Owner

DATED:

EGC Investments, Inc.

By: _____

Its:

DATED:

EBC Farms

By: _____

Its:

DATED:

E & C Farms, LLC

By: _____

Its:

DATED:

Nazario Martinez Santiago

By: _____

Plaintiff and Settlement Class Representative

EXECUTION BY PARTIES AND COUNSEL

DATED: JNM Contracting, Inc.

By: _____

Its:

DATED: EGC Investments, Inc.

By: _____

Its: Partner

DATED: EBC Farms

By: _____

Its: Owner

DATED: E & C Farms, LLC

By: _____

Its: Partner

DATED: Nazario Martinez Santiago

By: _____

Plaintiff and Settlement Class Representative

EXECUTION BY PARTIES AND COUNSEL

DATED: JNM Contracting, Inc.

By: _____

Its:

DATED: EGC Investments, Inc.

By: _____

Its:

DATED: EBC Farms

By: _____

Its:

DATED: E & C Farms, LLC

By: _____

Its:

DATED: 04-21-21 Nazario Martinez Santiago

By:  _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: April 22, 2021

FREEMAN MATHIS & GARY, LLP

By: Margot Parker

Margot Parker
David C. Chang
Attorneys for Defendant JNM Contracting, Inc.

DATED:

MCCORMICK BARSTOW SHEPPARD WAYTE
& CARRUTH, LLP

By: _____

Christina C. Tillma
Justin G. Donner
Attorneys for Defendants EGC Investments, Inc.,
EBC Farms, and E & C Farms, LLC

DATED:

STANSBURY BROWN LAW

By: _____

Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

APPROVED AS TO FORM:

DATED:

FREEMAN MATHIS & GARY, LLP

By: _____

Margot Parker
David C. Chang
Attorneys for Defendant JNM Contracting, Inc.

DATED:

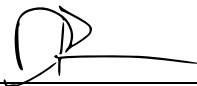
MCCORMICK BARSTOW SHEPPARD WAYTE
& CARRUTH, LLP

By: _____

Christina C. Tillma
Justin G. Donner
Attorneys for Defendants EGC Investments, Inc.,
EBC Farms, and E & C Farms, LLC

DATED: April 23, 2021

STANSBURY BROWN LAW

By:  _____

Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

EXHIBIT 1

STANSBURY BROWN LAW
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-207-5925

Attorneys for Plaintiff

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

NAZARIO MARTINEZ SANTIAGO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

JNM CONTRACTING, INC., a California
corporation; EGC INVESTMENTS, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: VCU282822

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Nazario Martinez Santiago (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Second Amended Class and Representative Action
3 Complaint (“FAC”) against JNM Contracting, Inc., a California corporation; EGC Investments,
4 Inc., a California corporation; EBC Farms; E & C Farms, LLC, a California Limited Liability
5 Company; and, DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
6 belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
9 Complaint for recovery of unpaid wages and penalties under California Business & Professions
10 Code § 17200 *et. seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
11 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
12 Order 14 (“Wage Order 14”), in addition to seeking declaratory relief and restitution. This
13 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
14 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
15 controversy exceeds this Court’s jurisdictional minimum.

16 **VENUE**

17 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
18 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
19 County of Tulare. One or more of the Defendants own, maintain offices, transact business, have
20 agent(s) within the County of Tulare, and/or otherwise are found within the County of Tulare,
21 and Defendants are within the jurisdiction of this Court for purposes of service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
27 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code

§§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, and 1198, 2802, and 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 14, which sets employment standards for Agricultural Occupations.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by employing seasonal farm labor employees to harvest agricultural commodities in the United States, and employed Plaintiff and other, similarly-situated non-exempt employees within Tulare County and the state of California and, therefore, were (and are) doing business in Tulare County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 9. Defendant EGC Investments, Inc. is also jointly liable with Defendant JNM
5 Contracting, Inc. for all civil legal responsibility and civil liability for the payment of wages,
6 including all sums payable to an employee or the state of California based upon any failure to pay
7 wages, pursuant to Labor Code § 2810.3

8 **GENERAL FACTUAL ALLEGATIONS**

9 10. Defendants are in the agricultural business and employ seasonal farm labor
10 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a
11 non-exempt farm labor employee on a seasonal basis from 2018 to approximately 2019 in the
12 position of “Picker.” Plaintiff would generally work about three weeks at a time during his
13 employment with Defendants. Plaintiff was tasked with harvesting cherries for the benefit of the
14 Defendants. Defendants’ credited Plaintiff with working approximately 7-8 hours per day, seven
15 days a week. However, in practice, on information and belief, Plaintiff alleges that Defendant
16 did not employ any actual timekeeping practices and at no point was Plaintiff made to confirm
17 or sign off on his hours. As discussed below, Plaintiff usually worked considerably more hours
18 per shift. Defendants have not boarded or lodged Plaintiff during his employment.

19 11. During Plaintiff’s employment with Defendants, Plaintiff was in most workweeks
20 paid on a piece-rate basis, whereby he was paid a set rate of \$5.50 per bucket filled with cherries.
21 Defendants’ foreperson allegedly recorded the hours Plaintiff worked; however, Plaintiff was
22 only paid an hourly minimum wage if his earned piece-rate compensation did not exceed his
23 minimum wages earned in a pay period.

24 12. Plaintiff and other non-exempt employees were not authorized to take all legally
25 required rest periods regardless of whether they were working on a piece-rate or hourly basis. For
26 example, Plaintiff’s check numbered 12197 issued on May 24, 2019, indicates that he worked 8.0
27 hours on May 15, 2009, entitling him to two rest periods. However, Plaintiff’s wage statement
28 indicates he was only compensated for one rest period (i.e. .17 hours), when he should have been

1 authorized and paid for two rest periods (i.e. .34 hours). Furthermore, Plaintiff alleges that at no
2 point was he ever provided a legally complaint duty-free rest period. Despite Defendants' failure
3 to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest
4 periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff and
5 other non-exempt employees with an hour of pay at their regular rate for each rest period violation
6 as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
7 class period, Defendants maintained no payroll code or another mechanism for the payment of
8 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
9 to take lawful rest periods.

10 13. Defendants have failed to accurately record and compensate Plaintiff and other
11 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
12 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
13 compensation structure that does not separately compensate employees for non-productive time
14 violates California minimum wage laws). Plaintiff and other non-exempt employees were
15 required to perform work duties and activities that were not directly compensated on a piece-rate
16 basis. Specifically, employees would arrive for work at the usually time of 5:00 a.m. but would
17 have to wait for the foreperson to provide them with ladders and for Defendants to set up the on-
18 site tractors and trailers with which employees would deposit their cherries. Plaintiff alleges that
19 all this wait time constitutes unproductive worktime which must be compensated under California
20 law. Furthermore, employees were not compensated for bathroom and water breaks, waiting in
21 lines, and/or other mandatory duties that were not directly compensated on a piece-rate basis.
22 Accordingly, Plaintiff and other non-exempt employees worked at least an additional one hour
23 per shift of non-productive time. However, as evidenced by Plaintiff's check numbered 12197
24 issued on May 24, 2019, Defendants would only compensate employees for one tenth of an hour
25 of non-productive time per day. Plaintiff alleges that Defendants have not accurately tracked and
26 compensated employees' non-productive time in compliance with Labor Code § 226.2.

27 14. Defendants have also failed to record employees' total hours worked each
28 workday accurately. Specifically, Defendants' forepersons would maintain timecards for all non-

1 exempt employees, but on information and belief, such timecards did not accurately reflect the
2 times that employees began and ended each workday. For example, although Plaintiff would
3 typically work at least 8 hours per workday, Plaintiff's wage statements indicated that he typically
4 only worked 7 hours per workday, presumably because Plaintiff's wage statements were based
5 on time records that were prepared by Defendants' forepersons, which inaccurately listed he only
6 worked 7.0 hours per workday. As a result, Defendants failed to ensure that Plaintiff and other
7 non-exempt employees were being paid at least the minimum wage for all hours actually worked,
8 and failed to ensure that Plaintiff and other non-exempt employees received proper overtime
9 wages for all overtime hours worked, in compliance with Wage Order 14.

10 15. Defendants further failed to pay non-exempt employees all overtime wages,
11 because non-exempt employees worked at least 8.0 hours per day 7.0 days a week for a total of
12 56.0 hours per week, entitling them to at least 1.0 hour of overtime pay per week pursuant to
13 Wage Order 14.

14 16. Defendants also did not provide Plaintiff and other non-exempt employees with a
15 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
16 other non-exempt employees would be instructed by the foreperson to take their lunch at 8:30am.
17 However due to the pressures to complete all of their work within narrow time frames set by
18 Defendants and the desire to maximize their piece rate compensation, Plaintiff and other non-
19 exempt employees would only take 15-20 minutes maximum for their meal periods. Defendants
20 were not only aware of, but actively encouraged this practice. Further, Defendants failed to
21 provide second meal periods when non-exempt employees worked shifts in excess of 10.0 hours.
22 Upon information and belief, Defendants' forepersons did not accurately record the beginning
23 and ending of each meal period on the timecards. Defendants also failed to record employees'
24 meal periods. Despite Defendants' failure to provide Plaintiff and other non-exempt employees
25 with all lawful meal periods due to their uniform and unlawful practices, Defendants never
26 provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for
27 each meal period violation as required by Labor Code § 226.7.

28 17. Defendants failed to adequately reimburse Plaintiff for all reasonable and

necessary work expenditures, including but not limited to, requiring Plaintiff to purchase his own equipment, tools, and buckets for the harvesting of cherries without reimbursement.

18. As a result of Defendants' failure to accurately compensate Plaintiff and other non-exempt employees for non-productive time, failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained inaccurate payroll records, and issued inaccurate wage statements. Furthermore, Defendants issued wage statements that were facially deficient as they impermissibly included employees' entire social security number, instead of just the last four digits, and at least some wage statements impermissibly failed to provide the name and address of the client employer.

19. As a further result of Defendants' failure to pay all minimum and overtime wages, meal and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment from Defendants.

20. Additionally, JNM Contracting, Inc. is a farm labor contractor subject to the requirements of Labor Code § 205, which requires that employees be paid weekly, on a business day designated in advance, for all wages earned up to and including the fourth day before the scheduled payday. However, Defendants pay their employees on a delay of five days or more, in violation of the "fourth day" requirement found in Labor Code § 205. For example, Plaintiff's check numbered 12197 that represented the pay period between May 13, 2019 and May 19, 2019 was not issued to Plaintiff until five days afterwards on May 24, 2019.

CLASS ACTION ALLEGATIONS

21. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Rest Period Class consists of all current and former non-exempt employees of Defendant JNM Contracting, Inc. in California who worked at least one shift in excess of 3.5 hours while performing work for Defendant EGC Investments, Inc.

1 during the four years immediately preceding the filing of this lawsuit through the
2 present.

3 b. The Minimum Wage Class consists of all current and former non-exempt
4 employees of Defendant JNM Contracting, Inc. in California who performed work
5 for Defendant EGC Investments, Inc. that was compensated on a piece-rate or
6 hourly basis during the four years immediately preceding the filing of this lawsuit
7 through the present.

8 c. The Overtime Wage Class consists of all current and former non-exempt
9 employees of Defendant JNM Contracting, Inc. in California who worked
10 overtime hours (based on criteria set forth in Wage Order 14) while performing
11 work for Defendant EGC Investments, Inc. during the four years immediately
12 preceding the filing of this lawsuit through the present.

13 d. The Meal Period Class consists of all current and former non-exempt employees
14 of Defendant JNM Contracting, Inc. in California who: (i) worked at least one shift
15 in excess of 5.0 hours while performing work for Defendant EGC Investments,
16 Inc. without a meal period of at least 30 minutes in duration commencing prior to
17 the conclusion of the fifth hour of work, and who do not have a corresponding
18 meal period premium payment made for such shifts and/or (ii) worked at least one
19 shift in excess of 10.0 hours while performing work for Defendant EGC
20 Investments, Inc. without a second meal period of at least 30 minutes in duration
21 commencing prior to the conclusion of the tenth hour of work, and who do not
22 have a corresponding meal period premium payment made for such shifts during
23 the four years preceding the filing of this lawsuit through the present.

24 e. The Employee Expense Class consists of all of Defendants' current and former
25 non-exempt employees in California who were not reimbursed for the purchase
26 and maintenance of tools necessary for the performance of their job duties during
27 the four years immediately preceding the filing of this lawsuit to the present.
28

1 f. The Wage Statement Class consists of all members of the Rest Period Class,
2 Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a
3 wage statement from Defendants during the one year immediately preceding the
4 filing of this lawsuit through the present.

5 g. The Waiting Time Class consists of all Defendants' formerly employed members
6 of the Rest Period Class, Minimum Wage Class, Overtime Class, and Meal Period
7 Class who separated from employment during the three years immediately
8 preceding the filing of this lawsuit through the present.

9 22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
10 joinder of all members would be unfeasible and not practicable. The membership of the Classes
11 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
12 number greater than one hundred (100) individuals. The identity of such membership is readily
13 ascertainable via inspection of Defendants' employment records.

14 23. **Common Questions of Law and Fact Predominate/Well Defined Community**
15 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
16 situated employees, which predominate over questions affecting only individual members. Those
17 common questions include, without limitation:

18 i. Whether Defendants correctly compensated employees for rest periods pursuant
19 to Labor Code § 226.2;

20 ii. Whether Defendants paid all minimum wages owed for all hours worked to
21 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
22 1194.2, and 1197;

23 iii. Whether Defendants violated the applicable Labor Code provisions, including, but
24 not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the
25 Overtime Wage Class to perform overtime work and not paying for said work in
26 accordance with the overtime laws of the State of California;

27 iv. Whether Defendants' timekeeping policies/practices resulted in the failure to
28 properly compensate members of the Minimum Wage Class;

- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform piece-rate pay structure, meal and rest period policies and practices, timekeeping policies and practices, non-reimbursement, wage statement, and payment of final wages policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was paid on a piece-rate and hourly basis, was subject to Defendants' meal and rest period and timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate and incomplete wage statements, and was not paid all wages earned at the time of his separation of employment.

1 26. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
2 to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
5 and-hour class actions in state and federal courts in the past and are committed to vigorously
6 prosecuting this action on behalf of the members of the Classes.

7 27. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous

individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 14.

30. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

31. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 14.

32. Defendants' practice and uniform administration of corporate policy regarding

1 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
2 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
3 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
4 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
5 Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGE**

8 **(AGAINST AL DEFENDANTS)**

9 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
11 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
12 overtime hours worked, and provide a private right of action for the failure to pay all overtime
13 compensation for overtime work performed.

14 35. At all times relevant herein, Defendants were required to properly compensate
15 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
16 Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
17 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
18 in the Wage Order.

19 36. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
20 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
21 Class at one and one-half times their regular rate of pay for such hours.

22 37. The foregoing policies and practices are unlawful and create entitlement to
23 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
24 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
25 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
26 14, and Code of Civil Procedure § 1021.5.

27 **THIRD CAUSE OF ACTION**

28 **MEAL PERIOD VIOLATIONS**

1 **(AGAINST ALL DEFENDANTS)**

2 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

3 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 failed in their affirmative obligation to provide all of their non-exempt employees in California,
5 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
6 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
7 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
8 of the Meal Period Class at their respective regular rates of compensation, in accordance with
9 California Labor Code §§ 226.7, and 512.

10 40. As a result, Defendants are responsible for paying premium compensation for meal
11 period violations including interest thereon, as well as statutory penalties, civil penalties, and
12 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§
13 3287(b) and 3289.

14 **FOURTH CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 42. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516 establish the
19 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
20 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

21 43. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
22 of the Rest Period Class to take all legally compliant rest periods.

23 44. The foregoing violations create an entitlement to recovery by Plaintiff and
24 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
25 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
26 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

27 **FIFTH CAUSE OF ACTION**

28 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

1 **(AGAINST ALL DEFENDANTS)**

2 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

3 46. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
4 states that “an employer shall indemnify his or her employees for all necessary expenditures or
5 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
6 his or her obedience to the directions of the employer...”

7 47. Due to Defendants’ unlawful policy and practice of requiring employees to
8 purchase and maintain tools necessary for the performance of their job duties, Defendants have
9 violated Labor Code § 2802.

10 48. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
11 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

12 49. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
13 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
14 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
15 from the date on which they incurred the initial necessary expenditure.

16 **SIXTH CAUSE OF ACTION**

17 **WAGE STATEMENT VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
22 and the Wage Statement Class with accurate, itemized wage statements that included, among
23 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
24 net wages earned in violation of Labor Code §226 *et seq.*

25 52. Furthermore, Defendants knowingly and intentionally, as a matter of uniform
26 practice and policy, failed to conform to Labor Code §226 *et seq* by unlawfully including the
27 entirety of Plaintiff and the Wage Statement Class’ Social Security numbers on their wage
28 statements in violation of the provisions of the Labor Code that provide that only the last four

1 digits be displayed on employee's wage statements.

2 53. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
3 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
4 failures led to, among other things, the non-payment of all of their meal and rest period
5 premiums, and deprived them of the information necessary to identify discrepancies in
6 Defendants' reported data.

7 54. Defendants' failures created an entitlement to Plaintiff and members of the Wage
8 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
9 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
10 suit pursuant to Labor Code § 226 *et seq.*

11 **SEVENTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

13 **(AGAINST ALL DEFENDANTS)**

14 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 56. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
16 an employer to pay all wages immediately at the time of termination of employment in the event
17 the employer discharges the employee or the employee provides at least 72 hours of notice of
18 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
19 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
20 employee's last date of employment.

21 57. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
22 all final wages due to them at the time of their separation including, among other things, unpaid
23 amounts for rest and recovery periods and non-productive time, underpaid overtime and
24 minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed
25 and believes, and based thereon alleges, that as a matter of uniform policy and practice,
26 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
27 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
28 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

58. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, failing to provide all required meal periods, failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse for necessary business expenditures, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

61. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

62. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

63. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

1 64. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
3 of Defendants' current non-exempt employees, and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which he is entitled to recover under Code of Civil Procedure § 1021.5.

6 **NINTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

9 65. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
10 fully set forth herein.

11 66. Defendants have committed several Labor Code violations against Plaintiff,
12 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
13 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
14 employees, brings this representative action against Defendants to recover the civil penalties due
15 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
16 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
17 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
18 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
19 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
20 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
21 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
22 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
23 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
24 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
25 subsequent violation per employee per pay period for those violations of the Labor Code for
26 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 27 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
28 Wage Class, and other similarly aggrieved employees in violation of Labor

Code §§ 1182.12, 1194, 1194.2, and 1197;

- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- e. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

67. On May 9, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 66 (a)-(h). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

68. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the

civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other

aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations;

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5 and all other applicable statutes; and

15. For such other and further relief the Court may deem just and proper.

Dated: April 22, 2021
Respectfully submitted,
STANBURY BROWN LAW

By: 
Daniel J. Brown
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: April 22, 2021
Respectfully submitted,
STANBURY BROWN LAW

By: 
Daniel J. Brown

Attorneys for Plaintiff

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EXHIBIT 2

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT
Nazario Martinez Santiago v. JNM Contracting, Inc., et al.
Tulare Superior Court
Case No.: VCU282822

To: All current and former non-exempt employees of Defendant JNM Contracting, Inc. in California who were subject to Wage Order 14 and performed work for Defendants EGC Investments, Inc., and/or EBC Farms and/or E & C Farms, LLC at any time during the period of May 11, 2016, to March 15, 2021 (“Settlement Class” or “Settlement Class Members”)

PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in the matter of *Nazario Martinez Santiago v. JNM Contracting, Inc., et al.*, Tulare County Superior Court, Case No. VCU282822 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. JNM Contracting, Inc.’s (“JNM”) records show that you were employed by JNM as a non-exempt employee subject to the requirements of Wage Order 14 and worked at least one shift performing work for Defendants EGC Investments, Inc., and/or EBC Farms, and/or E & C Farms, LLC (EGC Investments, Inc., EBC Farms, and E & C Farms, LLC are referred to herein collectively as “EGC”) (JNM and EGC are collectively referred to herein as “Defendants”) in California between May 11, 2016, and March 15, 2021. (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Nazario Martinez Santiago (“Plaintiff”) brought this Lawsuit against Defendants seeking to assert claims on behalf of a class of all current and former non-exempt employees subject to Wage Order 14 who were employed by Defendant JNM and worked at least one shift for EGC in California from May 11, 2016, to March 15, 2021. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

The Lawsuit alleges that Defendants: (i) failed to pay employees all earned minimum and overtime wages, (ii) failed to provide all legally required meal and rest periods, (iii) failed to provide accurate and itemized wage statements, (iv) failed to timely pay all wages due or final wages due, and as a result of the above-mentioned alleged violations, engaged in unlawful business practices and are liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Defendants deny that they have done anything wrong. Defendants also deny that they owe Class Members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement is a compromise of disputed claims and should not be considered as an admission of liability on the part of Defendants, by whom all liability is expressly denied.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of the Court not allowing the case to proceed as a class action, the risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

The Court has not ruled on Plaintiff’s claims. In granting preliminary approval of the Settlement the Court has determined only that there is sufficient evidence to suggest that the Settlement might be fair, adequate, and reasonable. A final determination on whether the Settlement is fair, adequate, and reasonable will be made at the Final Approval hearing.

Your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants’ policies strictly prohibit unlawful retaliation. Defendants will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff/Settlement Class: STANSBURY BROWN LAW Daniel J. Brown dbrown@stansburybrownlaw.com Ethan C. Surls esurls@stansburybrownlaw.com 2610 ½ Abbot Kinney Blvd. Venice, California 90291 Tel: (323) 207-5925 www.stansburybrownlaw.com	Attorneys for Defendant JNM Contracting, Inc.: FREEMAN MATHIS & GARY, LLP Margot Parker mparker@fmglaw.com David C. Chang dchang@fmglaw.com 400 Continental Blvd., 6th Floor El Segundo, CA 902445 Tel: (424) 352-1835 www.fmglaw.com
	Attorneys for Defendants EGC Investments, Inc., EBC Farms, E & C Farms, LLC: MCCORMICK BARSTOW SHEPPARD WAYTE & CARRUTH, LLP Christina C. Tillman christina.tillmam@mccormickbarstow.com Justin G. Donner justin.donner@mccormickbarstow.com 7647 N. Fresno Street Fresno, CA 93720 Tel: (209) 599-5003 www.terpstra-law.com

What are the terms of the Settlement?

Defendants have agreed to jointly pay \$130,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, Class Counsel’s attorneys’ fees and expenses, Settlement administration costs, and the Class Representative’s Enhancement Payment.

The following deductions from the Maximum Settlement Amount will be requested by the Parties:

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of 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. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for up to one-third of the Maximum Settlement Amount, which is currently estimated at \$43,290.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$10,000.00 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved ILYM Group, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$15,996.96 from the Maximum Settlement Amount to pay the settlement administration costs.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an Enhancement Payment in the amount of \$5,000.00 to compensate him for his service and extra work provided on behalf of the Class Members.

Payment to State of California. The Parties have agreed to allocate \$5,000.00 towards the Settlement of the PAGA claims in the Lawsuit. \$3,750.00 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$1,250 will be allocated to Class Members as part of the Net Settlement Fund described below.

Defendants Share of Payroll Taxes. Defendants’ share of payroll taxes shall be paid by Defendants separate and apart from the Maximum Settlement Amount.

Calculation of Class Members’ Settlement Awards. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Fund, which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion Form (“Settlement Class Members”) (described below). The Net Settlement Fund is estimated at approximately \$51,963.04, and will be divided as follows:

- (i) 20% of the Net Settlement Fund shall be designated as the “Waiting Time Amount” and will be allocated in equal amounts to all Settlement Class Members whose employment with JNM ended at any time between May 11, 2017, to March 15, 2021.
- (ii) 15% of the Net Settlement Fund shall be designated as the “Wage Statement Amount” and will be allocated to Settlement Class Members who were employed by JNM to perform work for EGC at any time from May 11, 2019, to March 15, 2021, based on the proportionate number of Eligible Workweeks (defined as any workweek in which the Settlement Class Member worked at least one day during the workweek for JNM performing work for EGC based on JNM’s records) he or she worked from May 11, 2019, to March 15, 2021.
- (iii) \$2, 500.00 of the Maximum Settlement Amount has been designated as the “PAGA Amount.” Each Class Member who was employed by JNM to perform work for EGC at any time from May 11, 2019, to March 15, 2021, shall receive a portion of the PAGA Amount based on the number of proportionate Eligible Workweeks he or she worked from May 11, 2019, to March 15, 2021.
- (iv) The remainder of the Net Settlement Fund will be distributed to each Settlement Class Member based on the proportionate number of Eligible Workweeks that he or she worked during the Class Period.

Payment of the Settlement. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to all Class Members for their portion of the PAGA Amount regardless of whether they submit a Request for Exclusion Form. In addition, Settlement Class Members will receive additional compensation as part of their Individual Settlement Awards comprised of their portion of the Net Settlement Fund as described above.

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: 20% as “wages,” for which an IRS Form W-2 will be issued; and 80% as penalties and interest, for which an IRS Form 1099 will be issued. Class Members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of awards they receive under the Settlement.

Release. If the Court approves the Settlement, Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendants, their past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, and their respective successors and predecessors in interest, and attorneys (collectively the “Released Parties”) for all claims that were pled or could have been pled based on the factual allegations in the proposed SAC, including: (a) minimum wage violations (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) failure to reimburse necessary business expenses; (f) wage statement violations; (g) waiting time

penalties; (h) all claims arising out of unfair business practices under Business & Professions Code § 17200, *et seq.* that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC; and (i) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been based on the factual allegations in the SAC. (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from May 11, 2016, to March 15, 2021 (“Class Period”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of Eligible Workweek during the Class Period, the proportionate number of Eligible Workweeks you worked between May 11, 2019, and March 15, 2021, and whether you separated your employment from JNM between May 11, 2017, and March 15, 2021, as stated in this Notice. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of Eligible Workweeks you worked during the Class Period, the proportionate number of Eligible Workweeks you worked between May 11, 2019, and March 15, 2021, and, whether you have separated employment from Defendants between May 11, 2017, and March 15, 2021. The information contained in JNM’s records regarding each of these factors, along with your estimated Individual Settlement Award, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to <<ADMINISTRATOR CONTACT INFO>>. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make a determination as to whether an adjustment will be made.

According to Defendant’s records:

- (a) you worked for JNM in California from [REDACTED] to [REDACTED];
- (b) you worked [REDACTED] Eligible Workweeks between May 11, 2016, and March 15, 2021, for JNM;
- (c) you worked [REDACTED] Eligible Workweeks between May 11, 2019, and March 15, 2021, for JNM; and
- (d) your employment with Defendants <<DID/DID NOT>> end between May 11, 2017, and March 15, 2021.

Based on the above, your Individual Settlement Award is estimated at \$ [REDACTED]. The lowest Individual Settlement Award to a Settlement Class Member is estimated at [REDACTED]. The highest Individual Settlement Award to a Settlement Class Member is estimated at [REDACTED].

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by completing the Request for Exclusion Form included with this Notice, and sending it to the Settlement Administrator postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, and your signature.

Send the Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion Form, shall, upon receipt by the Settlement Administrator, not be a Settlement Class Member and shall be barred from participating in any portion of the Net Settlement Fund.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may complete the Objection Form or timely submit a written objection directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection must include your name, address, the case name

and number, each specific reason in support of your objection, and any legal or factual support for each objection, together with any evidence in support of your objection. Objection Forms or written objections must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also object by appearing at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 02 of the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, California 93291. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. All objections or other correspondence must state the name and number of the case, which is *Nazario Martinez Santiago v. JNM Contracting, Inc., et al.*, Tulare Superior Court, Case No. VCU282822.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 02 of the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, California 93291. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Payment to the Class Representative. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, California 93291, during regular court hours. You may also view the case file online at www.tularesuperiorcourt.ca.gov by clicking on the "Case Information" tab, clicking on "Search Cases," and entering the case number information. This case is assigned to Department 02 of the County Civic Center Courthouse, located at 221 S. Mooney Blvd., Visalia, California 93291. The Settlement Agreement is attached as Exhibit A to the Declaration of Daniel J. Brown In Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed on <<<DATE PRELIMINARY APPROVAL MOTION FILED>>>. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting a Request for Exclusion Form, Objection Form, or any dispute is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIMINARY APPROVAL DATE>>.

EXHIBIT 3

REQUEST FOR EXCLUSION FORM

Nazario Martinez Santiago v. JNM Contracting, Inc., et al.
Tulare County Superior Court
Case No. VCU282822

IF YOU **DO NOT** WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MAY **COMPLETE**, **SIGN** AND **MAIL** THIS FORM, POSTMARKED ON OR BEFORE **[INSERT DATE]**, ADDRESSED AS FOLLOWS:

ILYM GROUP, INC. <i>Nazario Martinez Santiago v. JNM Contracting, Inc., et al.</i> CLASS ACTION ADMINISTRATOR ADDRESS ADDRESS PHONE FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Nazario Martinez Santiago v. JNM Contracting, Inc., et al.*, Tulare County Superior Court, Case No. VCU282822.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *NAZARIO MARTINEZ SANTIAGO V. JNM CONTRACTING, INC., ET AL.* 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.

Name _____ Telephone Number _____

Address _____

Date _____ Signature _____

Last Four Digits of Social Security Number: ____ _

EXHIBIT 4

OBJECTION FORM

Nazario Martinez Santiago v. JNM Contracting, Inc., et al.

Tulare Superior Court

Case No.: VCU282822

All objections must be mailed or delivered to the Settlement Administrator, ILYM Group, Inc. at <<INSERT ADMINISTRATOR CONTACT INFO>> on or before <<RESPONSE DEADLINE>>. All objections must be postmarked on or before <<RESPONSE DEADLINE>>.

Objecting Settlement Class Member Information:

Name

Telephone Number

Address

Date

Signature

Describe the Nature of Each Objection and Please Attach Additional Pages if Necessary:

