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OFELIA ORTEGA on behalf of herself  
and all similarly aggrieved employees

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF MONTEREY**

OFELIA ORTEGA, on behalf of herself  
and all similarly aggrieved employees,

Plaintiff,

v.

SUNLIGHT BERRY FARMS, INC.; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV002558

**DECLARATION OF MAX W. GAVRON  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: October 28, 2022

Time: 8:30 a.m.

Dept.: 14

Complaint Filed: September 24, 2020

FAC Filed: January 1, 2021

SAC Filed: January 6, 2022

## DECLARATION OF MAX W. GAVRON

I, Max W. Gavron, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Ofelia Ortega (“Plaintiff”), on behalf of herself and other similarly situated individuals, in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

## CASE SUMMARY

2. On September 24, 2020, Plaintiff filed a representative action complaint in the Superior Court of California, County of Monterey on behalf of herself and all similarly aggrieved employees against Sunlight Berry Farms, Inc.

3. On January 1, 2021, Plaintiff filed a First Amended Complaint, adding class action claims and Naturipe Berry Growers, Inc. (together with Sunlight Berry Farms, Inc., “Defendants”) to the action.

4. On January 6, 2022, Plaintiff filed a Second Amended Complaint. The Second Amended Complaint is the operative complaint (“Complaint”) and alleges class and representative action claims for (1) failure to provide meal periods in violation of Labor Code §§ 226.7 and 1198; (2) failure to provide rest periods in violation of Labor Code §§ 226.7 and 1198; (3) failure to pay hourly and overtime wages in violation of Labor Code §§ 1194 and 1198; (4) failure to comply with itemized employee wage statement requirements in violation of Labor Code §§ 226, 1174, and 1175; (5) failure to pay all wages upon termination in violation of Labor Code §§ 201, 202, and 203; (6) failure to timely pay wages in violation of Labor Code § 204; (7) claims for civil penalties pursuant to Labor Code § 2698; and (8) engaging in unfair business practices in violation of Business and Professions Code § 17200, *et seq.*

5. Since the initiation of the lawsuit, the Parties have engaged in formal and informal discovery. Plaintiff has reviewed Defendants' production of their policies and

1 practices, payroll data, sample wage statements and timesheets, and other documents. This  
2 investigation enabled Plaintiff to perform an analysis of the putative class and Defendants'  
3 liability.

4 6. On April 6, 2022, the Parties engaged in a full-day mediation with neutral Mike  
5 Masuda, Esq. After thorough investigation and evaluation of the facts and claims, as well as  
6 arm's length negotiation, the Parties were ultimately able to reach an agreement to resolve all  
7 claims and entered into a memorandum of understanding. The Parties subsequently executed  
8 the Stipulation of Settlement ("Settlement Agreement"), a true and correct copy of which is  
9 attached as **Exhibit A**.

10 7. The Parties recognize the risk, expense, and delay in continuing litigation with  
11 the class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.  
12 Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims  
13 arising from or relating to the afore-referenced claims.

#### 14 **SUMMARY OF THE SETTLEMENT TERMS**

15 8. The Settlement Agreement provides for Two Hundred Thousand Dollars  
16 (\$200,000.00) as the total Gross Settlement Amount. The Net Settlement Amount (calculated  
17 after deduction of Class Counsel's attorneys' fees (up to \$66,666.67), costs (up to \$10,000.00),  
18 Class Representative Enhancement Payment (up to \$5,000.00), payment to the LWDA  
19 (\$18,750.00), and Settlement Administration Costs estimated at \$8,275.00<sup>1</sup> (up to  
20 \$20,000.00)) is estimated to be approximately \$91,308.33. Each Settlement Class Member  
21 who does not opt-out of the settlement will be awarded a portion of the Settlement Class  
22 Award on a pro-rata basis, based upon the total number of weeks he or she worked during the  
23 Class Period, and a portion of the PAGA Amount on a pro-rata basis, based upon the total  
24 number of weeks he or she worked from September 24, 2019 through the date the court enters  
25 preliminary approval of the Settlement.

26 9. On a raw average, each Settlement Class Member potentially may recover

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27 <sup>1</sup> I obtained a quote for distribution from Phoenix Settlement Administrators, which is \$8,275.00. The Settlement  
28 Agreement provides for administration costs of up to \$20,000.00. See Settlement Agreement ¶ 3. The difference  
will be allocated for distribution pursuant to the terms of the Settlement Agreement.

1 approximately \$371.17. The amount actually paid to each Settlement Class Member will  
2 increase or decrease depending on the actual number of weeks he or she worked during the  
3 relevant time period.

4 10. Pursuant to the Settlement Agreement, Defendant has represented that there are  
5 approximately 246 individuals that comprise the Class. *See* Settlement Agreement ¶ 3.E.  
6 Should this number increase more than 10%, Plaintiff retains the right to rescind the  
7 agreement, subject to Defendants increasing the Gross Settlement Amount on a proportional  
8 basis, which would preserve the terms of the proposed settlement.

9 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

10 11. Based on the class data provided by Defendants, Plaintiff estimated that  
11 Defendants would face potential liability of up to approximately \$1.3 million for Plaintiff's  
12 class claims. Specifically, this amount was calculated based on the following breakdowns for  
13 each class claim:

- 14 • \$2,829.00 for off-the-clock work for mandatory training (30 minutes per  
15 employee @ \$23.00 per hour (including piece rate) x 246 employees =  
16 \$2,829.00
- 17 • \$41,354.00 for meal period violations at a 25% violation rate (~7,192 shifts x  
18 \$23.00 average rate of pay) x 25% = \$41,354.00);
- 19 • \$41,354.00 for rest period violations at a 25% violation rate (~7,192 shifts x  
20 \$23.00 average rate of pay) x 25% = \$41,354.00);
- 21 • \$193,200 in Section 226(e) wage statement penalties (2,055 workweeks x \$100  
22 = \$205,500) – (246 x \$50 = \$12,300) = \$193,200.00
- 23 • \$1,099,841.40 in waiting time penalties (premised on 246 former class members  
24 ((\$149.03 average per day x 30 days = \$4,470.90) x 246 = \$1,099,841.40).

25 12. Plaintiff further estimated the maximum potential PAGA penalties to be  
26 approximately \$205,500. This amount was calculated based on approximately 2,055  
27 workweeks during the relevant time period and a \$100 penalty per violation, which assumes  
28 that the Court would not “stack” PAGA penalties for distinct violations of the Labor Code.

1 Courts have recently been hesitant to award a higher PAGA penalty for “subsequent”  
2 violations where there is no prior citation by the Labor Commissioner, which renders the  
3 evaluation of the potential PAGA penalties without “stacking” reasonable. *C.f. Bernstein v.*  
4 *Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (“Virgin was not notified by the Labor  
5 Commissioner or any court that it was subject to the California Labor Code until the district  
6 court partially granted Plaintiffs’ motion for summary judgment. On this basis, we reverse the  
7 district court’s holding that Virgin is subject to heightened penalties for any labor code  
8 violation that occurred prior to that point.”). While *Bernstein* addresses whether the higher  
9 subsequent penalty should be applied, defendants often argue that this decision supports their  
10 position that the court should not award multiple penalties for different predicate violations of  
11 the Labor Code during the same pay period.

12 13. Even if Plaintiff were to prevail on the merits of the PAGA claim, the potential  
13 recovery is uncertain. Under PAGA, trial courts have considerable discretion to reduce the  
14 penalty award. Pursuant to Labor Code section 2699(f)(2) the Court can decline to award the  
15 full amount of PAGA penalties where “if, based on the facts and circumstances of the  
16 particular case, to do otherwise, would result in an award that is unjust, arbitrary and  
17 oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington*  
18 *v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court  
19 reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith  
20 attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court  
21 of Appeal found such reduction to be proper and affirmed a judgment which only provided for  
22 a PAGA penalty of \$5 per pay period. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at \*17  
23 (noting that even if PAGA penalties amounted to \$1 billion, such award “could well be  
24 reduced, as a court may reduce the penalty when to do otherwise would result in an award that  
25 is unjust, arbitrary and oppressive, or confiscatory”). If the Court were to award only \$5.00 a  
26 pay period in this case, the potential PAGA penalties total \$10,275.00.

27 14. Courts routinely award far less than the statutory maximum amount of civil  
28 penalties, even where an underlying violation of the Labor Code is found. In the matter of

1 *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed substantial PAGA penalties  
2 upon the defendant, such amount still represented reductions of 67% and 80% of the potential  
3 PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at \*87-\*100 (N.D. Cal. May 31, 2019).  
4 Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the  
5 Ninth Circuit reversed the trial court's ruling, which demonstrates the significant risk  
6 presented in moving forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668,  
7 677 (9th Cir. 2021).

8 15. The total amount of class and PAGA penalties amount to approximately \$1.5  
9 million, without discounting for potentially losing on any of the causes of action. The Gross  
10 Settlement Amount is \$200,000.00, which is a significant percentage of the maximum class  
11 and PAGA penalties, totaling approximately 13% (\$200,000/\$1,500,000.00).

12 16. Although Plaintiff believes in the merits of the alleged claims and maintains that  
13 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendants may raise  
14 defenses to the claims and further with respect to the reduction of PAGA penalties and that it  
15 could be persuasive to the Court. The Gross Settlement Amount was premised with this risk in  
16 mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA  
17 penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

18 17. On the merits, there are also significant risks presented if Plaintiff was to move  
19 forward with litigation. Defendant argued that it complied with the Labor Code in all respects  
20 and that class certification was not appropriate. Defendant presented many arguments in their  
21 defense, including, but not limited to, the following: 1) Plaintiff could not establish that  
22 Naturipe was her employer; 2) Plaintiff's meal and rest period claims were not viable because  
23 the majority of employees were able to leave the premises during their breaks, and Defendant  
24 maintained legal policies and provided breaks to employees, see *Brinker Rest. Corp. v. Super.*  
25 *Ct.*, 53 Cal. 4th 1004, 1041-42 (2012); 3) Defendant timely paid all wages due and owing at  
26 separation of employment and issued accurate wage statements; and 4) Defendant did not  
27 require employees to participate in orientation while off-the-clock.

28 18. Although Plaintiff believes that a class can be certified, Plaintiff also believes in

1 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff  
2 involved in not prevailing on one or more of the causes of action or theories alleged in the  
3 operative complaint at trial, the possibility of non-certification, and the potential for appeals.

4 19. From the inception of the case, Class Counsel have zealously represented the  
5 interests of the Settlement Class. The settlement was obtained for the benefit of the Settlement  
6 Class, as opposed to the individual Class Representative. Further, Class Counsel have been  
7 approved as class counsel on a number of prior cases, have litigated numerous other class  
8 action cases, and are competent to represent the Settlement Class.

9 20. Both Plaintiff's and Defendants' counsel have a great deal of experience in wage  
10 and hour class action litigation. Plaintiff's counsel has been approved as class counsel in a  
11 number of wage and hour class action and have extensive litigation experience.

12 21. Each side has apprised the other of their respective factual contentions, legal  
13 theories, and defenses, resulting in negotiations taking place between the Parties.

14 22. The Parties recognize the risk, expense, and delay in continuing litigation with  
15 the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

16 23. Based on my review of all the information, and based on my experience in class  
17 action litigation, I believe this settlement to be fair, adequate, and reasonable.

18 24. My office was retained based upon a contingency fee arrangement wherein  
19 Plaintiff's counsel agreed to advance all costs and receive no fee unless a recovery was  
20 accomplished. Specifically, had Plaintiff failed to prevail on these cases, counsel for Plaintiff  
21 would have spent a significant amount of time, money and other resources without any benefit  
22 or return. In addition, had Plaintiff also failed to prevail in the present cases, Defendants would  
23 have been able to seek attorney's fees and costs in connection with their defense of the case.

24 25. I have spent significant time researching and pursuing the claims that have been  
25 alleged in this action. The Parties engaged in formal and informal discovery, with the  
26 production of documents and data for the putative class.

27 **ATTORNEY'S EXPERIENCE**

28 26. My qualifications are as follows: I received a full-tuition scholarship, and

1 graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of  
2 my class. During my time at Southwestern, I was a Notes and Comments Editor on the  
3 Southwestern Law Review. I also received awards for achieving the highest grade in my class  
4 in several courses. In 2012, I was a full-time extern, at the United States District Court for the  
5 Central District. Immediately after law school, I taught several courses at Southwestern,  
6 including Principles of Legal Analysis and Legal Methods. I taught those courses for  
7 approximately four years.

8 27. I practiced civil litigation at Haight Brown & Bonesteel LLP from  
9 approximately September 2013, through January 2016. I was third-chair in a federal court jury  
10 trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach  
11 of contract dispute. I also regularly litigated cases across the civil litigation spectrum,  
12 including employment matters.

13 28. From February 2016, through Fall 2017, I practiced at the international law firm  
14 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune  
15 50 companies in Multi-District Litigation primarily in the product liability sphere. I also  
16 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a  
17 summary judgment decision regarding trade secret issues, in addition to working in several  
18 other practice groups.

19 29. From September 2017, through September 2018, I served as a law clerk to a  
20 Judge sitting on the United States District Court, Central District of California. I regularly  
21 prepared bench memoranda, on cases involving all types of civil litigation, including regularly  
22 working on wage and hour class actions.

23 30. I am currently an associate at the law firm Diversity Law Group, P.C., an  
24 employment law firm that has handled numerous wage and hour class and individual actions,  
25 on both plaintiff and defense sides. My current practice focuses on employment matters  
26 involving both class actions, and single plaintiffs. The firm currently has cases in the Los  
27 Angeles Superior Courts, the Orange County Superior Courts, the San Diego County Superior  
28 Courts, and the United States District Courts for the Central, Northern, and Eastern Districts of

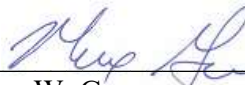
1 California. I am currently handling, or have handled, numerous wage and hour class action  
2 lawsuits with the firm, including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC*  
3 (Case No. CV-19-001906, Stanislaus County Superior Court); *Cunningham, et al. v. Diverse*  
4 *Business Solutions* (Case No. CIVDS1817095, San Bernardino County Superior Court);  
5 *Heredia v. Eddie Bauer LLC* (Case No. 16CV300475, United States District Court, Northern  
6 District of California); *Parsons v. Estenson Logistics, LLC* (Case No. 34-2019-00252929,  
7 Sacramento County Superior Court); *Wood v. Reeve Trucking Co., Inc.* (Case No. STK-CV-  
8 UOE-2018-0004414, San Joaquin County Superior Court); and *Coronel v. Pinnacle*  
9 *Agriculture* (Case No. 18CV004287, Monterey County Superior Court).

10 31. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court  
11 of Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On  
12 June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor  
13 of our clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

14 32. I have also assisted the firm in numerous wage and hour class action mediations.

15 I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct.

17 Executed on this 6th day of September 2022, at Los Angeles, California.

18   
19 \_\_\_\_\_  
Max W. Gavron

# EXHIBIT A

## STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Ofelia Ortega (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendants Sunlight Berry Farms, Inc. (“Sunlight”) and Naturipe Berry Growers, Inc. (“Naturipe”) (collectively “Defendants”), on the other hand. Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by James Fitzpatrick and Laura L. Franklin of Fitzpatrick & Swanston; and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. (collectively, “Class Counsel”). Defendant Sunlight is represented by Erica L. Rosasco and Michael G. Blankinship of McKague Rosasco LLP. Defendant Naturipe is represented by Paul Rovella and Anais Mora of Johnson, Rovella, Retterer, Rosenthal & Gilles, LLP.

On September 24, 2020, Plaintiff filed a complaint for civil penalties under the Private Attorneys General Act (Labor Code § 2698, *et seq.*) (“PAGA”) against Sunlight in Monterey County Superior court, titled *Ofelia Ortega v. Sunlight Berry Farms, Inc.*, Case No. 20CV002558 (the “Action”). On January 1, 2021, Plaintiff amended her complaint to bring a Class Action and added Defendant Naturipe. On January 6, 2022, Plaintiff filed the operative Second Amended Complaint (“SAC”) in the Action. The Action alleges that Defendants: (i) failed to provide all lawful meal periods; (ii) failed to provide rest periods; (iii) failed to pay hourly and overtime wages; (iv) failed to comply with itemized employee wage statement requirements; (v) failed to pay all wages upon termination; (vi) failed to pay wages timely engaged in unfair business practices; and (iv) are liable for civil penalties under PAGA.

On April 6, 2022, the Parties attended mediation with Mike Masuda as mediator. The Parties engaged in arms-length negotiations during the mediation.

Given the uncertainty of litigation, Plaintiff and Defendants wish to settle the Action in its entirety. Accordingly, Plaintiff and Defendants agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendants stipulate to the certification of the following Settlement Class:

All Sunlight Berry Farms, Inc.’s current and former non-exempt employees in the State of California at any time between September 24, 2016 through the date the Court enters preliminary approval of the Class Action Settlement (the “Settlement 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. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, the Parties agree that 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. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully and finally release and discharge Defendants and any of their former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, and all agents, employees, officers, directors, members, managers, holding companies, insurers, and attorneys thereof, (collectively, the “Released Parties”), as follows:

- A. All Settlement Class members who do not timely opt-out will fully and finally release and discharge the Released Parties from any and all claims and causes of action that were pled in the Action or which could have been pled based on the factual allegations in the Action that arose during the Class Period (the “Released Claims”). This release shall run through the Settlement Period.
- B. All Settlement Class members who performed work for Sunlight in the State of California between September 24, 2019 through the date the court enters preliminary approval of the Class Action Settlement (the “PAGA Aggrieved Employees”), regardless of whether they opt-out of the Settlement, will release and discharge the Released Parties from all PAGA claims based on the Labor Code violations and facts alleged in the SAC in the Action and/or Plaintiff’s PAGA notice letter, that arose during the Settlement Period (the “PAGA Released Claims”).
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff has agreed to release, as an individual and 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 Plaintiff 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.**

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers’ compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

The Settlement will become final and effective only upon the occurrence of all of the following events: (a) the Court enters an order granting preliminary approval of the Settlement; (b) the Court enters an order granting final approval of the Settlement; (c) any challenge to the Settlement, whether by objection or appeal, is resolved in favor of enforcement of the Settlement. The date the Settlement becomes effective shall be known as the Effective Date.

3. **Gross Settlement Amount.** As consideration, Defendants agree to pay a non-reversionary “Gross Settlement Amount” of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00), in full and complete settlement of the Action.
- A. Within 45-days of the Effective Date, Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator, to be held in an established Qualified Settlement Fund (“QSF”).
  - B. The Parties agree to utilize a Phoenix Settlement Administrators (“Settlement Administrator”) to administer this Settlement.
  - C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
    - i. All payments to the Settlement Class members;
    - ii. All costs of the Settlement Administrator which are anticipated to be no greater than twenty thousand dollars (\$20,000.00)
    - iii. Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff’s Class Representative Enhancement Payment in recognition of Plaintiff’s contributions to the Action and Plaintiff’s service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
    - iv. Up to one-third (1/3) of the Gross Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$66,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration of up to Ten Thousand Dollars and Zero Cents (10,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys’ fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and
    - v. Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00), will be payable to the California Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00), will be payable to the Settlement Class members as the “PAGA Amount,” as described below.
    - vi. Employer side payroll taxes.

- D. Defendants will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
  - E. **Plaintiff's Right to Rescind Clause.** Sunlight represents that the Settlement Class includes approximately 246 putative class members who worked approximately 2,055 workweeks for Sunlight during the Settlement Period. This representation is a material term of this Settlement Agreement. If, as of the date of preliminary approval, the actual number of putative Settlement Class members or workweeks, is 10% or more than these figures (i.e., if there are 271 or more putative class members or 2,261 workweeks), then Plaintiff shall have the right in her sole discretion to rescind this Settlement Agreement, which shall become void *ab initio*. Plaintiff shall communicate her decision to rescind the Settlement Agreement in writing to the Settlement Administrator and Defendants' counsel within fourteen (14) calendar days after the date on which the Settlement Administrator communicates to the Parties that the Plaintiff's Right to Rescind Clause has been triggered. Defendants shall have the option to preempt Plaintiff's right to rescind by increasing the Gross Settlement Amount on a proportional basis (i.e., if the number of Settlement Class members increases by 10%, Defendants may increase the Gross Settlement Amount by 10% to void Plaintiff's right to rescind). Defendants shall communicate their decision to preempt Plaintiff's right to rescind the Settlement Agreement in writing to the Settlement Administrator and Plaintiff's counsel within seven (7) calendar days after the date on which Plaintiff provides written notice of her intent to rescind the Settlement Agreement.
4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
  - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
    - i. PAGA Amount: The \$6,250.00 payable to the Settlement Class Members as the PAGA Amount shall be designated as the "PAGA Amount." Each participating Settlement Class member who was employed by Sunlight at any time from September 24, 2019 through the date the court enters preliminary approval of the Settlement, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the total number of

workweeks worked by all participating Settlement Class members during the aforementioned time period.

- ii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the Settlement Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Settlement Period.
- C. Within ten (10) business days after the Gross Settlement Amount has been fully funded, the Settlement Administrator will calculate each participating Settlement Class member's Settlement Award, and will prepare and mail Settlement Awards to the participating Settlement Class members, less applicable taxes and withholdings.
  - D. Each Settlement Award shall be allocated as 10% wages and 90% penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). The Settlement Administrator shall be responsible for calculating and withholding all employee and employer employment taxes and other legally required withholdings from each Settlement Award.
  - E. Defendants shall fully discharge their obligations to the participating Settlement Class members through the mailing of a Settlement Award, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not negotiated within one hundred eighty (180) days of mailing to a Settlement Class member shall be transferred to either Watsonville Law Center if approved as the *cy pres* designee; or to the State Controller's Unclaimed Property Fund.
  - 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 its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be \$66,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$10,000.00 from the Gross Settlement Amount. 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 and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fees and costs award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendants will not object to a request for Class Representative Enhancement Payment of \$5,000.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class and in exchange for a general release and waiver of the protections of Civil Code § 1542. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendants will not object to the appointment of the agreed upon Settlement Administrator. Defendants will not object to Plaintiff seeking approval to pay up to \$20,000.00 for the administration services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the payments from Defendants comprising the Gross Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Awards have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing James Fitzpatrick and Laura L. Franklin of Fitzpatrick and Swanson; and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. as Class Counsel;
- C. Appointing Plaintiff Ofelia Ortega Class Representative for the Settlement Class;
- D. Approving the agreed-upon Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Award), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within ten (10) business days after entry of an order preliminarily approving this Settlement Agreement, Sunlight will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, dates of employment, and workweek data of all Settlement Class Members, for the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period. This employee contact information shall be deemed confidential employee information. Plaintiff nor Plaintiff's counsel shall have access to this employee information. Settlement Administrator shall not provide Plaintiff or Plaintiff's counsel with this information unless necessary to address questions from Settlement Class Members and/or to address possible objections, and without prior notice to approval from Defendant's Counsel.
- B. Within ten (10) business days from receipt of this 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 address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline 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 five (5) business days of obtaining the updated address. 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. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Award. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. 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 forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
  - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the

name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the 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 does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion 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 or have any right to object, appeal or comment thereon.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.

E. Objections. Members of the Settlement Class who do not opt-out 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 Defendants' counsel, as well as file all such objections with the Court) within the Response Deadline. Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must be postmarked no later than the Response Deadline. Alternatively, any Settlement Class member may also appear in person or through their own counsel and state their objection at the Final Approval Hearing.

F. Notice of Settlement Award / Disputes. 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 to calculate the Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

- G. Defendants understand their legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes 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 and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** 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. Each of the Parties has 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. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties or their counsel, 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. **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.

14. **Enforcement Action.** The Parties agree that the Monterey County Superior Court shall have jurisdiction to enforce this Settlement Agreement pursuant to California Code of Civil Procedure Section 664.6 and California Rules of Court Rule 3.769. In the event that one or more of the Parties institutes any legal action or other proceeding against any other party to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement, the successful party will be entitled to recover from the unsuccessful party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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.

**IN WITNESS THEREOF**, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

DATED: 08/18/2022

PLAINTIFF OFELIA ORTEGA

By:   
Ofelia Ortega  
Plaintiff and Settlement Class Representative

DATED:

DEFENDANT SUNLIGHT BERRY FARMS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED:

DEFENDANT NATURIPE BERRY GROWERS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS THEREOF**, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

DATED:

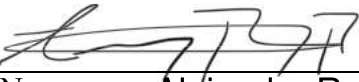
PLAINTIFF OFELIA ORTEGA

By: \_\_\_\_\_  
Ofelia Ortega  
Plaintiff and Settlement Class Representative

DATED:

DEFENDANT SUNLIGHT BERRY FARMS, INC.

July 28, 2022

By:  \_\_\_\_\_  
Name: Alejandro Ramirez  
Title: CEO

DATED: 7/29/2022

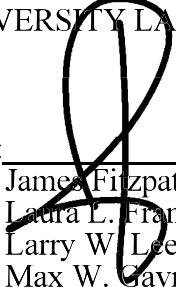
DEFENDANT NATURIBE BERRY GROWERS,  
INC.

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

DATED: August 18, 2022

FITZPATRICK AND SWANSTON/  
DIVERSITY LAW GROUP, P.C.

By:   
James Fitzpatrick  
Laura L. Franklin  
Larry W. Lee  
Max W. Gavron  
Attorneys for Plaintiff

DATED:

MCKAGUE ROSASCO LLP

By: \_\_\_\_\_  
Erica L. Rosasco  
Michael G. Blankinship  
Attorneys for Defendant  
Sunlight Berry Farms, Inc.

DATED:

JRG ATTORNEYS AT LAW

By: \_\_\_\_\_  
Paul Rovella  
Anais Mora  
Attorneys for Defendant  
Naturipe Berry Growers, Inc.

**APPROVED AS TO FORM:**

DATED:

FITZPATRICK AND SWANSTON/  
DIVERSITY LAW GROUP, P.C.

By: \_\_\_\_\_

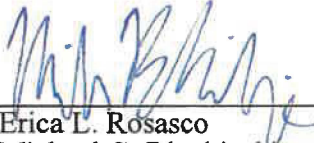
James Fitzpatrick  
Laura L. Franklin  
Larry W. Lee  
Max W. Gavron  
Attorneys for Plaintiff

DATED:

July 28, 2022

MCKAGUE ROSASCO LLP

By: \_\_\_\_\_

  
Erica L. Rosasco  
Michael G. Blankinship  
Attorneys for Defendant  
Sunlight Berry Farms, Inc.

DATED: July 28, 2022

JRG ATTORNEYS AT LAW

By: \_\_\_\_\_

  
Paul Rovella  
Anais Mora  
Attorneys for Defendant  
Naturipe Berry Growers, Inc.

# EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF MONTEREY**

OFELIA ORTEGA, on behalf of herself and all  
similarly aggrieved employees,

Plaintiff,

vs.

SUNLIGHT BERRY FARMS, INC.; and DOES 1  
through 50, inclusive,

Defendants.

Case No. 20CV002558

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT**

To: All Sunlight Berry Farms, Inc.'s current and former non-exempt employee in the State of California at any time between September 24, 2016 through [PRELIMINARY APPROVAL DATE]. Collectively, these employees will be referred to as "Settlement Class Members."

**PLEASE READ THIS NOTICE CAREFULLY  
YOUR LEGAL RIGHTS MAY BE AFFECTED.  
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

*The Court authorized this notice. This is not a solicitation from a lawyer, and you are not being sued.*

***What is the purpose of this notice?***

A proposed class action settlement (the "Settlement") of the above-captioned action (the "Action") filed in Monterey County Superior Court (the "Court"), has been reached by the parties and has been granted preliminary approval by the Court supervising the Action. Your rights may be affected by the Settlement, so it is important that you read this Notice carefully.

The purpose of this notice is to provide you with a brief description of the Action, 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 by the terms of the Settlement and any final judgment.

You may be entitled to money from this Settlement. Sunlight Berry Farms, Inc.'s ("Sunlight") records show that you were employed by Sunlight as a non-exempt employee who performed work in California between September 24, 2016 through [PRELIMINARY APPROVAL DATE] (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement unless you "opt out" of the Settlement, and because the Settlement affects your legal rights.

***What is this case about?***

Plaintiff Ofelia Ortega ("Plaintiff") brought this lawsuit against Defendants Sunlight and Naturipe Berry Growers, Inc. ("Naturipe") (collectively "Defendants"), asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and her attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the operative Complaint, Plaintiff alleges that Defendants failed to provide all lawful meal periods; failed to provide rest periods; failed to pay hourly and overtime wages; failed to comply with itemized employee wage statement requirements; failed to pay all wages upon termination; failed to pay wages timely engaged in unfair business practices; and are liable for civil penalties under the Private Attorneys' General Act of 2004 ("PAGA").

Defendants deny that they have done anything wrong. Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, and that they have any liability to anyone under

the claims asserted in the Action. Defendants deny that they owe Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, which expressly deny all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the best interests of Defendants and the Settlement Class Members to settle the Action on the terms summarized in this Notice. After Defendants provided relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

**If you are still employed by Defendants, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants' policy strictly prohibit unlawful retaliation.** Defendants will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

#### ***What are the terms of the Settlement?***

On [PRELIMINARY APPROVAL DATE], the Court granted preliminary approval of the proposed Settlement and preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who performed work for Sunlight in California at any time during the Class Period. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant, as described below in the "Release" section.

Defendant has agreed to pay \$200,000 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including payments to Settlement Class Members, attorneys' fees and costs, settlement administration costs, payment to the California Labor and Workforce Development Agency ("LWDA") for its share of PAGA civil penalties, and the Class Representative's Enhancement Payment. The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved [SETTLEMENT ADMINISTRATOR] to act as the "Settlement Administrator," who is sending this Notice to you, and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$20,000 from the Gross Settlement Amount to pay the Settlement administration costs. Any unused Settlement administration costs will be distributed to the Settlement Class Members, as detailed below.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Action on behalf of the Settlement 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. Class Counsel is asking for fees of up to one-third of the Gross Settlement Amount (which is currently estimated at \$66,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel is also seeking reimbursement of up to \$10,000.00 for verified costs incurred by Class Counsel in connection with the Action.

Class Representative's Enhancement Payment. Class Counsel has asked the Court to award \$5,000.00 to the named Plaintiff as Class Representative's Enhancement Payment. This payment is meant to compensate Plaintiff for her service provided on behalf of the Settlement Class Members and because she has agreed to provide a general release.

PAGA Payment to the State of California. The Parties have agreed to allocate \$25,000.00 of the Gross Settlement Amount as PAGA civil penalties. Pursuant to Labor Code section 2699(i), 75% of such penalties (\$18,750.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$6,250.00) will be payable to the Settlement Class as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the "Net Settlement Amount," which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) Each participating Settlement Class Member who was employed by Sunlight at any time between September 24, 2019 through [PRELIMINARY APPROVAL DATE], shall receive a portion of the \$6,250.00 in civil penalties payable to the settlement class ("PAGA Amount") proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the total number of workweeks worked by all participating Settlement Class Members during that time period.
- (ii) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Settlement Awards to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives a Settlement Award must negotiate that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not negotiated within 180 calendar days after mailing will be distributed by the Settlement Administrator to **Watsonville Law Center, the Court-approved *cy pres* designee.**

Allocation and Taxes. For tax purposes, each Settlement Award will be allocated as 90% penalties and interest issued pursuant to an IRS Form 1099; and 10% as wages issued pursuant to an IRS Form W-2. Settlement Class Members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Employer Payroll Taxes. The Gross Settlement Amount also includes any employer-side payroll taxes due and payable on the portions of Settlement Awards allocated as unpaid wages.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Defendants and any of its former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, and all agents, employees, officers, directors, members, managers, holding companies, insurers, and attorneys thereof (collectively the "Released Parties") from any and all claims and causes of action that were pled in the Action or which could have been pled based on the factual allegations in the Action that arose during the Class Period ("Released Claims"). This release shall run from September 25, 2016 through [PRELIMINARY APPROVAL DATE].

**[PAGA Release. Even if you exclude yourself from the Settlement, as described below, all Settlement Class members who performed work for Sunlight in the State of California between September 24, 2019 through the date the court enters preliminary approval of the Class Action Settlement (the "PAGA Aggrieved Employees"), regardless of whether they opt-out of the Settlement, will release and discharge the Released Parties from all PAGA claims based on the Labor Code violations and facts alleged in the SAC in the Action and/or Plaintiff's PAGA notice letter, that arose during the Settlement Period (the "PAGA Released Claims").]**

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 Members, and the entry of Judgment.

***How can I claim money from the Settlement?***

Do Nothing. If you do nothing, you will be entitled to receive your allotted Settlement Award, which has been calculated for you based on the formula set forth above, and as stated in the accompanying Notice of Settlement Award. 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 workweeks that you worked during the relevant time periods based on the formula detailed above. The information contained in Sunlight's records regarding this information, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **PLEASE DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself from the Settlement by sending the Settlement Administrator a written "Request for Exclusion from the Class Action Settlement" letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your full name, address, telephone number, the last four digits of the Social Security number, and your signature. The Request for Exclusion should state your desire not to participate in the lawsuit. An example of such a statement is as follows:

"I REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *OFELIA ORTEGA V SUNLIGHT BERRY FARMS, INC.*, LAWSUIT FILED IN THE MONTEREY COUNTY SUPERIOR COURT, CASE NO. 20CV002558. 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."

Send the Request for Exclusion directly to the Settlement Administrator at **[ADMINISTRATOR CONTACT INFO]**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. Do not submit both a Dispute and a Request for Exclusion. If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

**[Even if you request to be excluded from the Settlement, you will still release the PAGA Released Claims and receive your portion of the PAGA Amount.]**

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 mail a written objection to the Settlement Administrator. Your written objection must include your full name and current address, as well as contact information for any attorney representing you regarding your objection, the case name and number, all objections and the factual and legal basis for the same, and any and all supporting papers, briefs, declarations, and/or other evidence supporting your objection. All objections or other correspondence must state the name and number of the case, which is *Ofelia Ortega v. Sunlight Berry Farms, Inc.*, Monterey County Superior Court, Case No. 20CV002558. Objections in writing must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **[FINAL APPROVAL HEARING DATE/TIME]** in Department **[NUMBER]** of the Monterey County Superior Court, located at 240 Church St., Salinas, California 93901, to assert your objection. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. 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 [NUMBER] of the Monterey County Superior Court, located at 240 Church St., Salinas, California 93901. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to, and do not need to attend the Final Approval Hearing to receive your Settlement Award.**

***Who are the Attorneys in this Action?***

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Attorneys for Plaintiff / Settlement Class Members:<br><br>B. James Fitzpatrick (SBN 129056)<br>Laura L. Franklin (SBN 282642)<br><b>FITZPATRICK AND SWANSTON</b><br>555 S. Main Street<br>Salinas, CA 93901<br>Telephone (831) 755-1311<br>Facsimile: (831) 755-1319<br><br>Larry W. Lee (SBN 228175)<br>Max W. Gavron (SBN 291697)<br><b>DIVERSITY LAW GROUP, P.C.</b><br>515 South Figueroa Street, Suite 1250<br>Los Angeles, CA 90071<br>Telephone: (213) 488-6555<br>Facsimile: (213) 488-6554 |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

***How can I get additional information?***

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Monterey County Superior Court, located at 240 Church St., Salinas, California, Monday through Friday between 8:15 a.m. and 4:00 p.m. You may also contact the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>, toll free, or Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION  
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

***REMINDER AS TO TIME LIMITS***

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

**NOTICE OF SETTLEMENT AWARD**

*OFELIA ORTEGA V. SUNLIGHT BERRY FARMS, INC.*  
MONTEREY COUNTY SUPERIOR COURT, CASE NO. 20CV002558

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

**(I) Please type or print your name:**

\_\_\_\_\_  
(First, Middle, Last)

**(II) Please type or print the following identifying information if your contact information has changed:**

\_\_\_\_\_  
Former Names (if any)

\_\_\_\_\_  
New Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**(III) Information Used to Calculate Your Settlement Award:**

According to Defendant's records:

- (a) You worked \_\_\_\_\_ workweeks between September 24, 2019 and [PRELIMINARY APPROVAL DATE];
- (b) There was a total of \_\_\_\_\_ workweeks worked by all Settlement Class Members between September 24, 2019 and [PRELIMINARY APPROVAL DATE];
- (c) You worked \_\_\_\_\_ workweeks during the Class Period;
- (d) There was a total of \_\_\_\_\_ workweeks worked by all Settlement Class Members during the Class Period.

**Based on the above, your Settlement Award is estimated to be \$ \_\_\_\_\_.**

**(IV) If you disagree with items (a) or (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you dispute the above information from Sunlight's records, those records will control unless you are able to provide documentation that establishes that Sunlight's records are mistaken. If there is a dispute about whether Sunlight's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination. **ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_