

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com

Attorneys for Plaintiff and the Aggrieved Employees

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

STEPHANIE AGUIRRE, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

PINNACLE CLAIMS MANAGEMENT,
INC., a California corporation; WESTERN
GROWERS ASSOCIATION, a California
corporation; WESTERN GROWERS
INSURANCE SERVICES, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2020-01161977-CU-OE-CXC

[Assigned for all purposes to the Hon. William
Claster, Dept. CX101]

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Date: September 6, 2024
Time: 9:00 a.m.
Dept.: CX101

Reservation No.: 74354274

Action Filed: September 24, 2020
Trial Date: September 30, 2024

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, Max W. Gavron, hereby declare and state 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 Stephanie Aguirre (“Plaintiff”) 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.

8

9 2. From the inception of the case, Plaintiff's Counsel has zealously represented the
0 interests of the Aggrieved Employees.

3. On September 11, 2020, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendants Pinnacle Claims Management, Inc. and Western Growers Association (together, “Defendants”) of her intent to pursue a representative PAGA action on behalf of herself and the State of California, as well as on behalf of other aggrieved employees (the “PAGA Letter”). Plaintiff’s PAGA Letter alleged claims for violation of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194. Attached as **Exhibit B** is a true and correct copy of Plaintiff’s PAGA Letter.

4. On September 24, 2020, Plaintiff filed a class and representative action complaint against Defendants asserting claims for violation of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, and Business and Professions Code § 17200, *et seq.* (the “Action”). The complaint alleged that Defendants failed to properly calculate the regular rate of pay for the purposes of paying overtime, meal period premiums, and sick pay, provide off-duty meal periods, pay all wages owed upon separation of employment, and provide accurate itemized wage statements that identify the correct hourly rates of pay and gross and net wages earned to employees.

5. On May 19, 2021, Plaintiff filed a first amended complaint, dismissing all causes of action except for violation of Labor Code § 2698, *et seq.*

6. After the filing of the initial complaint, the Parties engaged in formal and informal

1 discovery. Plaintiff served Requests for Production of Documents and Special Interrogatories,
2 Sets One and Two. Among other things, the discovery called for Defendants to identify their
3 California employees and produce documents regarding Defendants' pay, timekeeping, wage
4 statement, meal break, sick pay, and final pay policies. Defendants responded to Plaintiff's
5 discovery requests and distributed *Belaire-West* notice to the aggrieved employees. Plaintiff set
6 the depositions of Defendants' persons most knowledgeable on several occasions only to have
7 Defendants cancel the deposition or fail to appear. Accordingly, Plaintiff took notices of non-
8 appearance and met and conferred extensively with Defendants' counsel.

9 7. Thereafter, the Parties agreed to engage in mediation before neutral Steve Pearl,
10 Esq. In connection with the mediation, Defendants provided Plaintiff and her counsel with
11 information and data to analyze Defendants' potential liability, including the number of
12 aggrieved employees, number of pay periods at issue, relevant policies, and the time and pay
13 records of the aggrieved employees. Based on this information, the Parties conducted settlement
14 negotiations.

15 8. The Parties engaged in mediation on March 7, 2024. The Parties spoke at length
16 about the strengths and weaknesses of each side's claims and defenses and the scope of each
17 Defendant's liability, but did not reach an agreement. Plaintiff thereafter filed a demand for
18 arbitration on her individual Labor Code claims.¹ After months of post-mediation arm's length
19 negotiations facilitated by Mr. Pearl, with each Party having had the opportunity to consider all
20 known facts and circumstances, the Parties agreed to terms for complete settlement of the
21 Action. The Parties entered into the PAGA Settlement Agreement ("Agreement," "Settlement,"
22 or "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached
23 herewith as **Exhibit A**.

24 **SUMMARY OF THE PROPOSED SETTLEMENT**

25 9. As defined by the Settlement Agreement, "Aggrieved Employees" means "all
26

27
28 ¹ Plaintiff's individual arbitration is being resolved through a confidential individual settlement agreement.

1 current and former non-exempt employees of Defendants in California during the PAGA Period
2 who: a. Were paid overtime wages and non-discretionary remuneration during the same pay
3 period; or b. Were paid sick pay wages and non-discretionary remuneration during the same pay
4 period; or c. Worked a shift of five hours or greater.” Agreement ¶ 1.B. The PAGA Period is
5 defined as “the period of April 6, 2019, through March 7, 2024.” *Id.* ¶ 1.R. Based upon
6 Defendants’ records, there are an estimated 223 Aggrieved Employees who worked an estimated
7 14,325 pay periods during the PAGA Period. *Id.* ¶ 11.

8 10. The Settlement Agreement requires Defendants to pay the total amount of One
9 Hundred Five Thousand Dollars (\$105,000.00) (the “Gross Settlement Amount”). Agreement ¶
10 1.J. The balance of the Gross Settlement Amount remaining after deduction of the approved
11 Incentive Payment to Plaintiff, Attorneys’ Fees and Costs, and Settlement Administration Costs,
12 or Net Settlement Amount, will be available for distribution to the LWDA (“LWDA Payment”)
13 and Aggrieved Employees (“Employees’ Portion”). *Id.* ¶¶ 1.I, 1.L, 1.M, 12-14. Seventy-five
14 percent (75%) of the Net Settlement Amount, or approximately \$34,500.00, will be paid to the
15 LWDA. *Id.* ¶ 1.L. The remaining twenty-five percent (25%), or approximately \$11,500.00, will
16 be distributed to the Aggrieved Employees. *Id.* ¶ 1.I.

17 11. As part of the Settlement Agreement, Defendants do not object to Plaintiff’s
18 Counsel’s request for attorneys’ fees of approximately one-third of the Gross Settlement
19 Amount, *i.e.*, Thirty-Five Thousand Dollars (\$35,000.00), plus up to Fifteen Thousand Dollars
20 (\$15,000.00) for reimbursement of litigation costs, subject to the Court finally approving this
21 settlement. Agreement ¶ 12. Plaintiffs’ Counsel’s anticipated actual litigation costs total
22 \$14,301.60.

23 12. Also, as part of the Settlement Agreement, Defendants do not object to Plaintiff’s
24 request for an Incentive Payment of Five Thousand Dollars (\$5,000.00). Agreement ¶ 13.

25 13. Finally, the Settlement Agreement provides for the payment of the costs
26 reasonably incurred by the Settlement Administrator. Agreement ¶ 14. The Parties have agreed
27 to utilize Phoenix Settlement Administrators to administer the Settlement, with the
28 administration costs estimated to be \$4,000.00. *Id.* ¶¶ 1.X, 14.

1 **PAYMENTS TO AGGRIEVED EMPLOYEES AND THE LWDA**

2 14. Assuming that the Court approves the Incentive Payment to Plaintiff (\$5,000.00),
3 Attorneys' Fees (\$35,000.00), Litigation Costs (\$15,000.00), and the Settlement Administration
4 Costs (\$4,000.00), I estimate that the Net Settlement Amount will total \$46,000.00. Seventy-five
5 percent (75%) of the Net Settlement Amount, or approximately \$34,500.00, will be paid to the
6 LWDA for PAGA penalties. The remaining twenty-five percent (25%), or approximately
7 \$11,500.00, will be distributed to Aggrieved Employees.

8 15. Based on the number of Aggrieved Employees, employees will be entitled to
9 recover, on average, up to \$51.57 each. The amount any particular Aggrieved Employee will be
10 entitled to recover will be greater or lower than this average depending on the number of pay
11 periods he or she worked during the PAGA Period, with some entitled to receive more, and
12 others less. This is fair, as it directly allocates greater penalties to individual Aggrieved
13 Employees who worked for Defendants for a longer period of time and therefore who have
14 allegedly suffered greater harm.

15 **POTENTIAL CIVIL PENALTIES**

16 16. Prior to mediation, Defendants provided the number of aggrieved employees, the
17 number of pay periods at issue, and other data for analysis, which permitted Plaintiff to analyze
18 Defendants' potential exposure and liability. As detailed in the Settlement Agreement, there are
19 approximately 223 Aggrieved Employees and approximately 14,325 pay periods at issue during
20 the time encompassed by this settlement. Agreement ¶ 11.

21 17. The PAGA's default penalty structure provides \$100 for the initial violation and
22 \$200 for subsequent violations. Cal. Labor Code § 2699(f).

23 18. Plaintiff asserts that her representative PAGA claim is based on the allegation that
24 Defendants failed to properly calculate the regular rate of pay for the purposes of paying
25 overtime, meal period premiums, and sick pay, provide off-duty meal periods, pay all wages
26 owed upon separation of employment, and provide accurate itemized wage statements that
27 identify the correct hourly rates of pay and gross and net wages earned.

28 19. Defendants disputed Plaintiff's claims wholeheartedly. For one, Defendants

1 argued that the allegations of regular rate violations only applied to the pay periods where an
2 employee was provided some form of non-discretionary remuneration and also earned sick pay,
3 overtime, and/or meal period premium wages. This necessarily limited the potential exposure on
4 this claim because the number of pay periods applicable to this theory of liability was limited to,
5 at most, 13% of the applicable pay periods, according to Plaintiff’s analysis of the records. Thus,
6 for these claims, if the Court were to award \$100 per pay period with a violation, the exposure
7 could be as high as \$186,225 ((14,325 * 13%) x \$100). This, of course, does not contemplate
8 any defenses regarding whether the remuneration actually should have been included in the
9 regular rate of pay, or the Court’s discretion to reduce penalties, as discussed below.

10 20. Defendants argued that Plaintiff’s claims for meal and rest periods more broadly
11 failed for a number of reasons. First, Defendants argued that they had facially compliant
12 policies. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537
13 (2012) (“On the other hand, the employer is not obligated to police meal breaks and ensure no
14 work thereafter is performed.”). Defendants argued that they had legally compliant written
15 policies, which satisfied *Brinker* and that any failure to take a legally compliant meal or rest
16 period by employees was the result of individual choice and thus not capable of resolution
17 through a representative action. Defendants also disputed that they controlled employees during
18 meal or rest periods. Moreover, analysis of the time records produced by Defendants
19 demonstrated a very high level of compliance and low meal period facial violation rate, which
20 further limited the potential chances for success on these claims.

21 21. Defendants also would have argued that the waiting time penalties are subject to a
22 complete defense. Defendants would have argued that a good faith dispute exists as to whether
23 the allegedly underpaid wages were due to Plaintiff and the aggrieved employees considering
24 Defendants’ legally compliant policies. If Defendants were successful on the good faith defense,
25 the Court may not have awarded waiting time penalties at all. *Naranjo v. Spectrum Sec. Servs.*,
26 *Inc.*, No. S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024); *Chavez v. Converse, Inc.*, 2020
27 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an employer’s failure to pay is not willful
28 where there is uncertainty in the law or a “good faith mistaken belief that wages are not owed”).

1 The California Supreme Court also recently approved a good faith defense to the imposition of
2 Section 226 penalties, which further undermines the certainty of recovering these damages even
3 if Plaintiff prevailed on liability.

4 22. If Plaintiff was successful in demonstrating at least one Labor Code violation per
5 pay period, the maximum exposure could be as high as approximately \$1.4 million. However,
6 the likelihood of this is low given the difficulties faced above and the Court's inherent discretion
7 to reduce penalties awarded even where there is a proven violation.

8 23. Defendants have indicated that there were approximately 14,325 pay periods at
9 issue during the time encompassed by this settlement. Agreement ¶ 11. Therefore, pursuant to
10 the PAGA, Plaintiff has calculated maximum exposure at \$1.4 million if the Court were to award
11 a \$100 penalty for each pay period encompassed by a violation. However, even if Plaintiff was to
12 prevail on the merits of the PAGA claim, the potential recovery is uncertain. Pursuant to Labor
13 Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties where "if,
14 based on the facts and circumstances of the particular case, to do otherwise, would result in an
15 award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of
16 Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA
17 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
18 employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018).
19 Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see O'Connor*,
20 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to \$1 billion, such
21 award "could well be reduced, as a court may reduce the penalty when to do otherwise would
22 result in an award that is unjust, arbitrary and oppressive, or confiscatory").

23 24. Courts routinely award far less than the statutory maximum amount of civil
24 penalties, even where an underlying violation of the Labor Code is found. Indeed, just very
25 recently, in the matter of *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed
26 substantial PAGA penalties upon the defendant, such amount still represented reductions of 67%
27 and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100.
28 Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial.

25. Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendants could make a compelling argument to the contrary.

26. The Court's assessment of the proposed settlement must take into account that any penalties awarded may be subject to substantial reduction. When this is considered, in conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Indeed, the Gross Settlement Amount is approximately 13% of the maximum amount of penalties at issue ($\$1,400,000 \div \$105,000.00$). Settlement for this reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendants' likely arguments that higher penalties would have been confiscatory. It also sufficiently deters Defendants from engaging in similar conduct in the future, which is one of the primary goals of PAGA.

27. I strongly believe that Plaintiff can prevail at trial. However, after taking into account sharply disputed factual and legal issues involved in this litigation, the risks attending further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the litigation, I have concluded that settlement on the terms set forth in the Settlement Agreement is appropriate and in the best interests of Plaintiff and the Aggrieved Employees.

ATTORNEY EXPERIENCE

28. My firm has a great deal of experience in wage and hour class action litigation and has had PAGA settlements approved and been approved as class counsel in a number of matters.

29. My qualifications are as follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a Notes and Comments Editor on the Southwestern Law Review. I also received awards for achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at the United States District Court for the Central District. Immediately after law school, I taught several courses at Southwestern, including

1 Principles of Legal Analysis and Legal Methods. I taught those courses for approximately four
2 years.

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

7 31. From February 2016, through Fall 2017, I practiced at the international law firm
8 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
9 companies in Multi-District Litigation primarily in the product liability sphere. I also
10 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
11 judgment decision regarding trade secret issues, in addition to working in several other practice
12 groups. *See Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893 F.3d 1176 (9th
13 Cir. 2018).

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

18 33. I am currently an attorney at the law firm Diversity Law Group, P.C., an
19 employment law firm that has handled numerous wage and hour class and individual actions, on
20 both plaintiff and defense sides. My current practice focuses on employment matters involving
21 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
22 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
23 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
24 currently handling, or have handled, numerous wage and hour class action lawsuits with the firm,
25 including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-
26 001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No.
27 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson*
28 *Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); *Wood v.*

1 *Reeve Trucking Co., Inc.* (Case No. STK-CV-UOE-2018-0004414, San Joaquin County Superior
2 Court); *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior
3 Court), and *Tice v. Trader Joe's Company* (Case No. 20CV00892, Santa Barbara County
4 Superior Court), *Hyde v. Prime Now LLC*, Alameda County Superior Court Case No.
5 RG20068286, among others.

6 34. I have been certified as class counsel in a number of cases, including *Smith v.*
7 *Gold Country Health Center, Inc.* (Case No. PC20180491, El Dorado County Superior Court)
8 and *Pantoja v. RAMCO Enterprises, L.P.* (Case No. M126835, Monterey County Superior
9 Court). I have also assisted in numerous wage and hour class action mediations.

10 35. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
11 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
12 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
13 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019). The related case
14 decision was *Chavez v. Converse, Inc.*, 772 Fed. Appx. 571 (June 28, 2019).

15 36. To date, I have incurred approximately 98.3 hours in connection with the
16 litigation of this lawsuit. I also anticipate spending approximately 5 hours after approval
17 responding to correspondence and phone calls from Aggrieved Employees, the Settlement
18 Administrator, and Defendants' Counsel. Attached hereto as **Exhibit C** is a summary of the
19 hours I have incurred to date.

20 37. The total lodestar for my hours will be approximately \$67,145.00 based on an
21 hourly rate of \$650.00 per hour 98.3 hours + 5 anticipated hours) x \$650]. In January 2024, I
22 increased my hourly rate to \$650 per hour. I was approved at this rate in *Jaramillo v. USS-UPI,*
23 *LLC*, Contra Costa County Case No. C22-00641 (April 24, 2024). Prior to that, I have been
24 approved at \$600.00 per hour in *Weybrew v. BEI Construction*, Solano County Superior Court
25 Case No. FCS055658 (January 14, 2022), *In re See's Candies Wage and Hour Cases*, Case No.
26 JCCP5004 (March 30, 2022), *Pevey v. Lumber City Corp*, San Bernardino County Superior
27 Court Case No. CIVDS2010240 (May 2, 2022), *Anguiano v. Mann Packing Co., Inc.*, Monterey
28 County Superior Court Case No. 19CV001178, and *Schneider v. Amazon Retail LLC*, Los

1 Angeles County Superior Court Case No. 21STCV26226 (December 1, 2022), *Hyde v. Prime*
2 *Now LLC*, Alameda County Superior Court Case No. RG20068286 (August 11, 2023), among
3 others. Prior to that throughout 2020 and 2021, I was approved at an hourly rate of at \$550.00
4 per hour in *James v RADC Enterprises, Inc.*, San Bernardino County Superior Court, Case No.
5 CIV-DS1933035 (September 29, 2020), *Hector Luna v. Triple Canopy, Inc.*, Santa Clara County
6 Superior Court, Case No. 19CV345169 (October 22, 2020), *Melbert Magpugay v. Harbor*
7 *Electronics, Inc.*, Santa Clara County Superior Court Case No. 19CV352547 (January 27, 2021),
8 *Foster v. Schindler Elevator Corp.*, Alameda County Superior Court Case no. RG19029640
9 (March 2, 2021), *Martin v. Streetplus Company, LLC, et al*, Los Angeles Superior Court Case
10 No. 19STCV15522 (July 13, 2021), *Morris v. Blue Mountain Enterprises, LLC*, Solano County
11 Superior Court, Case No. FCS05.858 (August 4, 2021).

12 38. Based on the hours and applicable rate above, the lodestar amount through the
13 finalization of this settlement – without a multiplier – will be approximately \$67,145.00. This is
14 almost double the \$35,000.00 fee requested.

15 COSTS

16 39. To date, my firm has incurred costs in the amount of \$14,301.60. These costs
17 were directly incurred in the prosecution of this action, including filing fees, mediation fees,
18 service of process costs, postage, copy costs, and court reporter fees. Attached hereto as **Exhibit**
19 **D** is a true and correct copy of the firm's cost report.

20 NOTICE TO THE LWDA

21 40. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
22 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.
23 Attached as **Exhibit E** is a true and correct copy of the upload confirmation.

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

26 Executed on this 5th day of August 2024, at Los Angeles, California.

27 

28 Max W. Gavron

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement is made by and between (1) Plaintiff STEPHANIE AGUIRRE (“Plaintiff”), on behalf of herself and other Aggrieved Employees, and as a representative of the State of California, and (2) Defendants PINNACLE CLAIMS MANAGEMENT, INC. (“Pinnacle”) and WESTERN GROWERS ASSOCIATION (“WGA”) (Pinnacle and WGA together, “Defendants”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2).

DEFINITIONS

1. Unless otherwise defined in this PAGA Settlement Agreement, the following terms used in this Settlement Agreement shall have the meanings ascribed to them:

- A. “Action” means the civil action titled *Stephanie Aguirre, as an individual and on behalf of all others similarly situated, Plaintiffs, vs. Pinnacle Claims Management, Inc., et al., Defendants*, filed on September 24, 2020, in the Superior Court of the State of California, County of Orange, Case No. 30-2020-01161977-CU-OE-CXC.
- B. “Aggrieved Employees” means all current and former non-exempt employees of Defendants in California during the PAGA Period who:
 - a. Were paid overtime wages and non-discretionary remuneration during the same pay period; or
 - b. Were paid sick pay wages and non-discretionary remuneration during the same pay period; or
 - c. Worked a shift of five hours or greater.
- C. “Agreement,” “Settlement,” or “Settlement Agreement” means this PAGA Settlement Agreement.
- D. “Complaint” or “Operative Complaint” means the operative First Amended Complaint in the Action, filed on May 19, 2021.
- E. “Court” means the Superior Court for the State of California, County of Orange.
- F. “Defendants” mean Pinnacle Claims Management, Inc. and Western Growers Association.
- G. “Defendants’ Counsel” means the law firm of Jackson Lewis P.C.
- H. “Effective Date” means when all of the following events have occurred: (i) this Agreement has been fully executed by all Parties and their respective

counsel; (ii) the Court has entered an Order and Judgment approving this Settlement with no challenges or objectors; and (iii) the later of the following events: sixty-five (65) days following notice of entry of the Court's Order and Judgment approving the Settlement; or if any appeal, writ, or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) days following notice of entry of the Court's Order and Judgment approving the Settlement, then when any appeal, writ, or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's Order approving the Settlement and Judgment are completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

- I. "Employees' Portion" means twenty-five (25%) of the Net Settlement Amount distributed to PAGA Settlement Members as Settlement Shares.
- J. "Gross Settlement Amount" means the total amount to be paid by Defendants as provided by this Agreement. The Gross Settlement Amount is One Hundred Five Thousand Dollars and Zero Cents (**\$105,000.00**).
- K. "LWDA" means the California Labor and Workforce Development Agency.
- L. "LWDA Payment" means 75% of the Net Settlement Amount distributed to the LWDA as its share of the Settlement attributable to civil penalties under PAGA.
- M. "Net Settlement Amount" means the amount from the Gross Settlement Amount that is available for distribution for the LWDA Payment and for Settlement Shares to the Aggrieved Employees after deducting (1) Plaintiff's Counsel's attorney's fees and costs (the amount of which is subject to Court approval); (2) the Settlement Administrator's fees and expenses (the amount of which is subject to Court approval); and (3) Plaintiff's incentive payment (the amount of which is subject to Court approval).
- N. "Order and Judgment" means the Order Granting Approval of Settlement and Judgment.
- O. "Notice" means the Notice of PAGA Settlement, which shall be subject to Court approval and which the Settlement Administrator shall mail to each Aggrieved Employee at their last known address explaining the terms of the Settlement. The Notice shall be substantially in the form attached hereto as **Exhibit A**.
- P. "PAGA" means California's Labor Code Private Attorneys General Act, Cal. Lab. Code § 2699, *et seq.*

- Q. “PAGA Letter” means the notice Plaintiff filed with the LWDA on or about September 11, 2020, alleging Defendants’ violation of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194, pursuant to the PAGA.
- R. “PAGA Period” means the period of April 6, 2019, through March 7, 2024.
- S. “Parties” means Plaintiff and Defendants, collectively.
- T. “Plaintiff” means Plaintiff Stephanie Aguirre.
- U. “Plaintiff’s Counsel” means the law firm of Diversity Law Group, P.C.
- V. “Released Claims” means any and all claims for civil penalties under California Labor Code § 2698, *et seq.* arising during the PAGA Period, that were pled or could have reasonably been pled based on the factual allegations contained in the Operative Complaint and PAGA Letter, including, but not limited to, claims for violation of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194, and all applicable IWC Wage Orders, as well as any attorney’s fees and costs available under PAGA.
- W. “Released Parties” means (i) Pinnacle Claims Management, Inc., (ii) Western Growers Association, and (iii) their respective parent companies, affiliates, subsidiaries, divisions, partners, joint venture partners, predecessors, insurers, representatives, agents, successors and assigns, and their current and former employees, attorneys, officers, directors, members, shareholders, and agents thereof, both individually and in their business capacities, and their insurers.
- X. “Settlement Administrator” means Phoenix Settlement Administrators, the third-party administrator selected by the Parties, if approved by the Court to administer this Settlement. The Settlement Administrator’s estimated total fees and expenses are \$4,000, subject to approval by the Court.
- Y. “Settlement Funding Date” means fifteen (15) calendar days after the Effective Date of the Settlement.
- Z. “Settlement Share” means the portion of the Net Settlement Amount allocable to each Aggrieved Employee as provided by this Agreement.

FACTUAL BACKGROUND

2. On September 11, 2020, Plaintiff provided written notice to the LWDA alleging that Defendants violated California Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194. The LWDA did not indicate an intention to investigate the allegations on its own within the applicable statutory time period.

3. On September 24, 2020, Plaintiff filed a class and representative action against Defendants in the Superior Court of California, County of Orange.

4. On May 19, 2021, Plaintiff filed an amended complaint against Defendants, alleging a single cause of action under PAGA for civil penalties. The first amended complaint is the Operative Complaint. The Operative Complaint alleges underlying predicate violations of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194, and all applicable IWC Wage Orders. In the Action, Plaintiff seeks to recover civil penalties under PAGA on behalf of herself, other aggrieved employees, and the State of California.

5. Following several cancelled mediation attempts and negotiations, on March 7, 2024, the Parties participated in a private mediation session with mediator Steve Pearl, Esq., a highly respected mediator in employment law. The Parties did not reach an agreement to resolve the Action. Following further negotiations, on April 22, 2024, Mr. Pearl issued a Final Mediator's Proposal in an effort to resolve the litigation, which was accepted by the Parties.

6. This Agreement represents a full compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that Plaintiff's claims in the Action have merit or that Defendants have any liability to Plaintiff or any of the Aggrieved Employees. Nor is this Agreement an admission by Plaintiff that Defendants' defenses in the Action have merit.

SETTLEMENT TERMS AND CONDITIONS

7. **Interim Stay of Proceedings.** The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Court's approval of the Settlement.

8. **Resolution of Litigation.** It is agreed by and among Plaintiff and Defendants that the Action be settled and compromised as between Plaintiff, on behalf of herself and other Aggrieved Employees and as a representative of the State of California, and Defendants, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

9. **Monetary Consideration for Resolution of Dispute.** In consideration of the mutual covenants, promises, and agreements set forth in this Agreement, and subject to the Court's approval, Defendants will pay the Gross Settlement Amount as provided herein.

10. **Stipulation re: Entry of Judgment.** In consideration of the mutual covenants, promises, and agreements set forth in this Agreement, and subject to the Court's approval, the Parties stipulate that they shall seek approval of the Settlement from the Court and the entry of a binding final judgment in this matter.

11. **Representation Regarding PAGA Settlement Metrics.** Defendants represent that, as of April 24, 2024, there were approximately 14,325 pay periods in the PAGA Period and 223 Aggrieved Employees. If the final number of pay periods is more than 10% above 14,325, the PAGA Period will cut off at the date this 10% threshold is met.¹

¹ Defendants will generate the updated figures prior to the filing of Plaintiff's Motion for PAGA Approval.

12. **Attorneys' Fees and Litigation Costs.** Defendants will not oppose an application by Plaintiff for attorneys' fees in an amount that does not exceed one-third (1/3) of the Gross Settlement Amount, or (*i.e.*, Thirty-Five Thousand Dollars and Zero Cents [\$35,000.00]). Defendants will also not oppose an application by Plaintiff for litigation costs up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00). IRS Forms 1099-MISC and state and local equivalents will be issued to Plaintiff's Counsel for any awarded attorneys' fees and costs. Should the Court approve Attorney's Fees and Costs in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Attorney's Fees and Costs set forth above shall be added to the Net Settlement Amount. Plaintiff's Counsel will not seek, or be entitled to any attorneys' fees and/or expenses related to the claims and allegations in this Action, other than those specified in this Agreement.

13. **Incentive Payment.** Plaintiff will request, and Defendants will not oppose, an incentive payment to Plaintiff from the Gross Settlement Amount in an amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) for acting as the representative on behalf of the Aggrieved Employees. This incentive payment shall be in addition to whatever payment Plaintiff is otherwise entitled to as an Aggrieved Employee. Plaintiff will be issued an IRS Form 1099-MISC and its state and local equivalents for any incentive payment amount received under the Settlement. Should the Court award less than \$5,000.00 for the Incentive Payment, Plaintiff agrees that (a) Plaintiff will accept the Court's ruling; and (b) an award of less than \$5,000.00 for the incentive payment does not serve as a basis for appeal or otherwise affect the implementation of this Agreement.

14. **Payment to the Settlement Administrator.** The Settlement Administrator will pay itself out of the Gross Settlement Amount its reasonable fees and expenses, as approved by the Court. The Settlement Administrator's reasonable fees and expenses shall not exceed Four Thousand Dollars and Zero Cents (\$4,000.00).

15. **Settlement Payments to Aggrieved Employees Constitute Civil Penalties.** After deducting the amounts for the LWDA Payment, the remainder of the Net Settlement Amount (the Employees' Portion) will be paid as Settlement Shares to each Aggrieved Employee. The Settlement Share is intended to settle claims for PAGA civil penalties. Accordingly, the payments to Aggrieved Employees will not be reduced by payroll tax withholding and deductions; instead, the Settlement Administrator will issue to the Aggrieved Employees IRS Form 1099s and their state and local equivalents with respect to the payments.

16. **Calculation of Settlement Shares.** Each Aggrieved Employee will be entitled to a pro rata share of the Employees' Portion of the Net Settlement Amount based upon the number of pay periods worked during the PAGA Period, as established by Defendants' payroll records. Each Aggrieved Employee will be credited with at least one pay period. To calculate each Aggrieved Employee's share, the Settlement Administrator shall divide the number of pay periods credited to each Aggrieved Employee by the total aggregate number of pay periods for all Aggrieved Employees, and then multiply this amount by the Employees' Portion of the Net Settlement Amount to arrive at each Aggrieved Employee's individual Settlement Share.

17. **No Claim Form Required.** Aggrieved Employees will not be required to submit

any claim form or other documentation to receive their individual Settlement Shares.

18. **Settlement Funding Date.** Defendants will fund the Qualified Settlement Fund established by the Settlement Administrator with the Gross Settlement Amount within fifteen (15) calendar days of the Effective Date of the Settlement. If the date by which the funding is due falls on a Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended to the next following day that is not a Saturday, Sunday, or legal holiday in the State of California.

19. **Disbursement of Settlement Funds.** Within ten (10) days of the Settlement Funding Date, the Settlement Administrator will disburse the funds pursuant to the terms of this Agreement, including the LWDA Payment, Settlement Shares to the Aggrieved Employees, Incentive Payment to Plaintiff, Attorney's Fees and Litigation Costs to Plaintiff's Counsel, and settlement administration costs to itself. If the date by which the disbursement is due falls on a Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended to the next following day that is not a Saturday, Sunday, or legal holiday in the State of California.

20. **Appointment of Settlement Administrator.** The Parties will propose a Settlement Administrator to distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the letter to the Aggrieved Employees; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any Aggrieved Employee whose letter or Settlement Share was returned by the U.S. Postal Service as non-deliverable, and re-mailing the letter and Settlement Share to the Aggrieved Employee's new address; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the letter, will be paid out of the Gross Settlement Amount.

21. **Motion for Approval of PAGA Settlement.**

- A. The Parties will cooperate in seeking approval of the Settlement, including by drafting and filing of a Motion for Approval of PAGA Settlement ("Motion for Approval"). The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement. Plaintiff's Counsel shall draft the Motion for Approval and provide the draft to Defendants' Counsel for review and comment, which Plaintiff's Counsel shall consider in good faith, a reasonable period prior to the filing of the Motion. Plaintiff's Counsel shall submit the Settlement Agreement and motion papers to the LWDA at the same time the Settlement Agreement and motion papers are filed with the Court.
- B. At the hearing on the Motion for Approval, the Parties will jointly appear

and support the granting of the motion.

- C. If the Court does not grant the application for approval and issue an order approving the Settlement, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns in good faith and determine whether resolution of the claims encompassed by the Settlement can be obtained in a manner consistent with the Court's concerns.
- D. If the Court does not grant approval of the Settlement, or if the Court's approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void. A modification of amounts payable in attorneys' fees or expenses, amounts payable as part of the Plaintiff's incentive payment, or amounts paid to the Settlement Administrator for its fees and expenses shall not be deemed a material modification of the Settlement.

22. **No Right to Object or Request Exclusion.** The Parties agree that there is no statutory right for any Aggrieved Employee to object to, opt out of, or otherwise exclude himself or herself from the Settlement.

23. **Letter and Payment of Settlement Shares to Aggrieved Employees.** Once the Settlement becomes Effective, each Aggrieved Employee will be provided with a letter concerning the Settlement and payment of the Aggrieved Employee's Settlement Share.

- A. **Contact Information to Settlement Administrator.** Within (30) calendar days of the Court's approval of the Settlement, Defendants will provide to the Settlement Administrator a list in Microsoft Excel format containing each Aggrieved Employees' (i) full name, (ii) last known address, (iii) Social Security Number, and (iv) dates worked for Defendants during the PAGA Period ("Contact Information"). The Settlement Administrator will perform one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee list.
- B. **Mailing of Payments.** Consistent with the timeframes set forth herein, the Settlement Administrator will send each Aggrieved Employee the letter and payment of the Aggrieved Employee's Settlement Share by first-class United States mail. The Settlement Administrator will mail the letters and Settlement Share payments to all identified Aggrieved Employees, using the Contact Information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains during the course of administration of the Settlement.
- C. **Returned Mail.** In the event of returned or non-deliverable letters and Settlement Share payments, the Settlement Administrator will make reasonable efforts to locate Aggrieved Employees and re-send the letters and Settlement Share payments. The Settlement Administrator will promptly, and not later than ten (10) calendar days from receipt of the

returned packet and payment, search for a more current address for the Aggrieved Employee using reasonable and cost-effective skip trace methods, and re-mail the letter and Settlement Share payment to the Aggrieved Employee. The Settlement Administrator will use the Aggrieved Employees' data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Plaintiff's Counsel and according to the following deadlines, to trace the mailing address of any Aggrieved Employee for whom a letter or Settlement Share payment is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Aggrieved Employees for whom new addresses are found. If the letter and Settlement Share payment is re-mailed, the Settlement Administrator will note for its own records and notify Plaintiff's Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Plaintiff's Counsel and Defendants' Counsel will be entitled to receive from the Settlement Administrator any updated address information about an Aggrieved Employee as the Settlement Administrator obtains such information.

24. **Submission of Order and Judgment.** Plaintiff shall submit a copy of the order providing for or denying an award of civil penalties to the LWDA within ten (10) calendar days after entry of the dismissal and/or Order and Judgment, in compliance with Section 2699(1)(3) of the California Labor Code.

25. **Uncashed Settlement Share Checks.** An Aggrieved Employee must cash his or her Settlement Share payment or check within 180 calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Aggrieved Employee at his or her correct address in accordance with the procedures set forth herein. If an Aggrieved Employee cannot be located using the procedures set forth herein or if an Aggrieved Employee fails to cash the check for his or her Settlement Share within 180 days after it is mailed to him or her, the Settlement Administrator will distribute the funds represented by the uncashed check to the California State Controllers' Office Unclaimed Property Fund.

26. **Release and Waiver of Claims.** In consideration for the LWDA Payment and the Aggrieved Employees' Settlement Shares, and upon the funding of the Settlement, and except as to the rights and obligations created by this Agreement, Plaintiff and the Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors, and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged the Released Parties from the Released Claims.

27. **No Effect on Other Benefits.** The Settlement Share payments will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this

Agreement to Plaintiff or the Aggrieved Employees. All Settlement Shares shall be deemed to be paid to Aggrieved Employees solely in the year in which such payments actually are received by the Aggrieved Employees. It is expressly understood and agreed that the receipt of such Settlement Shares will not entitle any Aggrieved Employee to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits.

28. **Tax Liability.** The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Parties are not relying on any statement, representation, or calculation by any of the Parties or by the Settlement Administrator in this regard. Plaintiff understands and agrees that she will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein and will hold Plaintiff's Counsel, Defendants' Counsel, the Released Parties, and the Settlement Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages. Each Party to this Settlement (for purposes of this section, the "Acknowledging Party" and each Party to this Settlement Agreement other than the Acknowledging Party, an "other Party") acknowledges and agrees that: (a) no provision of this Settlement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (b) the Acknowledging Party (i) has relied exclusively upon her or its own independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (ii) has not entered into this Settlement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (c) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

29. **No Publicity.** Plaintiff and Plaintiff's Counsel agree that they have not and will not publish the Settlement in any form of media. Plaintiff's Counsel shall not report the settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Settlement on their website, and shall not discuss with or contact any reporters or media regarding the Settlement. However, Plaintiff's Counsel is authorized to make disclosures to the Court and the LWDA, the Aggrieved Employees, the Settlement Administrator, and for any other reason necessary to effectuate obtaining the approval of the settlement or the administration thereof. Notwithstanding the foregoing, Plaintiff's Counsel may include the settlement (and/or a summary of the settlement) in future declarations filed in support of Plaintiff's Counsel's experience and/or adequacy in PAGA representative actions and/or class actions.

30. **No Admission of Liability.**

A. Defendants deny that they have engaged in any unlawful activity, have

failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by Plaintiff, that any of the claims were non-meritorious or any defense asserted by Defendants were meritorious.

- B. Whether or not the Settlement becomes Effective, nothing in this Agreement, any document, statement, proceeding, or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damages.
- C. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

31. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, current and potential.

32. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

33. **Judgment and Continued Jurisdiction.** After entry of the Court's Order and Judgment, the Court will have continuing and exclusive jurisdiction for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement Agreement; (b) matters relating to the administration of the Settlement; and (c) such post-Judgment matters as may be appropriate under California Code of Civil Procedure § 664.6, or as set forth in this Agreement.

34. **Enforcement.** In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

35. **Miscellaneous Terms.**

- A. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. This Agreement also includes the Confidential Individual Settlement Agreement of Plaintiff's arbitration.
- B. **Attorney Authorization.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- C. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
- D. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- E. **No Transfer or Assignment of Claims.** Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Agreement. Plaintiff is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes, or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Agreement.

- F. **Liens and Other Fees.** Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, or expert witnesses. Each Party is solely responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants, and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action, except to the extent the Agreement provides for payment of Attorneys' fees and costs.
- G. **Cooperation in Drafting.** This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. The Parties have cooperated in the drafting and preparation of this Agreement. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly.
- H. **Headings.** The section headings used in this Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions.
- I. **Notices.** All notices, demands, or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Aggrieved Employees:

Larry W. Lee
Max W. Gavron
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
lwlee@diversitylaw.com
mgavron@diversitylaw.com

To Defendants:

Scott C. Lacunza
JACKSON LEWIS, P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Tel: (949) 885-1360
Scott.Lacunza@jacksonlewis.com

- J. **Non-Waiver.** If Plaintiff or Defendants fail(s) to enforce this Settlement

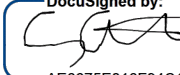
Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

- K. **Execution in Counterparts.** This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument.
- L. **Electronic Signatures.** A signature made on a faxed or electronically mailed copy of the Settlement Agreement, or a signature transmitted by facsimile or electronic mail, shall have the same effect as the original signature. Signatures of the Parties transmitted by facsimile or electronic mail (*e.g.*, in .PDF format) will be deemed to be their original signatures for any purpose whatsoever. Without limiting the foregoing, the words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to this Settlement Agreement or any document to be signed in connection with this Settlement Agreement and the transactions contemplated hereby (including any amendments, waivers and/or consents) shall be deemed to include electronic signatures (*e.g.*, through DocuSign© or other similar electronic e-signature application), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, and any other applicable law, including any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby knowingly and voluntarily execute this Settlement Agreement as set forth below.

Dated: 6/25, 2024

DocuSigned by:

AE6675E846F04C1...
STEPHANIE AGUIRRE

Dated: , 2024

PINNACLE CLAIMS MANAGEMENT, INC.

Signature

Print Name

Title

Dated: , 2024

WESTERN GROWERS ASSOCIATION

Signature

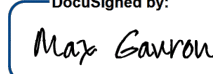
Print Name

Title

Approved as to form and content

Dated: June 25, 2024

DIVERSITY LAW GROUP, P.C.

By: 
57F8B43F1DCE4BB...
Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff Stephanie Aguirre

EXECUTION BY PARTIES AND COUNSEL

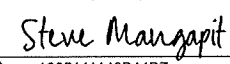
The Parties and their counsel hereby knowingly and voluntarily execute this Settlement Agreement as set forth below.

Dated: _____, 2024

STEPHANIE AGUIRRE

Dated: 6/25 _____, 2024

PINNACLE CLAIMS MANAGEMENT, INC.

DocuSigned by:

1825141149B44B7...

Signature

Steve Mangapit

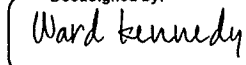
Print Name

President

Title

Dated: 06/25 _____, 2024

WESTERN GROWERS ASSOCIATION

DocuSigned by:

EF902F42C3AB41C...

Signature

ward Kennedy

Print Name

CFO

Title

Approved as to form and content

Dated: _____, 2024

DIVERSITY LAW GROUP, P.C.

By: _____
Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff Stephanie Aguirre

Dated: June 26, 2024

JACKSON LEWIS P.C

DocuSigned by:
By: Scott Lacunza
7A43C9216BFE408...
Scott C. Lacunza

Attorneys for Defendants Pinnacle Claims
Management, Inc. and Western Growers
Association

EXHIBIT A

<<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

The parties to a lawsuit entitled *Stephanie Aguirre v. Pinnacle Claims Management, Inc., et al.*, filed in the Superior Court of the State of California for the County of Orange, Case No. 30-2020-01161977-CU-OE-CXC (the “Action”), have reached a settlement that affects you. Plaintiff Stephanie Aguirre (“Plaintiff”), as a proxy of the State of California and on behalf the Aggrieved Employees, filed suit against Pinnacle Claims Management, Inc. and Western Growers Association (together, “Defendants”) for alleged Labor Code violations. The “Aggrieved Employees” is defined to include all current and former non-exempt employees of Defendants in California during the period of April 6, 2019, through March 7, 2024 (the “PAGA Period”) who either: 1) Were paid overtime wages and non-discretionary remuneration during the same pay period; or 2) Were paid sick pay wages and non-discretionary remuneration during the same pay period; or 3) Worked a shift of five hours or greater during the PAGA Period.

Generally, Plaintiff sought civil penalties under the California Private Attorneys General Act (“PAGA”), claiming that Defendants failed to provide off-duty meal breaks, failed to pay overtime, sick pay, and premium pay for missed breaks at the regular rate of pay, failed to issue accurate itemized wage statements, and failed to pay all wages due to employees upon separation of employment.

Defendants deny each of Plaintiff’s claims. However, to avoid the time and expense associated with further litigation, Plaintiff and Defendants agreed to settle the case.

Pursuant to the release approved by the Court, Plaintiff, as a proxy for the State of California and on behalf of all Aggrieved Employees, released the Released Parties from any and all claims for civil penalties under California Labor Code § 2698, *et seq.* arising during the PAGA Period, that were pled or could have reasonably been pled based on the factual allegations contained in the Operative Complaint and PAGA Letter, including, but not limited to, claims for violation of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194, and all applicable IWC Wage Orders, as well as any attorney’s fees and costs available under PAGA (“Released Claims”). The Released Claims only applies to claims for civil penalties under PAGA, and not any other claim or right that you may have.

The Released Parties are (i) Pinnacle Claims Management, Inc., (ii) Western Growers Association, and (iii) their respective parent companies, affiliates, subsidiaries, divisions, partners, joint venture partners, predecessors, insurers, representatives, agents, successors and assigns, and their current and former employees, attorneys, officers, directors, members, shareholders, and agents thereof, both individually and in their business capacities, and their insurers.

According to Defendants’ records, you are an Aggrieved Employee and are therefore entitled to a share of the settlement. Enclosed is a check representing your share of the settlement. The check shall remain valid for one hundred eighty (180) days. The funds from checks that remain uncashed after 180 days will be sent to the California State Controllers’ Office Unclaimed Property Fund in the name of individual(s) to whom the funds relate. One hundred percent (100%) of your share of the settlement shall be deemed penalties and reported as miscellaneous income for which an IRS Form 1099 will be issued, if required by law. You are solely and legally responsible for paying any and all applicable taxes on your share of the settlement.

If you have any questions, please contact:

Settlement Administrator

Address

Address

Telephone

EXHIBIT B

STEPHANIE AGUIRRE

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

September 11, 2020

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Aguirre v. Pinnacle Claims Management, Inc.; Western Growers Association;
Western Growers Insurance Services*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Pinnacle Claims Management, Inc./Western Growers Association/Western Growers Insurance Services (collectively, the "Company"). Specifically, I allege that the Company:

1. Violated Labor Code §§ 510, 558, and 1194 by failing to correctly calculate the regular rate of pay for purposes of paying overtime wages to myself and other non-exempt employees by not properly calculating all non-discretionary compensation into the regular rate, including without limitation, referral bonus incentive wages. Therefore, the Company owes me and other employees additional overtime pay based on the correct regular rate of pay. Further as a result of such violations, the Company violated Labor Code §§ 201-203 by not paying employees all of their wages upon separation of employment due to the underpaid overtime wages and Labor Code § 226(a) as the overtime wage rates, and net/gross wages earned shown on the wage statements were inaccurate due to the overtime violations set forth above.

2. Violated Labor Code §§ 226.7 and 512 by failing to provide proper meal breaks, and failing to pay me and other employees our meal period premium pay for improper meal periods at our regular rates of pay as required by these provisions. First, I and other employees were routinely denied the opportunity to take an off-duty meal break of at least 30 minutes within the first 5 hours of our work shifts. Further, Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration, including referral bonus incentive wages. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal period premium pay. However, whenever the Company paid me and other employees our meal period premium pay during pay periods in which we earned this non-discretionary remuneration, the meal period premium was always paid at our base rate of pay. Further, the Company also violated Labor Code §§ 201-203

September 11, 2020

Page 2

by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed meal period premiums.

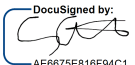
3. Violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at the regular rate of pay. I and other employees routinely earned non-discretionary incentive wages such as referral bonus incentive wages, thus increasing our regular rate of pay. However, when sick pay was paid, it was paid at our base rate of pay rather than the regular rate of pay.

The address for the Company is:

15525 Sand Canyon
Irvine, CA 92618

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,


Stephanie Aguirre

cc: Pinnacle Claims Management, Inc./Western Growers Association/Western Growers Insurance Services (by certified mail)

EXHIBIT C

Aguirre v. Pinnacle Claims Management
Max W. Gavron Time and Task Chart

Hours	Description of Work
15.8	Initial research and review of background facts in preparation for filing of class action claims; draft PAGA letter; confer with co-counsel re theories of liability and conduct research re same; analysis and research re defendant and prior actions.
1.1	Draft and revise Complaint.
6.4	Meet and confer regarding arbitration agreement; analyze and review same; conduct legal research to determine whether to dismiss putative class claims considering arbitration agreement; confer with co-counsel re same.
3.6	Draft and revise First Amended Complaint considering arbitration agreement; draft and revise stipulation and proposed order to file same; confer with defense counsel re same; confer with client re same.
2.5	Meet and confer/draft and revise several joint case management statements throughout case addressing theories of liability, status of discovery, etc.
5.8	Prepare three sets of Requests for Production of Documents (Set One) and Special Interrogatories (Set One) to Defendants.
12.4	Review Defendants' objections to Requests for Production of Documents (Set One) and Special Interrogatories (Set One); draft and revise meet and confer correspondence re same and confer with defense counsel following receipt; analyze and review documents produced by Defendants.
1.9	Draft and revise Belaire-West Notice; confer with defense counsel re same; confer with administrator re distribution of same.
4.9	Draft and revise second set of written discovery to Defendants; analyze and review Defendants' objections and responses to same; meet and confer re deficient responses.
3.2	Draft and revise PMQ deposition notice; analyze and review document production to prepare for drafting same; meet and confer with Defendants' counsel re deposition dates.
5.7	Multiple meet and confer emails and telephonic conferences re Defendants' failure to produce PMQ deponent; prepare outline for deposition of Defendants' PMQ; prepare exhibits re same.
1.0	Take notices of non-appearance of Defendants' PMQs.
2.4	Meet and confer with defense counsel regarding settlement; review and respond to correspondence regarding settlement; conference with co-counsel regarding settlement and setting mediation.

Hours	Description of Work
1.1	Prepare data request to Defendants to prepare for mediation.
5.5	Draft and revise mediation brief; analyze and review Defendants' document and data production to prepare for same; confer with consultant re data analysis in advance of mediation.
8.6	Prepare for and participate in mediation; confer with client re failed mediation attempt.
3.1	Multiple follow-up calls with mediator and defense counsel re potential settlement
6.1	Review and revise settlement agreement; prepare correspondence to defense counsel regarding same; conference with co-counsel regarding same.
7.2	Prepare Motion for Approval of PAGA Settlement and supporting declarations.
98.3	TOTAL HOURS

EXHIBIT D

8/5/2024
3:39 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Aguirre, Stephanie v. Pinnacle

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
63869	EXP	Olympia	1	75.00	75.00
9/11/2020		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
LWDA					
64177	EXP	Olympia	1	1494.56	1494.56
9/25/2020		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - Complaint					
64716	EXP	Olympia	1	101.00	101.00
10/7/2020		Atty Service			
WIP		Aguirre, Stephanie v. Pinnac			
Attorney Service - Complaint Service					
64717	EXP	Olympia	1	55.00	55.00
10/7/2020		Atty Service			
WIP		Aguirre, Stephanie v. Pinnac			
Attorney Service - Complaint Service					
64718	EXP	Olympia	1	101.00	101.00
10/7/2020		Atty Service			
WIP		Aguirre, Stephanie v. Pinnac			
Attorney Service - Complaint Service					
64440	EXP	Olympia	1	12.20	12.20
10/16/2020		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - POS of Summons					
65050	EXP	Olympia	1	12.20	12.20
11/18/2020		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - Notice					
65380	EXP	Olympia	1	0.65	0.65
11/30/2020		Postage			
WIP		Aguirre, Stephanie v. Pinnac			
Postage					

8/5/2024
3:39 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
65379	EXP	Olympia	8	0.25	2.00
11/30/2020		Photocopies			
WIP		Aguirre, Stephanie v. Pinnac			
Photocopies					
65494	EXP	Olympia	1	11.95	11.95
12/29/2020		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
65485	EXP	Max Gavron	1	94.00	94.00
1/5/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
Courtcall					
66962	EXP	Olympia	1	14.41	14.41
4/20/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
66984	EXP	Max Gavron	1	94.00	94.00
4/28/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
Courtcall					
67237	EXP	Olympia	1	19.82	19.82
5/13/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - Proposed Stipulation					
67251	EXP	Olympia	1	39.38	39.38
5/18/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - Stipulation and Order					
67355	EXP	Erika Mejia	1	18.79	18.79
5/20/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
One Legal - Notice of Entry/FAC					
68624	EXP	Erika Mejia	1	16.47	16.47
8/25/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
One Legal - CMS					
68657	EXP	Larry W. Lee	1	94.00	94.00
9/1/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
Courtcall					

8/5/2024
3:39 PM

DIVERSITY LAW GROUP
Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
70175	EXP	Christine S. Lee	1	14.41	14.41
12/28/2021		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
70248	EXP	Max Gavron	1	94.00	94.00
1/5/2022		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
Courtcall					
71548	EXP	Erika Mejia	1	16.99	16.99
4/20/2022		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
72579	EXP	Erika Mejia	1	15.96	15.96
7/26/2022		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
73611	EXP	Erika Mejia	1	16.99	16.99
11/22/2022		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
74685	EXP	Erika Mejia	1	17.45	17.45
3/14/2023		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
75797	EXP	Erika Mejia	1	16.42	16.42
8/1/2023		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
76039	EXP	Olympia	1	8750.00	8750.00
8/31/2023		Arbitrators			
WIP		Aguirre, Stephanie v. Pinnac			
Steve Pearl Mediation					
76922	EXP	Erika Mejia	1	15.39	15.39
12/11/2023		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
77081	EXP	Olympia	1	331.50	331.50
1/2/2024		Transcript/DEP			
WIP		Aguirre, Stephanie v. Pinnac			
Steno - Deposition Transcript of Pinnacle					
Claims Management, Inc. PMK					

8/5/2024
3:39 PM

DIVERSITY LAW GROUP
Slip Listing

Page 4

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
77080	EXP	Olympia	1	407.15	407.15
1/2/2024		Transcript/DEP			
WIP		Aguirre, Stephanie v. Pinnac			
Steno - Deposition Transcript of Western Growers Association PMK					
78591	EXP	Linda Lee	1	411.96	411.96
3/20/2024		Arbitrators			
WIP		Aguirre, Stephanie v. Pinnac			
JAMS - Demand for Arbitration					
77920	EXP	Olympia	1	1650.00	1650.00
3/28/2024		Experts			
WIP		Aguirre, Stephanie v. Pinnac			
JTC Corporation					
77956	EXP	Olympia	1	2.11	2.11
3/31/2024		Postage			
WIP		Aguirre, Stephanie v. Pinnac			
Postage					
78025	EXP	Erika Mejia	1	15.39	15.39
4/9/2024		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
78475	EXP	Erika Mejia	1	2.00	2.00
4/9/2024		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - eservice charge					
78241	EXP	Erika Mejia	1	17.45	17.45
5/9/2024		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
78239	EXP	Max Gavron	1	250.00	250.00
5/10/2024		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
MFA Filing					
78895	EXP	Erika Mejia	1	17.45	17.45
7/31/2024		Court fees			
WIP		Aguirre, Stephanie v. Pinnac			
OneLegal - CMS					
Grand Total					
Billable			0.00		14319.05

8/5/2024
3:39 PM

DIVERSITY LAW GROUP
Slip Listing

Page 5

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
	Unbillable	0.00		0.00
	Total	0.00		14319.05

EXHIBIT E