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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN BERNARDINO – CIVIL DIVISION**

FERNANDO CARILLO FAJARDO, an  
individual and on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

VEG-FRESH FARMS, INC., a California  
corporation; MANAGING PERSONNEL  
SERVICES, INC., a California corporation;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CIVSB2102912

*Related cases No.: CVRI2104492 and  
CVRI2304774*

[Assigned for All Purposes to:  
Hon. Joseph T. Ortiz, Dept. S17]

**CLASS AND PAGA SETTLEMENT  
AGREEMENT**

Action Filed: February 11, 2021  
Trial Date: None Set

**LAW OFFICES OF DEAN G. THOMPSON, APC**

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Attorney for Defendant, Managing Personnel Services, Inc.

1 This Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement” or  
2 “Settlement Agreement”) is made by and between plaintiff Fernando Carillo Fajardo (“Plaintiff”)  
3 and defendants Veg-Fresh Farms, Inc. (“Veg-Fresh”), and Managing Personnel Services, Inc.  
4 (“MPS” and with Veg-Fresh, “Defendants”). The Agreement refers to Plaintiff and Defendants  
5 collectively as “Parties,” or individually as “Party.”

6 **1. DEFINITIONS**

7 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations and civil  
8 penalties under California Private Attorneys’ General Act of 2004, California Labor Code § 2698  
9 et seq. (“PAGA”), against Defendants, captioned *Fernando Carrillo Fajardo v. Veg-Fresh*  
10 *Farms, Inc., et al*, Case No. CIVSB2102912, initiated on February 11, 2021, and pending in  
11 Superior Court of the State of California, County of San Bernardino.

12 1.2. “Administrator” means Apex Class Action Administration (“Apex”), the neutral entity  
13 Plaintiff has agreed to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid  
15 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance  
16 with the Administrator’s “not to exceed” bid submitted to the Court in connection with  
17 Preliminary Approval of the Settlement.

18 1.4. “Aggrieved Employee” means a person employed by Defendants in California and  
19 classified as a non-exempt, hourly-paid employee who worked for Defendants during the PAGA  
20 Period.

21 1.5. “Class” or “Settlement Class” means all persons employed by Defendants in California  
22 and classified as a non-exempt, hourly-paid employee who worked for Defendants during the  
23 Class Period.

24 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,  
25 P.C.

26 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean  
27 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and  
28 expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendants’ custody, possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3) last known telephone number(s); (4) last four digits of the last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from October 14, 2018, through December 7, 2019.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Incentive Award” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of San Bernardino.

1.16. “Defendants” means named Defendants Veg-Fresh Farms, Inc. and Managing Personnel Services, Inc.

1.17. “Defense Counsel” means Shaun J. Voigt, Andrew J. Hoag, and Jacob M. Axelrad of Fisher & Phillips LLP, and Dean G. Thompson of the Law Offices of Dean G. Thompson, APC.

1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the

1 latest of the following occurrences: (a) if no Participating Class Member objects to the  
2 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members  
3 objects to the Settlement, the day after the deadline for filing a notice of appeal from the  
4 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court  
5 affirms the Judgment and issues a remittitur.

6 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

7 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval  
8 of the Settlement.

9 1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final  
10 Approval.

11 1.22. “Gross Settlement Amount” means \$125,000.00 (One Hundred and Twenty-Five  
12 Thousand Dollars and Zero Cents) which is the total amount Defendants agree to pay under the  
13 Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes  
14 owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will  
15 be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA  
16 Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative  
17 Incentive Award, and Administrator’s Expenses.

18 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the  
19 Net Settlement Amount calculated according to the number of Workweeks worked during the  
20 Class Period.

21 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of  
22 the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA  
23 Period.

24 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

25 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency  
26 entitled, under Labor Code section 2699, subd. (i).

27 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA  
28 under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was employed by Defendants for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.31. “PAGA Period” means the period from October 14, 2018, through December 7, 2019.

1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.33. “PAGA Notice” means Plaintiff’s September 1, 2020, letter to Defendants and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$6,250.00), allocated 25% to the Aggrieved Employees (\$1,562.50) and 75% to the LWDA (\$4,687.50) in settlement of PAGA claims.

1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiff,” “Named Plaintiff,” or “Class Representatives” means Fernando Carillo Fajardo, the named Plaintiff in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval and Approval of PAGA Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4

below.

1.41. “Released Parties” means: Defendants, and each of their former, present and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendants for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

## **2. RECITALS**

2.1. On or about September 1, 2020, Plaintiff filed a notice with the Labor Workforce Development Agency (“LWDA”) requesting to seek civil penalties for various Labor Code violations.

2.2. On February 11, 2021, Plaintiff commenced this Action by filing a complaint in Los Angeles County Superior Court against Defendants for: failure to pay overtime and minimum wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage statement violations; failure to indemnify work expenses; unfair competition; and seeking penalties under PAGA for violations of Labor Code sections 210, 226.3, 558, 1197.1, and 2699 (“Action”).

2.3. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery: (i) time and payroll records for 324 employees who were placed to work at Veg-Fresh during the alleged time that MPS provided employees (i.e., October of 2018 through December of 2019); (ii) a class list that included the weeks that each employee worked; (iii) the number of workweeks; and (iv) all documents concerning Plaintiff, including his personnel file as well as his time and pay records through November of 2019.

2.5. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.6. On July 8, 2022, the Parties participated in an all-day mediation presided over by Tripper Ortman.

2.7. On September 5, 2024, the Parties participated in a second all-day mediation presided over by Kevin Barnes. The mediation was successful, and the Parties agreed to globally resolve all class and PAGA claims in the Action.

2.8. The Court has not granted class certification.

2.9. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below, Defendants promise to pay \$125,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert

1 to Defendants.

2 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct  
3 the following payments from the Gross Settlement Amount, in the amounts specified by the Court  
4 in the Final Approval:

5 3.2.1. To Plaintiff: Class Representative Service Award to Plaintiff in the amount of  
6 \$7,500.00, in addition to any Individual Class Payment and any Individual PAGA  
7 Payment Plaintiff is entitled to receive as a Participating Class Member. Defendants  
8 will not oppose Plaintiff's request for a Class Representative Incentive Award that does  
9 not exceed this amount. As part of the motion for Class Counsel Fees Payment and  
10 Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class  
11 Representative Incentive Award prior to the Final Approval Hearing. If the Court  
12 approves a Class Representative Incentive Award less than the amount requested, the  
13 Administrator will retain the remainder in the Net Settlement Amount and shall be  
14 distributed to Participating Class Members as part of their Individual Settlement  
15 Payment. The Administrator will pay the Class Representative Incentive Award using  
16 IRS Form 1099. Plaintiff assumes full responsibility and liability for any applicable  
17 employee taxes owed on the Class Representative Incentive Award.

18 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty five  
19 percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to  
20 Paragraph 8.1 of this Agreement, is currently estimated to be \$43,750.00 and a Class  
21 Counsel Litigation Expenses Payment of not more than \$35,000.00. Defendants will  
22 not oppose requests for these payments provided that do not exceed these amounts.  
23 Plaintiff and/or Class Counsel will endeavor to file a motion for Class Counsel Fees  
24 Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing.  
25 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation  
26 Expenses Payment less than the amounts requested, the Administrator will allocate the  
27 remainder to the Net Settlement Amount. Released Parties shall have no liability to  
28 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion

any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendants for such work unless, Defendants materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,990.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,990.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The

Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$6,250.00 to be paid from the Gross Settlement Amount, with 75% (\$4,687.50) allocated to the LWDA PAGA Payment and 25% (\$1,562.50) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,562.50) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS**

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records to date, Defendants estimates there are 322 Class Members who collectively worked a total of no more than 2,795 Workweeks, and 76 Aggrieved Employees who worked a total of 802 PAGA Pay Periods.

1 4.2. Class Data. Not later than fifteen (15) days after execution of the Settlement Agreement,  
2 Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a  
3 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must  
4 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement  
5 and for no other purpose, and restrict access to the Class Data to Administrator employees who  
6 need access to the Class Data to effect and perform under this Agreement. Defendants has a  
7 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted  
8 class member identifying information and to provide corrected or updated Class Data as soon as  
9 reasonably feasible. Without any extension of the deadline by which Defendants must send the  
10 Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts,  
11 in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class  
12 Data.

13 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement  
14 Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by  
15 transmitting the funds to the Administrator no later than fifteen (15) days after the Effective Date.  
16 Defendant MPS shall contribute \$100,000.00 to the Settlement and Veg-Fresh shall contribute  
17 \$25,000.00 MPS will be solely responsible for payroll taxes on the Wage Portion allocation of  
18 the Net Settlement Amount as set forth in Sections 3.2.4 and 3.2.4.1 of this Agreement.

19 4.4. Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the  
20 Administrator will mail checks for all Individual Class Payments, all Individual PAGA  
21 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel  
22 Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative  
23 Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation  
24 Expenses Payment and the Class Representative Service Payment shall not precede disbursement  
25 of Individual Class Payments, and the Individual PAGA Payments.

26 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
27 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
28 Mail, postage prepaid. The face of each check shall prominently state the date (not less

1 than 180 days after the date of mailing) when the check will be voided. The  
2 Administrator will cancel all checks not cashed by the void date. The Administrator  
3 will send checks for Individual Settlement Payments to all Participating Class Members  
4 (including those for whom Class Notice was returned undelivered). The Administrator  
5 will send checks for Individual PAGA Payments to all Aggrieved Employees including  
6 Non-Participating Class Members who qualify as Aggrieved Employees (including  
7 those for whom Class Notice was returned undelivered). The Administrator may send  
8 Participating Class Members a single check combining the Individual Class Payment  
9 and the Individual PAGA Payment in each installment. Before mailing any checks, the  
10 Settlement Administrator must update the recipients' mailing addresses using the  
11 National Change of Address Database.

12 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
13 Class Members whose checks are returned undelivered without USPS forwarding  
14 address. Within 7 days of receiving a returned check the Administrator must re-mail  
15 checks to the USPS forwarding address provided or to an address ascertained through  
16 the Class Member Address Search. The Administrator need not take further steps to  
17 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
18 The Administrator shall promptly send a replacement check to any Class Member whose  
19 original check was lost or misplaced, requested by the Class Member prior to the void  
20 date.

21 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
22 PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
23 shall transmit the funds represented by such checks to the California Controller's  
24 Unclaimed Property Fund in the name of the Aggrieved Employee.

25 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
26 not obligate Defendants to confer any additional benefits or make any additional  
27 payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
28 specified in this Agreement.

1           **5.       RELEASE OF CLAIMS**

2           Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,  
3 and on the date after Defendants fully fund the Gross Settlement Amount and all employer  
4 payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class  
5 Members, and Class Counsel will release claims against all Released Parties as follows:

6   5.1.   Plaintiff's General Release of All Claims. Plaintiff and his respective former and present  
7 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns  
8 generally, releases and discharges Released Parties from all claims, transactions, or occurrences,  
9 that occurred during the Class Period, whether known or unknown, suspected or unsuspected,  
10 including, but not limited to: (a) all claims that are related to Plaintiff's respective employment  
11 and termination with Defendant; (b) all claims that were, or reasonably could have been, alleged,  
12 based on the facts contained, in the Operative Complaint and (c) all PAGA claims that were, or  
13 reasonably could have been, alleged based on facts contained in the Operative Complaint and  
14 Plaintiff's PAGA Notice ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims  
15 or actions to enforce this Agreement, or to any claims for vested benefits, unemployment  
16 benefits, disability benefits, social security benefits, workers' compensation benefits that arose  
17 at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that  
18 Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff  
19 now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and  
20 remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's  
21 discovery of them.

22       5.1.1.   Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
23 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquish the  
24 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
25 which reads:

26           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
27           **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
28           **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**

1           **RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE**  
2           **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
3           **DEBTOR OR RELEASED PARTY.**

4   5.2.   Release by Participating Class Members: For the duration of the Class Period, all  
5   Participating Class Members, on behalf of themselves and their respective former and present  
6   representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released  
7   Parties from all claims that were alleged, or reasonably could have been alleged, based on the  
8   facts stated in the Operative Complaint including: failure to pay overtime and minimum wages;  
9   failure to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time  
10   penalties; wage statement violations; and unfair competition.

11   5.3.   Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not  
12   release any other claims, including claims for vested benefits, wrongful termination, violation of  
13   the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
14   workers' compensation, or claims based on facts occurring outside the Class Period.

15   5.4.   Release by Aggrieved Employees: For the duration of the PAGA Period, all Aggrieved  
16   Employees are deemed to release, on behalf of themselves and their respective former and present  
17   representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
18   Parties from all claims for PAGA civil penalties that were alleged, or reasonably could have been  
19   alleged, based on the facts stated in the Operative Complaint or the PAGA Notice that accrued  
20   during the PAGA Period (collectively "Released PAGA Claims").

21   The Settlement shall release and bar all Released PAGA Claims by or on behalf of Plaintiffs and  
22   all Aggrieved Employee during the PAGA Period, regardless of whether Plaintiffs or an  
23   Aggrieved Employee negotiates (cashes) their/his/her settlement checks sent pursuant to this  
24   Settlement. The Parties agree that there is no statutory right for any Aggrieved Employee to opt  
25   out or otherwise exclude himself or herself from the PAGA settlement and the associated release  
26   of claims and rights under PAGA. The Parties also agree that Aggrieved Employees do not have  
27   a right to intervene in or object to the Settlement, or to require a court to receive and consider  
28   objections to the Settlement, and that Aggrieved Employees do not have a right to move to vacate

1 a judgement entered in the Action. As such, an individual Aggrieved Employee opting out of the  
2 Class has no impact as to his/her standing or inclusion in the PAGA settlement assuming  
3 they/he/she qualifies as an Aggrieved Employee. Class Counsel agrees to provide timely notice  
4 of the Settlement to the LWDA as required under PAGA. Any Aggrieved Employees who submit  
5 a valid and timely Request for Exclusion are still entitled to their Individual PAGA Payment and  
6 have no right or ability to opt out of the portion of this Settlement releasing the Released PAGA  
7 Claims.

8 **5.5 Release by and between Defendants:** Likewise, Defendants Veg Fresh Farms, Inc. and  
9 Managing Personnel Services, Inc. generally, unconditionally, irrevocably and absolutely  
10 releases each other from all claims related in any way to the transactions or occurrences regarding  
11 the Complaint and Cross-Complaint filed herein between them to date, including, but not limited  
12 to, all claims, including indemnity or contribution or similar claims, charges, demands, and  
13 causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out  
14 of or in any way connected with Defendants.

## 15 **6. MOTION FOR PRELIMINARY APPROVAL**

16 The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion  
17 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary  
18 Approvals.

19 6.1. Within 7 days of full execution of this Agreement, Defendants will prepare and deliver to  
20 Class Counsel a signed declaration from Defendants and Defense Counsel disclosing all facts  
21 relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres  
22 Recipient

23 6.2. **Plaintiff’s Responsibilities.** Plaintiff will prepare and endeavor to deliver to Defense  
24 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the  
25 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an  
26 analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement  
27 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary  
28 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed

1 declaration from the Administrator attaching its “not to exceed” bid for administering the  
2 Settlement and attesting to its willingness to serve; competency; operative procedures for  
3 protecting the security of Class Data; amounts of insurance coverage for any data breach,  
4 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of  
5 interest with Class Members; and the nature and extent of any financial relationship with  
6 Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming  
7 willingness and competency to serve and disclosing all facts relevant to any actual or potential  
8 conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm  
9 attesting to its competency to represent the Class Members; its timely transmission to the LWDA  
10 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.  
11 (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code  
12 section 2699, subd. (1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest  
13 with Class Members and the Administrator.

14 6.3. Responsibilities of Counsel. Class Counsel is responsible for appearing in Court to  
15 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for  
16 delivering the Court’s Preliminary Approval to the Administrator.

17 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
18 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
19 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and  
20 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
21 Approval or conditions Preliminary Approval on any material change to this Agreement, Class  
22 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by  
23 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the  
24 Court’s concerns.

## 25 7. SETTLEMENT ADMINISTRATION

26 7.1. Selection of Administrator. The Parties have jointly selected Apex to serve as the  
27 Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this  
28 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for

1 payment of Administration Expenses. The Parties and their Counsel represent that they have no  
2 interest or relationship, financial or otherwise, with the Administrator other than a professional  
3 relationship arising out of prior experiences administering settlements.

4 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
5 Identification Number for purposes of calculating payroll tax withholdings and providing reports  
6 state and federal tax authorities.

7 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
8 the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section  
9 468B-1.

10 7.4. Notice to Class Members

11 7.4.1. No later than three (3) business days after receipt of the Class Data, the  
12 Administrator shall notify Class Counsel that the list has been received and state the  
13 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the  
14 Class Data.

15 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14  
16 days after receiving the Class Data, the Administrator will send to all Class Members  
17 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,  
18 the Class Notice with Spanish translation, substantially in the form attached to this  
19 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the  
20 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable  
21 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)  
22 used to calculate these amounts. Before mailing Class Notices, the Administrator shall  
23 update Class Member addresses using the National Change of Address database.

24 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice  
25 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice  
26 using any forwarding address provided by the USPS. If the USPS does not provide a  
27 forwarding address, the Administrator shall conduct a Class Member Address Search,  
28 and re-mail the Class Notice to the most current address obtained. The Administrator

has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer, in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative, signed by the Class Member, that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, signature, the last four digits of their Social Security Number, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator

1 shall accept any Request for Exclusion as valid if the Administrator can reasonably  
2 ascertain the identity of the person as a Class Member and the Class Member's desire  
3 to be excluded. The Administrator's determination shall be final and not appealable or  
4 otherwise susceptible to challenge. If the Administrator has reason to question the  
5 authenticity of a Request for Exclusion, the Administrator may demand additional proof  
6 of the Class Member's identity. The Administrator's determination of authenticity shall  
7 be final and not appealable or otherwise susceptible to challenge, except by the Court.

8 7.5.3. Every Class Member who does not submit a timely and valid Request for  
9 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
10 to all benefits and bound by all terms and conditions of the Settlement, including the  
11 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,  
12 regardless whether the Participating Class Member actually receives the Class Notice or  
13 objects to the Settlement.

14 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a  
15 Non-Participating Class Member and shall not receive an Individual Class Payment or  
16 have the right to object to the class action components of the Settlement. Because future  
17 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-  
18 Participating Class Members who are Aggrieved Employees are deemed to release the  
19 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual  
20 PAGA Payment.

21 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after  
22 the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class  
23 Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and  
24 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class  
25 Member may challenge the allocation by communicating with the Administrator via mail. The  
26 Administrator must encourage the challenging Class Member to submit supporting  
27 documentation. In the absence of any contrary documentation, the Administrator is entitled to  
28 presume that the Workweeks contained in the Class Notice are correct so long as they are

1 consistent with the Class Data. The Administrator's determination of each Class Member's  
2 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise  
3 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to  
4 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the  
5 Administrator's determination the challenges. The Administrator will provide similar copies of  
6 challenges to Class Counsel after redacting Class Member identifying information, including but  
7 not limited to name, address, social security number, email address, and phone number.

8 **7.7. Objections to Settlement**

9 7.7.1. Only Participating Class Members may object to the class action components of  
10 the Settlement and/or this Agreement, including contesting the fairness of the  
11 Settlement, or amounts requested for the Class Counsel Fees Payment, Class Counsel  
12 Litigation Expenses Payment or Class Representative Incentive Award.

13 7.7.2. Participating Class Members may send written objections to the Administrator, by  
14 facsimile, e-mail, or mail. In the alternative, Participating Class Members may appear  
15 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final  
16 Approval Hearing. A Participating Class Member who elects to send a written objection  
17 to the Administrator must do so not later than 45 days after the Administrator's mailing  
18 of the Class Notice (plus an additional fourteen (14) days for Class Members whose  
19 Class Notice was re-mailed).

20 7.7.3. Non-Participating Class Members have no right to object to any of the class action  
21 components of the Settlement.

22 **7.8. Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be  
23 performed or observed by the Administrator contained in this Agreement or otherwise.

24 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain  
25 and use an internet website to post information of interest to Class Members including  
26 the date, time and location for the Final Approval Hearing and copies of the Settlement  
27 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class  
28 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,

1 Class Counsel Litigation Expenses Payment and Class Representative Incentive Award,  
2 the Final Approval and the Judgment. The Administrator will also maintain and monitor  
3 an email address and a toll-free telephone number to receive Class Member calls,  
4 facsimiles, and e-mails. If Final Approval is granted, the Administrator will post the  
5 above-listed information of interest for at least 180 days after the date of mailing  
6 Individual Class Payments and Individual PAGA Payments.

7 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
8 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.  
9 Not later than 5 days after the expiration of the deadline for submitting Requests for  
10 Exclusion, the Administrator shall email a list to: (a) Class Counsel and Defense  
11 Counsel containing the names and other identifying information of Class Members who  
12 have timely submitted valid Requests for Exclusion (“Exclusion List”), along with  
13 copies of all valid and timely Requests for Exclusion; and (b) Defense Counsel  
14 containing the names and other identifying information of Class Members who  
15 submitted invalid Requests for Exclusion, along with copies of all invalid or untimely  
16 Requests for Exclusion from Settlement submitted.

17 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written  
18 reports to Class Counsel and Defense Counsel that, among other things, tally the number  
19 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for  
20 Exclusion (whether valid or invalid) received, objections received, challenges to  
21 Workweeks or Pay Periods received or resolved, and checks mailed for Individual Class  
22 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports  
23 must include provide the Administrator’s assessment of the validity of Requests for  
24 Exclusion and attach copies of all Requests for Exclusion and objections received. The  
25 Administrator must, on a weekly basis, provide Defense Counsel the names and  
26 identifying information of Class Members whose Class Notices have been returned as  
27 undeliverable for the purpose of determining if Defendant can provide any additional  
28 information to successfully mail the Class Notice.

1 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to  
2 address and make final decisions consistent with the terms of this Agreement on all  
3 Class Member challenges over the calculation of Workweeks or Pay Periods. The  
4 Administrator's decision shall be final and not appealable or otherwise susceptible to  
5 challenge.

6 7.8.5. Employer's Share of Payroll Taxes. The Administrator shall handle all tax  
7 document preparation and reporting, including W-2 or 1099 Forms, and any other state  
8 and federal tax forms. The Administrator shall calculate the amount of the Employer's  
9 Taxes and shall remit and report the applicable portions of the payroll tax payment to  
10 the appropriate taxing authorities in a timely manner.

11 7.8.6. Administrator's Declaration. Not later than fourteen (14) days before the date by  
12 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the  
13 Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable  
14 for filing in Court attesting to its due diligence and compliance with all of its obligations  
15 under this Agreement, including, but not limited to, its mailing of Class Notice, the Class  
16 Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class  
17 Members, the total number of Requests for Exclusion from Settlement it received (both  
18 valid or invalid), the number of written objections and attach the Exclusion List. The  
19 Administrator will supplement its declaration as needed or requested by the Parties or  
20 the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in  
21 Court.

22 7.8.7. Posting of Final Judgment. Within ten (10) days after the Court has held a Final  
23 Approval Hearing and entered the Judgment certifying the Class for settlement purposes  
24 only and approving the Settlement, the Administrator will give notice of judgment to  
25 Class Members pursuant to California Rules of Court, rule 3.771(b) by posting a copy  
26 of said Judgment on its website at a web address to be included in the Class Notice.

27 7.8.8. Final Report by Settlement Administrator. Within 10 days after the Administrator  
28 disburses all funds in the Gross Settlement Amount, the Administrator will provide

1 Class Counsel and Defense Counsel with a final report detailing its disbursements by  
2 employee identification number only of all payments made under this Agreement. At  
3 least fifteen (15) days before any deadline set by the Court, the Administrator will  
4 prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable  
5 for filing in Court attesting to its disbursement of all payments required under this  
6 Agreement. Class Counsel is responsible for filing the Administrator's declaration in  
7 Court.

8 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

9 Based on its records, Defendants estimates that, as of the date of this Settlement  
10 Agreement, (1) there are 322 Class Members and 2,795 Total Workweeks during the Class Period  
11 and (2) there are 76 Aggrieved Employees who worked 802 Pay Periods during the PAGA  
12 Period.

13 8.1 Increase in Workweeks. Defendants represent that there are no more than 2,795  
14 Workweeks worked during the Class Period. In the event the number of Workweeks during the  
15 Class Period increases by more than 5%, or 140 Workweeks, then Defendants, in their sole  
16 discretion shall either: (1) de-escalate the Settlement so the Class Period ends on the date that the  
17 Workweek count totals no more than 2,935; or (2) increase the Gross Settlement Amount  
18 proportionally by the Workweeks in excess of 2,935 Workweeks multiplied by the Workweek  
19 Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross  
20 Settlement Amount (\$125,000.00) by 2,795 which amounts to a Workweek Value of \$44.72.  
21 Thus, for example, should there be 5,000 Workweeks in the Class Period, then the Gross  
22 Settlement Amount shall be increased by \$92,346.80 (5,000 Workweeks – 2,935 Workweeks) x  
23 \$44.72 per Workweek.) Defendants must exercise their election pursuant to this Paragraph at  
24 least 30 days before the first set hearing on the Motion for Preliminary Approval or it will be  
25 assumed Defendants have elected Option (2) in this paragraph

26 **9. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests  
27 for Exclusion identified in the Exclusion List equals or exceeds 10% of the total of all  
28 Class Members, Defendants may, but is not obligated to, elect to withdraw from the

1 Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void  
2 ab initio, have no force or effect whatsoever, and that neither Party will have any further  
3 obligation to perform under this Agreement; provided, however, Defendants will remain  
4 responsible for paying all Settlement Administration Expenses incurred to that point.  
5 Defendant must notify Class Counsel and the Court of its election to withdraw not later  
6 than seven days after the Administrator sends the final Exclusion List to Defense Counsel;  
7 late elections will have no effect.

#### 8 **10. MOTION FOR FINAL APPROVAL**

9 Not later than sixteen (16) court days before the calendared Final Approval Hearing,  
10 Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request  
11 for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final  
12 Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff  
13 shall endeavor to provide drafts of these documents to Defense Counsel not later than two (2)  
14 calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel  
15 will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning  
16 the Motion for Final Approval.

17 10.1. Response to Objections. Each Party retains the right to respond to any objection raised  
18 by a Participating Class Member, including the right to file responsive documents in Court no  
19 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or  
20 accepted by the Court.

21 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
22 Approval on any material change to the Settlement (including, but not limited to, the scope of  
23 release to be granted by Class Members), the Parties will expeditiously work together in good  
24 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final  
25 Approval. The Court’s decision to award less than the amounts requested for the Class  
26 Representative Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation  
27 Expenses Payment, and Administrator Expenses Payment shall not constitute a material  
28 modification to the Agreement within the meaning of this paragraph.

1 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
2 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of  
3 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,  
4 and (iii) addressing such post-Judgment matters as are permitted by law.

5 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
6 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class  
7 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their  
8 respective counsel, and all Participating Class Members who did not object to the Settlement as  
9 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to  
10 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions  
11 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver  
12 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the  
13 Parties' obligations to perform under this Agreement will be suspended until such time as the  
14 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect  
15 the amount of the Net Settlement Amount.

16 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
17 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material  
18 modification of this Agreement (including, but not limited to, the scope of release to be granted  
19 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless  
20 expeditiously work together in good faith to address the appellate court's concerns and to obtain  
21 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration  
22 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify  
23 the Court's award of the Class Representative Incentive Award or any payments to Class Counsel  
24 shall not constitute a material modification of the Judgment within the meaning of this paragraph,  
25 as long as the Gross Settlement Amount remains unchanged.

## 26 **11. AMENDED JUDGMENT**

27 10.1 If any amended judgment is required under the Code of Civil Procedure section 384, the  
28 Parties will work together in good faith to jointly submit a proposed amended judgment.

1                   **12.     ADDITIONAL PROVISIONS**

2   12.1.   No Effect on Employee Benefit Plans. Neither this Agreement nor any amounts paid  
3   under the Settlement will modify any previously credited hours, days, or weeks of service under  
4   any employee benefit plan, policy or bonus program sponsored by Defendants. Such amounts  
5   will not form the basis for additional contributions to, benefits under, or any other monetary  
6   entitlement under Defendants’ sponsored benefit plans, policies, or bonus programs. The  
7   payments made under the terms of this Settlement shall not be applied retroactively, currently,  
8   or on a going forward basis, as salary, earnings, wages, or any other form of compensation for  
9   the purposes of any of Defendant’s benefit plan, policy, or bonus program. Defendants retain the  
10   right to modify the language of its benefits plans, policies and bonus programs to effect this intent  
11   and to make clear that any amounts paid pursuant to this Settlement are not for “weeks worked,”  
12   “weeks paid,” “weeks of service,” or any similar measuring term as defined by applicable plans,  
13   policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other  
14   purpose, and that additional contributions or benefits are not required by this Settlement.  
15   Defendant does not consider the Individual Class Payments “compensation” for purposes of  
16   determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus  
17   programs, or any other plan sponsored by Defendant.

18   12.2.   No Admission of Liability, Class Certification or Representative Manageability for Other  
19   Purposes. This Agreement represents a compromise and settlement of highly disputed claims.  
20   Nothing in this Agreement is intended or should be construed as an admission by Defendants  
21   that any of the allegations in the Operative Complaint have merit or that Defendants has any  
22   liability for any claims asserted; nor should it be intended or construed as an admission by  
23   Plaintiff that Defendants’ defenses in the Action have merit. The Parties agree that class  
24   certification and representative treatment is for purposes of this Settlement only. If, for any  
25   reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants  
26   reserves the right to contest certification of any class for any reasons, and Defendants reserves  
27   all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class  
28   certification on any grounds available and to contest Defendants’ defenses. The Settlement, this

1 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be  
2 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the  
3 Settlement and this Agreement).

4 12.3. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and  
5 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement  
6 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit  
7 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly  
8 or indirectly, specifically or generally, to any person, corporation, association, government  
9 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom  
10 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the  
11 extent necessary to report income to appropriate taxing authorities; (4) in response to a court  
12 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal  
13 government agency. Each Party agrees to immediately notify each other Party of any judicial or  
14 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,  
15 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any  
16 conversation or other communication, before the filing of the Motion for Preliminary Approval,  
17 any with third party regarding this Agreement or the matters giving rise to this Agreement except  
18 to respond only that "the matter was resolved," or words to that effect. This paragraph does not  
19 restrict Class Counsel's communications with Class Members in accordance with Class  
20 Counsel's ethical obligations owed to Class Members.

21 12.4. No Solicitation. The Parties separately agree that they and their respective counsel and  
22 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
23 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's  
24 ability to communicate with Class Members in accordance with Class Counsel's ethical  
25 obligations owed to Class Members. Nothing in this section shall be construed to restrict  
26 Defendants' ability to communicate with their employees regarding the Settlement, provided that  
27 in such communication Defendants do not solicit or encourage Class Members to opt out of or  
28 object to the Settlement, or appeal from the Judgment.

1 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
2 together with its attached exhibits shall constitute the entire agreement between the Parties  
3 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
4 inducements made to or by any Party.

5 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
6 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate  
7 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate  
8 its terms, and to execute any other documents reasonably required to effectuate the terms of this  
9 Agreement including any amendments to this Agreement.

10 12.7. Cooperation. The Parties and their counsel will cooperate with each other and use their  
11 best efforts, in good faith, to implement the Settlement by, among other things, modifying the  
12 Settlement Agreement, submitting supplemental evidence and supplementing points and  
13 authorities as requested by the Court. In the event the Parties are unable to agree upon the form  
14 or content of any document necessary to implement the Settlement, or on any modification of the  
15 Agreement that may become necessary to implement the Settlement, the Parties will seek the  
16 assistance of a mediator or the Court for resolution.

17 12.8. No Prior Assignments. The Parties separately represent and warrant that they have not  
18 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
19 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
20 action, or right released and discharged by the Party in this Settlement.

21 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are  
22 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied  
23 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR  
24 Part 10, as amended) or otherwise.

25 12.10. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
26 modified, changed, or waived only by an express written instrument signed by all Parties or their  
27 authorized representatives, and approved by the Court.

28 12.11. Authority of Signatories. The respective signatories to the Agreement represent that they

are fully authorized to enter into this Agreement and bind the respective Parties to its terms and conditions.

12.12. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.13. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

12.14. Attorneys' Fees and Costs. Except as otherwise specifically provided for herein, each party shall bear its own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them or arising out of the Action and shall not seek reimbursement thereof from any other party in this Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs.

12.15. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting

12.16. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement

12.17. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court.

12.18. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.19. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day

1 thereafter.

2 12.20. Notice. All notices, demands, or other communications between the Parties in connection  
3 with this Agreement will be in writing and deemed to have been duly given as of the third  
4 business day after mailing by United States mail, or the day sent by e-mail or messenger,  
5 addressed as follows:

6  
7 To Plaintiffs:

8 David Bibiyan

9 david@tomorrowlaw.com

10 Vedang J. Patel

11 vedang@tomorrowlaw.com

12 Bibiyan Law Group, P.C.

13 1460 Westwood Boulevard

14 Los Angeles, CA 90024

15 Telephone: 310.438.5555

16 Facsimile: 310.300.1705

17  
18 To Defendant Managing Personnel Services, Inc.

19 Dean Thompson

20 dean@thomponlaborlaw.com

21 4193 Flat Rock Road, Building 200, Office 242

22 Riverside, California 92505

23 Telephone: 212-278-9685

1 To Defendant Veg-Fresh Farms, Inc.

2 Shaun J. Voigt

3 svoigt@fisherphillips.com

4 Andrew J. Hoag

5 ahoag@fisherphillips.com

6 444 S. Flower Street, Suite 1500

7 Los Angeles, CA 90071

8 Telephone: 213.330.4500

9 Facsimile: 213.330.4501

10  
11 12.21. Execution in Counterparts. This Agreement may be executed in one or more counterparts  
12 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes  
13 of this Agreement shall be accepted as an original. All executed counterparts and each of them  
14 will be deemed to be one and the same instrument if counsel for the Parties will exchange between  
15 themselves signed counterparts. Any executed counterpart will be admissible in evidence to  
16 prove the existence and contents of this Agreement.

17 12.22. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
18 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
19 agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure, section  
20 583.330 to extend the date to bring a case to trial under Code of Civil Procedure, section 583.310  
21 for the entire period of this settlement process.

22 12.23. Severability. In the event that one or more of the provisions contained in this Agreement  
23 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
24 illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel  
25 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing  
26 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
27 Agreement.

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1 **IT IS SO AGREED:**

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3  
4 Plaintiff, FERNANDO CARILLO  
FAJARDO

For Defendant, VEG-FRESH FARMS, Inc.

5 Jairo m

02/19/2026

Jairo mendoza (Feb 19, 2026 16:23:05 PST)

6 For Defendant, MANAGING PERSONNEL  
7 SERVICES, INC.

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10  
11 **AGREED AS TO FORM ONLY:**

12  
13  
14 DAVID D. BIBIYAN  
15 VEDANG J. PATEL  
16 MEGAN R. LAZAR  
Counsel for Plaintiff

SHAUN J. VOIGT  
ANDREW J. HOAG  
JACOB M. AXELRAD  
Counsel for Defendant Veg-Fresh Farms, Inc.

17 Dean G. Thompson

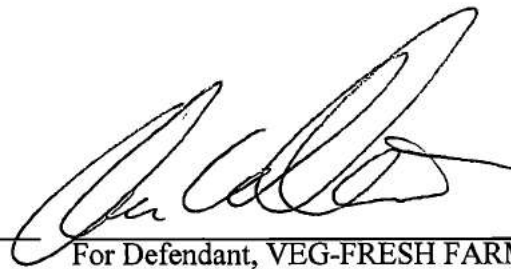
02/20/2026

Dean G. Thompson (Feb 20, 2026 11:55:42 PST)

18 DEAN G. THOMPSON  
19 Counsel for Defendant Managing Personnel  
20 Services, Inc.

1 **IT IS SO AGREED:**

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3  
4 Plaintiff, FERNANDO CARILLO  
5 FAJARDO

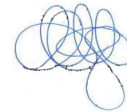


For Defendant, VEG-FRESH FARMS, Inc.

6 For Defendant, MANAGING PERSONNEL  
7 SERVICES, INC.

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10  
11 **AGREED AS TO FORM ONLY:**

12  
13  
14 DAVID D. BIBIYAN  
15 VEDANG J. PATEL  
16 MEGAN R. LAZAR  
17 Counsel for Plaintiff



18 SHAUN J. VOIGT  
19 ANDREW J. HOAG

Counsel for Defendant Veg-Fresh Farms, Inc.

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21  
22 DEAN G. THOMPSON  
23 Counsel for Defendant Managing Personnel  
24 Services, Inc.

1 **IT IS SO AGREED:**

2  
3 *Fernando Fajardo*

02/16/2026

4 Plaintiff, FERNANDO CARILLO  
FAJARDO

For Defendant, VEG-FRESH FARMS, Inc.

6  
7 For Defendant, MANAGING PERSONNEL  
SERVICES, INC.

10  
11 **AGREED AS TO FORM ONLY:**

12  
13 *Megan R. Lazar*

14 DAVID D. BIBIYAN  
15 VEDANG J. PATEL  
MEGAN R. LAZAR  
16 Counsel for Plaintiff

17  
18 SHAUN J. VOIGT  
ANDREW J. HOAG  
JACOB M. AXELRAD  
19 Counsel for Defendant Veg-Fresh Farms, Inc.

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DEAN G. THOMPSON  
Counsel for Defendant Managing Personnel  
Services, Inc.