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on behalf of herself and all others similarly situated

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BELLA VISTA FARMING COMPANY, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LAKE

MONICA FLORES-ALVAREZ, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

BELLA VISTA FARMING COMPANY, LLC,
a limited liability company; and DOES 1 - 50,
Inclusive,

Defendant.

Case No. CV421525

PAGA SETTLEMENT AGREEMENT

Complaint Filed: February 8, 2021
FAC Filed: March 23, 2021
Trial Date: None Set

Subject to Court approval, Plaintiff Monica Flores-Alvarez (“Plaintiff”) and Defendant Bella Vista Farming Company, LLC (“Defendant”) (collectively the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement” or “Agreement”) of the PAGA claims in the action entitled *Flores-Alvarez v. Bella Vista Farming Company, LLC* (Lake County Superior Court Case No. CV421525) (the “Action”).

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1 currently estimated to be no greater than \$11,000.00 (“PAGA Counsel’s
2 Costs”); and

- 3 c. The remaining funds (the Maximum Settlement Amount less the Third-
4 Party Settlement Administration Fees, PAGA Counsel’s Fees, and PAGA
5 Counsel’s Costs) shall be referred to as the “Net Settlement Amount.”

6 5. **Escalator Clause.** With respect to the Settlement, Defendant estimates that it
7 issued approximately 12,294 paychecks to approximately 625 Aggrieved Employees for the
8 period of December 5, 2019 through February 21, 2022. Plaintiff is entering into this Settlement
9 Agreement based on such representations. In the event it is determined that the actual number of
10 pay periods exceeds 12,294 by more than 10 percent for the period of December 5, 2019 through
11 February 21, 2022, the parties shall agree to engage in a good faith effort to renegotiate the
12 Maximum Settlement Amount. If the renegotiation is unsuccessful, Plaintiff has the right to
13 declare the settlement null and void.

14 6. **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall
15 be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under
16 the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to
17 have been violated in or reasonably related to the operative Complaint with respect to PAGA
18 Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code
19 Section 2699(i) with 75.0% paid to the LWDA and 25.0% paid to the PAGA Members on a pro-
20 rata basis (“PAGA Penalties Fund”). The 25.0% of the Net Settlement Amount will be paid to
21 all PAGA Members according to the following formula: Settlement Payment to each PAGA
22 Member = $[\$25.0\% \text{ of Net Settlement Amount}] \times [\text{Pay Periods Worked by Individual PAGA}$
23 $\text{Member During PAGA Period} \div \text{Total Pay Periods Worked by All PAGA Members during}$
24 $\text{PAGA Period}]$.

25 7. **Settlement Administration.** Settlement Administrator ILYM, or as otherwise
26 agreed to by the Parties and approved by the Court, will administer this Settlement and will be
27 responsible for issuing payments and appropriate tax forms to PAGA Members, the LWDA,
28 Plaintiff, and PAGA Counsel. The estimate of costs of administration for the disbursement of the
PAGA Penalties Fund is no more than \$10,000.00. If less than \$10,000.00 is spent on the
Settlement Administrator, the unused funds will be re-allocated to the Net Settlement Amount.

1 8. **Court Approval of the Settlement.** The Parties will present this Settlement
2 Agreement to the Court and will request that the Court issue a Court Approval Order and
3 Judgment approving and incorporating by reference the terms and conditions of the Settlement
4 Agreement (the “Court Approval Order and Judgment”), dismissing the Action with prejudice,
5 and entering judgment. The Parties shall submit this Settlement Agreement for the Court’s
6 approval by a motion which Plaintiff will undertake that responsibility.

7 9. **Notice to LWDA.** Pursuant to California Labor Code § 2699(1)(1), Plaintiff shall
8 submit to the LWDA a copy of this Settlement Agreement and all supporting approval documents
9 at the same time that Plaintiff submits it to the Court for approval.

10 10. **Funding of the Settlement.** Within sixty (60) calendar days after the Effective
11 Date and notice by the Court or Plaintiff that the Action has been dismissed with prejudice,
12 Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator,
13 who shall issue payment to PAGA Counsel and Plaintiff within twenty (20) calendar days of
14 receipt of the Maximum Settlement Amount. Within ten (10) calendar days after the Effective
15 Date, Defendant shall provide the Settlement Administrator with a list of all PAGA Members
16 with each listed employee’s full name, hiring, and, if applicable, termination dates in connection
17 with the employee’s employment with Defendant during the PAGA Period, last known mailing
18 address, and social security number. Within twenty (20) calendar days of receipt of the list of all
19 PAGA Members, the Settlement Administrator shall run all the addresses of PAGA Members
20 through the United States Postal Service NCOA database to obtain current address information,
21 and issue payments to (a) PAGA Members; (b) the LWDA; and (c) itself. The Settlement
22 Administrator will skip-trace return mail and re-mail within five (5) calendar days. The
23 Settlement Administrator will issue the appropriate tax forms for all payments issued under this
24 Settlement. If the Effective Date falls on a holiday or weekend, the Effective Date shall be the
25 next calendar day.

26 11. **Settlement Payments to PAGA Members:** The Settlement Administrator will
27 issue each PAGA Member a check for his or her share of the Net Settlement Amount along with
28 an explanatory letter in the form attached as Exhibit A. Checks will remain negotiable for one
hundred eighty (180) days. Any checks returned as non-deliverable on or before the check
cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
affixed thereto. Funds represented by settlement checks returned as undeliverable and those

1 settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the
2 California State Controller's Office Unclaimed Property Fund with an identification of the
3 amount of unclaimed funds attributable to each PAGA Member. The Parties do not bear any
4 liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of
5 checks. Unless responsible by its own acts of omission or commission, the same is true for the
6 Settlement Administrator. All settlement payments to PAGA Members will be treated as
7 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement
Administrator if required by law.

8 12. **Release of Plaintiff's Individual Claims:** Plaintiff acknowledges the existence
9 of and, with respect to the release given in Paragraph 12 herein, expressly waives and relinquishes
10 any and all rights and benefits Plaintiff has or may have under California Civil Code, Section
11 1542, which provides:

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

16 Plaintiff acknowledges that she may hereafter discover facts different from or in addition to those
17 which she or her attorneys now know or believe to be true with respect to the matters released in
18 this settlement, and agrees that the release so given in Paragraph 12, shall be and remain in effect
as a full and complete release of all claims, notwithstanding any such different or additional facts.

19 13. **Settled and Released PAGA Claims.** As of and subject to the occurrence of the
20 Effective Date, and in consideration for the Maximum Settlement Amount, the claims settled,
21 fully released and forever discharged by the LWDA and the PAGA Members, including Plaintiff,
22 constitute any and all claims for civil penalties Plaintiff, the PAGA Members, and the State of
23 California may have against the Released Parties under the California Labor Code, Wage Orders,
24 regulations, and/or any other provisions of state and federal law arising from allegations that the
25 PAGA Members suffered Labor Code violations based on, and any other Labor Code violations
26 that were alleged in the Action, or that could have been alleged in the Action based on the facts
27 alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code
28 sections alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 510,

1 1194, 1197, and 2698 *et seq.* (“PAGA Released Claims”). The “Released Parties” are Bella Vista
2 Farming Company, LLC and their present and former parent companies, subsidiaries, divisions,
3 concepts, related or affiliated companies, and their shareholders, officers, directors, members,
4 employees, agents, attorneys, insurers, successors and assigns, and all persons acting by or
through or in concert with any of them, and each of them (hereinafter “Released Parties”).

5 14. **No Credit Toward Benefit Plans.** Payments to PAGA Members as referenced
6 herein will not be utilized to calculate any additional benefits under any benefit plans to which
7 any PAGA Member may be eligible, including, but not limited to profit-sharing plans, bonus
8 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
9 other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not
10 affect any rights, contributions, or amounts to which any PAGA Member may be entitled under
any benefit plans.

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

15 16. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not
16 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
17 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
will be null and void, and the Parties will be returned to their original respective positions.

18 17. **Continued Jurisdiction.** After entry of the Court Approval Order and Judgment,
19 the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6
20 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
21 Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as
22 may be appropriate under court rules or as set forth in this Settlement.

23 18. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the
24 Parties’ settlement terms regarding the Action. No other prior or contemporaneous written or oral
agreements may be deemed binding on the Parties.

25 19. **Amendment or Modification.** This Settlement Agreement may be amended or
26 modified only by a written instrument, signed by either all the Parties or their successors-in-
27 interest or counsel for all Parties.

1 20. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
2 warrant and represent they are expressly authorized by the Parties whom they represent to
3 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
4 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
5 execute any other documents required to effectuate the terms of this Settlement Agreement. The
6 Parties and their counsel will cooperate with each other and use their best efforts to effect the
7 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
8 content of any document needed to implement the Settlement, or on any supplemental provisions
9 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
assistance of the Court to resolve such disagreement.

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

12 22. **California Law Governs.** All terms of this Settlement Agreement and Exhibit(s)
13 hereto will be governed by and interpreted according to the laws of the State of California.

14 23. **Execution and Counterparts.** This Settlement Agreement is subject only to the
15 execution of all Parties. However, the Settlement Agreement may be executed in one or more
16 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
of the signature page, will be deemed to be one and the same instrument.

17 24. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties
18 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
19 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before
20 Hon. Maria Elena-James, an experienced and well-respected judge and mediator who focuses on
21 mediation of employment matters involving alleged wage and hour violations. The Parties further
22 acknowledge that they are each represented by competent counsel and that they have had an
23 opportunity to consult with their counsel regarding the fairness and reasonableness of this
Settlement.

24 25. **Denial of Liability.** The Parties expressly recognize that the making of this
25 Settlement Agreement does not in any way constitute an admission or concession of wrongdoing
26 on the part of Defendant, the Released Parties, or Plaintiff. Nothing in this Settlement, nor any
27 action taken in implementation thereof, nor any statements, discussions or communications, nor
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1 any materials prepared, exchanged, issued or used during the course of this Action, is intended
2 by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible
3 in any way in any other judicial, arbitral, administrative, investigative or other forum or
4 proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,
5 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding
6 the foregoing, this Settlement Agreement may be used in any proceeding in the Court that has as
7 its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or
judgments of the Court entered into in connection therewith.

8 26. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
10 extent possible consistent with applicable precedents so as to define all provisions of this
11 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement or
12 the application thereof is held invalid, the invalidity shall not affect other provisions or
13 applications of this Settlement Agreement which can be given effect without the invalid
14 provisions or application and, to this end, the provisions of this Settlement Agreement are
15 declared to be severable. Notwithstanding the foregoing, no portion of any release contained
16 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing
by the applicable party.

17 27. **Captions.** The captions and section numbers in this Settlement Agreement are
18 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
or intent of the provisions of this Settlement Agreement.

19 28. **Waiver.** No waiver of any condition or covenant contained in this Settlement
20 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
21 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
22 right or remedy.

23 29. **Enforcement Action.** In the event that one or more of the Parties institutes any
24 legal action or other proceeding against any other Party or Parties to enforce the provisions of
25 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
26 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
27 fees and costs, including expert witness fees incurred in connection with any enforcement
28 actions.

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

7 31. **Representation By Counsel.** The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement, and that this Settlement Agreement has been executed with the consent and advice
10 of counsel, and reviewed in full.

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

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

19 34. **Confidentiality.** The Parties and their counsel agree that they will not issue any
20 press releases, initiate any contact with the press, respond to any press inquiry or have any
21 communication with the press about the fact, amount or terms of the Settlement. PAGA Counsel
22 may respond to press inquiries by stating the matter has been resolved and refer the press to court
23 filings. In addition, PAGA Counsel agree that they will not engage in any advertising or distribute
24 any marketing materials specifying any material terms specifically relating to the Settlement of
25 this case, including but not limited to any postings on any websites maintained by PAGA
26 Counsel. Any communication about the Settlement to PAGA Members will be limited to a
27 statement that a settlement has been reached and the details will be communicated in a
28 forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from
discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her
immediate family members, and (2) her respective accountants or lawyers as necessary for tax
purposes. Nothing herein shall restrict PAGA Counsel from including publicly available

1 information regarding this Settlement in future judicial submissions regarding PAGA Counsel's
2 qualifications and experience.

3 **AGREED TO AND ACCEPTED:**

4 Dated: 5/24, 2022

MONICA FLORES-ALVAREZ

5 By: 
6 Plaintiff Monica Flores-Alvarez

7
8 Dated: _____, 2022

BELLA VISTA FARMING COMPANY, LLC

9
10 By: _____
David Weiss

11 **APPROVED AS TO FORM:**

12 Dated: May 25, 2022

LABOR LAW, PC

13
14 By: 
15 Danny Yadidsion
Attorneys for Plaintiff

16 Dated: _____, 2022

GORDON REES SCULLY MANSUKHANI,
LLP

17
18
19 By: _____
Matthew J. Wayne
Attorneys for Defendant

1 information regarding this Settlement in future judicial submissions regarding PAGA Counsel's
2 qualifications and experience.

3 **AGREED TO AND ACCEPTED:**

4 Dated: _____, 2022

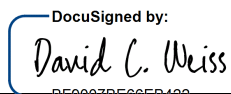
MONICA FLORES-ALVAREZ

5 By: _____

6 Plaintiff Monica Flores-Alvarez

7
8 Dated: May 27, 2022 | 8:27 PM PDT

BELLA VISTA FARMING COMPANY, LLC

9 By:  _____

10 David C. Weiss, Managing Member

11 **APPROVED AS TO FORM:**

12 Dated: _____, 2022

LABOR LAW, PC

14 By: _____

15 Danny Yadidsion
Attorneys for Plaintiff

16 Dated: June 1, 2022

17 GORDON REES SCULLY MANSUKHANI,
LLP

18 By:  _____

19 Matthew J. Wayne
20 Attorneys for Defendant

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EXHIBIT A

1 **NOTICE OF PAGA SETTLEMENT**

2 *Flores-Alvarez v. Bella Vista Farming Company, LLC*
3 (Lake County Superior Court Case No. CV421525)

4 <<Settlement Administrator>>

5 []

6 []

7 Telephone: []

8 «FirstName»

9 «LastName»

10 «Address1» «Address2»

11 «City» «State» «Zip»

12 You are receiving this notice as a result of a lawsuit brought on a representative basis
13 under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”).
14 The plaintiff in the Action is Monica Flores-Alvarez (“Plaintiff”) and the Defendant is Bella
15 Vista Farming Company, LLC (“Defendant”). The Action seek civil penalties for purported
16 violations of the California Labor Code on behalf of all Defendant’s current and former
17 California non-exempt employees (“PAGA Members”) who Defendant employed during the
18 PAGA Period of December 5, 2019 through March 18, 2022.

19 Defendant denies all claims and allegations in the Action, denies that it owes any
20 penalties, and asserts that it fully complied with all applicable Labor Code provisions.
21 Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the
22 case and the Court has approved the settlement and release of claims. By settling the Action,
23 Defendant is not admitting that it did anything wrong.

24 As of and subject to the occurrence of the Effective Date of the Settlement, the Settlement
25 resolves, and in consideration for the Maximum Settlement Amount, the claims settled, fully
26 released and forever discharged by the LWDA and the PAGA Members, including Plaintiff,
27 constitute any and all claims for civil penalties Plaintiff, the PAGA Members, and the State of
28 California may have against the Released Parties under the California Labor Code, Wage Orders,
regulations, and/or any other provisions of state and federal law arising from allegations that the
PAGA Members suffered Labor Code violations based on, and any other Labor Code violations
that were alleged in the Action, or that could have been alleged in the Action based on the facts
alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code
sections 201, 202, 203, 204, 226, 226.7, 510, 512, 510, 1194, 1197, and 2698 et seq. (“PAGA
Released Claims”). The “Released Parties” are Bella Vista Farming Company, LLC and its
present and former parent companies, subsidiaries, divisions, concepts, related or affiliated
companies, and their shareholders, officers, directors, members, employees, agents, attorneys,
insurers, successors and assigns, and all persons acting by or through or in concert with any of
them, and each of them (hereinafter “Released Parties”).

By Order dated <<court approval order date>>, the Superior Court of the State of
California, Lake County approved the Settlement of the PAGA claims.

1 According to Defendant's records, you are a PAGA Member and therefore entitled to a
2 share of the settlement based upon the Court approved allocation. Enclosed with this Notice is
3 your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all
4 uncashed checks shall be distributed to California State Controller's Office Unclaimed Property
Fund with an identification of the amount of unclaimed funds attributable to each PAGA
Member.

5 Please Note: One hundred percent (100%) of your individual PAGA payment under this
6 Settlement will be considered penalties and may be subject to local, state, or federal tax
7 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
8 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
9 nor Defendant have made any representations or warranties regarding the taxation of your
10 individual PAGA payment. Nothing within this notice or any other communication shall
constitute or be construed or relied upon as tax advice within the meaning of United States
Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
tax forms pertaining to your payment.

11 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
12 or to ask questions about the claims process. If you have any questions, you may call or write to
13 _____ (the Settlement Administrator) using the contact information at the top
of this correspondence.