

STIPULATION OF CLASS AND PAGA SETTLEMENT

This Stipulation of Class and PAGA Settlement (“**Settlement Agreement**”) is reached by and between: (i) Plaintiffs Ana E. Ramirez and Juan Gabriel Hernandez (“**Plaintiffs**”), individually and on behalf of all Aggrieved Employees and members of the Settlement Class, defined below, on the one hand; and (ii) Defendants Cal Ag Resources, Inc. (“**Cal Ag**”), Wonderful Orchards LLC (“**Wonderful**”), and J. G. Boswell Company (“**Boswell**”) (collectively Cal Ag, Wonderful, and Boswell are referred to as “**Defendants**”) on the other hand, (Plaintiffs and Defendants are referred to herein as the “**Parties**”). Plaintiffs, Aggrieved Employees and the Settlement Class are represented by Daniel J. Brown of Stansbury Brown Law, PC and Jeremy Bollinger, Ari Moss, Dennis Moss and Jorge A Flores of Moss Bollinger LLP (“**Class Counsel**”).

RECITALS

Plaintiff Hernandez filed a class action complaint (“**Hernandez Complaint**”) against Defendants Cal Ag and Boswell on December 1, 2020, in Tulare County Superior Court, Case No. VCU285149, which alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties unfair competition; (7) unfair competition; (8) failure to reimburse for necessary business expenses. Plaintiff Hernandez filed a First Amended Class and Representative Action Complaint (“**Hernandez FAC**”) on May 28, 2021, to add an additional cause of action for civil penalties under the Private Attorneys General Act (“**PAGA**”) pursuant to Labor Code Sections 2698 *et seq.* based on claims asserted in the PAGA letters Hernandez submitted to the LWDA on November 30, 2020, and February 17, 2021, in Case No. LWDA-CM-813913-20. The Hernandez Complaint and Hernandez FAC are referred to herein as the “**Hernandez Action.**”

Plaintiff Ramirez filed a PAGA only complaint against Defendants Cal Ag and Wonderful on September 1, 2020 in Kern County Superior Court, Case No. BCV-20-102050, based on claims asserted in the PAGA letter Ramirez submitted to the LWDA on June 25, 2020, in Case No. LWDA-CM-794648-20 (“**Ramirez Action**”). The Hernandez Action and Ramirez Action are referred to herein collectively as the “**Lawsuit.**” Pursuant to Paragraph 4 of this Settlement Agreement, Plaintiff Hernandez agrees to dismiss the Hernandez Complaint without prejudice and Plaintiff Ramirez agrees to amend her complaint in the Ramirez Action to add Hernandez as a representative plaintiff, Boswell as a defendant and the causes of action from the Hernandez Complaint. The First Amended Complaint to be filed in the Ramirez Action, attached hereto as Exhibit A, will be the Operative Complaint for settlement purposes.

On March 16, 2022, and continuing thereafter in subsequent negotiations that occurred between then and the present, Plaintiff Ramirez and Defendant Cal Ag, represented by their respective counsel of record, privately mediated the Ramirez Action, before Tripper Ortman, Esq., of Ortman Mediation. After the March 16, 2022 mediation, Plaintiff Hernandez, Defendant Wonderful and Defendant Boswell, represented by their respective counsel of record, joined the ongoing and subsequent negotiations with Plaintiff Ramirez and Defendant Cal Ag, and included the potential settlement of the Hernandez Action as part of a global settlement.

Prior to entering into settlement discussions, the Parties conducted significant investigation of the facts and law. This included formal discovery propounded by and responded to by Plaintiff Ramirez and Defendants Wonderful and Cal Ag, deposition of Wonderful's corporate representative, full briefing of Wonderful's motion for summary judgment, review and analysis of Defendants' policies and putative class members' and Aggrieved Employees' time records and payroll records. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiffs' claims, the defenses thereto, and the damages and penalties claimed by Plaintiffs in the Lawsuit. As a result of the Parties thorough investigation of the allegations and defenses thereto, they were able to reach an agreement for a global settlement after extensive negotiations.

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

AGREEMENT

The Parties agree as follows:

1. Settlement Class.

For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class (hereinafter, the "**Class**" or "**Class Members**":

All current and former employees of Cal Ag, whom Cal Ag assigned to work at J. G. Boswell Company and/or J.G. Boswell Tomato Company, LLC, in California between December 1, 2016, through January 31, 2022 (the "**Class Period**").

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. PAGA Aggrieved Employees.

For the purposes of this Settlement Agreement only, the Parties stipulate that the PAGA "**Aggrieved Employees**" shall be defined as:

All persons, including Plaintiffs, employed by Cal Ag in California, including, but not limited to those assigned to work at J. G. Boswell Company and/or J.G. Boswell Tomato Company, LLC, and/or Wonderful Orchards LLC between June 25, 2019 through March 3, 2022 (the "**PAGA Period**").

The Parties agree that the definition of the PAGA Aggrieved Employees for purposes of settlement is not an admission that the PAGA representative claim alleged in the Lawsuit meets the applicable standard of manageability. If this Settlement Agreement is not approved or is terminated, in whole or in part, this definition of PAGA Aggrieved Employees, and this Settlement Agreement in general, will be inadmissible and will have no effect in the Lawsuit or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

3. **Releases.**

- A. **Released Parties.** As referenced herein, **Released Parties** shall collectively mean: Cal Ag Resources, Inc., Wonderful Orchards LLC, J. G. Boswell Company, J. G. Boswell Tomato Company, LLC, and their respective present and former parent companies, affiliates, subsidiaries, divisions, successors and assigns, and their respective shareholders, members, predecessors, insurers, current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their trustees, administrators, fiduciaries and insurers.
- B. **Release of Class Claims.** All Class Members who do not opt out of the settlement (collectively, “**Settlement Class Members**”) on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties, from all claims that were alleged, or reasonably could have been alleged, arising from the facts alleged in the Lawsuit, arising during the Class Period, including but not limited to claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law, for failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to maintain and/or furnish requisite payroll records, failure to reimburse necessary business expenses, failure to allow use of accrued paid sick leave, unfair or unlawful business practices in violation of California Business and Professions Code section 17200 et seq., and any violation or breach of the California Labor Code arising from or related to the conduct alleged, including without limitation, Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, or any other state statute, rule and/or regulation, or similar causes of action arising from or relating to the conduct alleged.

Expressly excluded from this release of Class Claims is Wonderful Orchards LLC and its respective present and former parent companies, affiliates, subsidiaries, divisions, successors and assigns, and its respective shareholders, members, predecessors, insurers, current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their trustees, administrators, fiduciaries and insurers. The Lawsuit does not allege any Class Claims

against Defendant Wonderful Orchards LLC, and Wonderful will only receive a release for the PAGA claims as specified below.

C. **Released PAGA Claims.** PAGA Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, regardless of whether they opt out of the Settlement Class, will release and discharge the Released Parties from all PAGA claims that are based on Labor Code violations that are pled in the Lawsuit, or that could have been pled based on the factual allegations therein that arose during the PAGA period. The time period covered by the Release of the PAGA claims is June 25, 2019 through March 3, 2022.

D. **Plaintiffs' Release of Unknown Claims.** Plaintiffs agree to release, in addition to the Released Class and PAGA Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. The Parties understand and agree that Plaintiffs are not, by way of this release, releasing any workers compensation claims or any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims and that he or she is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

4. **Amended Complaint.** The Parties agree that the claims in the Ramirez Action and the Hernandez Action will be combined into a First Amended Complaint filed in the Ramirez Action, in the form attached hereto as Exhibit A. The Parties will file a stipulation regarding filing of the First Amended Complaint in the Ramirez Action to add Plaintiff Hernandez as a plaintiff, Boswell as a Defendant, and to add the class and PAGA claims alleged in the Hernandez Action as against Defendant Boswell. All material allegations in the Lawsuit shall be deemed denied by Defendants without the necessity of any Defendant filing an Answer to the First Amended Complaint unless required by the Court. Within seven days of the filing of First Amended Complaint in the Ramirez Action, Plaintiff Hernandez will dismiss the Hernandez Action without prejudice. Thereafter, Class Counsel will prepare a draft of the preliminary approval papers and will make all reasonable efforts to obtain the first available date on preliminary approval which permits sufficient time to file the preliminary approval papers. All counsel shall cooperate with mutual efforts to obtain Court approval of the Settlement.
5. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendant Cal Ag agrees to pay a common fund of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) ("**Gross Settlement Amount**" or "**GSA**") in full and complete settlement of this matter, subject to Paragraph 5(B) below, as follows:

- A. **Funding of the Gross Settlement Amount.** Defendant Cal Ag shall fund the Gross Settlement Amount in seven installments which the settlement administrator shall place in a Qualified Interest-Bearing Settlement Account established by the Settlement Administrator for this purpose as follows: (1) Cal Ag shall make the first installment of \$500,000 within thirty (30) calendar days of the Court granting preliminary approval of the Settlement; (2) Defendant Cal Ag shall make the second installment of \$500,000 within thirty (30) calendar days of Final Approval (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval, or solely in the event that there are any objections to the settlement, the filing of an objection being a prerequisite to the filing of an appeal, the later of: (i) the last date on which any appeal might be filed, or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review); (3) thereafter, Cal Ag shall fund five additional installments of \$250,000 each within 90 days of the deadline to fund the prior installment. Based on this funding schedule, the Parties intend for Cal Ag to fully fund the Gross Settlement Amount within 480 days of the Court granting final approval of the Settlement.

In no event shall Cal Ag be required to pay more than the Gross Settlement Amount except as provided pursuant to Paragraphs 5(D) – (F).

- B. **Disbursement of Gross Settlement Amount.** The Settlement Administrator shall disburse Plaintiffs' Class Representative Service Awards, Class Counsel's litigation costs and expenses, and forty percent (40%) of Class Counsel's attorneys' fees within forty-five (45) calendar days of Final Approval. Within fifteen (15) calendar days of each successive installment payment the Settlement Administrator shall disburse an additional \$87,500 of Class Counsel's attorneys' fees to Class Counsel, with the balance of awardable Class Counsel fees to be disbursed within fifteen (15) calendar days of the final installment payment. All other payments called for by this Settlement Agreement shall be disbursed by the Settlement Administrator within either: (i) fifteen (15) calendar days of the Settlement being fully funded; or (ii) it has been determined by the Settlement Administrator that an uncured default has occurred after the first two installment payments have been made and the Settlement reverts to a PAGA-only settlement pursuant to Paragraphs 5(I) and 5(J).

- C. **Non-revisionary.** This is a non-reversionary settlement. The Gross Settlement Amount Includes:

- i. All payments to the Aggrieved Employees and Settlement Class;
- ii. Settlement Administrator. All fees and expenses of the settlement administrator associated with the administration of the settlement, which are anticipated to be no greater than Seventy-Five Thousand Nine Hundred Ninety-Five Dollars and Zero Cents (\$75,955.00). The Parties agree to the appointment of Phoenix Settlement Administrators as the settlement administrator ("**Settlement Administrator**") and to Class Counsel seeking Court approval to pay up to Seventy-Five Thousand Nine Hundred Ninety-Five Dollars and Zero Cents

(\$75,955.00) from the Gross Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending all required notices in both English and Spanish, providing written reports to Class Counsel and Defense Counsel that, among other things, tally the number of Notices mailed or re-mailed, Notices returned undelivered, Requests for Exclusion, objections and disputes received from Class Members, calculating the Net Settlement Amount, calculating each Class Member's and Aggrieved Employees' Participating Member Payment, defined below, amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Paragraph 7, and providing declarations regarding the Settlement Administrator's background and services for Preliminary Approval, attesting to its due diligence and compliance with all of its obligations under this Agreement for Final Approval, and a final report detailing disbursement of the Gross Settlement Amount in compliance with the Final Approval Order. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after checks have been mailed to all Aggrieved Employees and Settlement Class Members (collectively "**Participating Members**");

- iii. Service Award. Up to Twenty Thousand Dollars (\$20,000) for service awards to Plaintiffs subject to Court approval ("**Service Awards**"). Class Counsel will seek up to \$10,000 for a Service Award to each Plaintiff. Defendants will not object to a request for Class Representative Service Awards for Plaintiffs in exchange for the general release of their claims and waiver of Civil Code Section 1542, their time and risks in prosecuting this case, and their service to the Settlement Class. These payments will be in addition to Plaintiffs' Participating Member Payments (defined below) as a Participating Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Service Awards to the Plaintiffs are for their services in connection with this Lawsuit and are not wages, therefore the Settlement Administrator shall not withhold any taxes from the Service Awards and shall report it on an IRS Form 1099, which shall be provided to Plaintiffs and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Service Awards do not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Service Awards constitute wages for income tax and withholding purposes. Plaintiffs agree to assume all responsibility for remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendants from the Service Awards paid under this Settlement Agreement, and all liability associated therewith. In the event that the Court reduces or does not approve the requested Service Awards, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the right to revoke the settlement for that reason, and it shall remain binding;

- iv. Class Counsel Fees and Costs. Up to thirty-five percent (35%) of the Gross Settlement Amount in attorneys' fees, which is currently estimated to be Seven Hundred Eighty-Seven Thousand Five Hundred Dollars (\$787,500.00), plus up to Twenty-Five Thousand Dollars (\$25,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the right to revoke the settlement for that reason, and it shall remain binding. If the Gross Settlement Amount increases at Defendants' election pursuant to Paragraphs 5(E) and 5(F), the amount of fees requested by Class Counsel will increase proportionally such that the requested award is 35% of the GSA. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court; and
- v. PAGA Amount. Two Hundred Thousand Dollars (\$200,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or One Hundred Fifty Thousand Five Hundred Dollars (\$150,000.00) will be payable to the Labor & Workforce Development Agency ("**LWDA Payment**"), and the remaining twenty-five percent (25%), or Fifty Thousand Dollars (\$50,000.00) will be payable to the Aggrieved Employees as the "**PAGA Amount.**" The LWDA Payment and PAGA Amount are collectively referred to herein as the "**PAGA Payment.**" The PAGA Payment is subject to increase pursuant to Paragraph 5(I) and (J).

D. **Payroll Tax Payments.** Defendants' share of payroll taxes shall be paid by Cal Ag in addition to the Gross Settlement Amount.

E. **Settlement Class Escalator Clause.** Cal Ag represents that Class Members worked a total of 100,528 Class Workweeks during the Class Period. A "**Class Workweek**" is any calendar week in which a Class Member worked at least one shift performing work for J. G. Boswell Company, and/or J. G. Boswell Tomato Company, LLC during the Class Period. If the actual number of Class Workweeks worked by Class Members through January 31, 2022 exceeds 100,528 workweeks, then Cal Ag shall have the option of either increasing the Gross Settlement Amount by a proportional amount to take advantage of the January 31, 2022 release period or shortening the class release period to an earlier date at which only 100,528 Class Workweeks are covered by the Class Period.

- F. **Aggrieved Employee Escalator Clause.** Cal Ag represents that there are 23,412 Aggrieved Employees who worked a total of 189,128 PAGA Workweeks. A “**PAGA Workweek**” is any calendar week in which an Aggrieved Employee worked at least one shift for Cal Ag during the PAGA Period. If the actual number of PAGA Workweeks worked by Aggrieved Employees through March 3, 2022, exceeds 189,128 workweeks, then Cal Ag shall have the option of either increasing the Gross Settlement Amount by a proportional amount to take advantage of the March 3, 2022 PAGA release period or shortening the release period to an earlier date at which only 189,128 PAGA Workweeks are covered by the PAGA Period.
- G. **Effective Date of Settlement.** The Effective Settlement Date of this settlement shall be the later of the time when: either (i) the Judgment in the Lawsuit granting final approval of the settlement is final and no longer subject to appeal, if there are objections, or (ii) 30 days after Notice is provided by Plaintiffs to Defendant that the Court entered the order on final approval of the settlement, if there are no objections (“**Effective Settlement Date**”).
- H. **Curing Default.** Cal Ag shall have 10 calendar days to cure any payment default. If Cal Ag defaults on its payment of any installment as required under Paragraph 5(A) and does not timely cure the default, Wonderful and/or Boswell will each separately have the right, but not the obligation, to act within twenty calendar days after receiving notice of default from Class Counsel to cure the default.
- I. **Effect of Failure to Cure.** If Cal Ag defaults after making the first two payments pursuant to Paragraph 5(A) and does not timely cure the default, and if neither Defendant Wonderful nor Defendant Boswell exercises its discretion to cure Cal Ag’s default pursuant to Paragraph 5(H), then (i) the settlement will convert to a PAGA-only settlement, (ii) there will be no release of class claims. If Cal Ag fails to make either of the first two payments pursuant to Paragraph 5(A) and does not timely cure the default, and if neither Defendant Wonderful nor Defendant Boswell exercises its discretion to cure Cal Ag’s default, then Plaintiffs shall have the option to declare that the entire settlement is null and void, or to convert the Settlement to a PAGA-only settlement in which there will be no release of Class Claims. If Plaintiffs elect to void the settlement, the Parties shall return to their respective positions prior to the execution of the settlement of the class claims, and any payment made on any portion of the first two installments shall be refunded to the payor.
- J. **Disbursements in the Event of a PAGA Only Settlement.** In the event the Settlement turns into a PAGA only settlement pursuant to Paragraph 5(I), then attorney fees will be reduced to thirty-five (35%) of the PAGA Payment. The Settlement Administrator will deduct the costs of settlement administration, Class Counsel’s Attorney fees and costs, Service Awards to Plaintiffs from the PAGA Payment and distribute the remainder of the PAGA Payment to the LWDA and Aggrieved Employees pursuant to formula described in Paragraph 6(A)(i).

6. **Participating Member Payment Procedures.** Participating Members are not required to submit a claim form to receive their share of the Settlement (“**Participating Member Payment**”). Participating Member Payments will be determined and paid as follows:

A. **Net Settlement Amount:** The Net Settlement Amount is the Gross Settlement Amount after the following deductions are made: (a) all costs of settlement administration; (b) Service Awards to Plaintiffs; (c) the LWDA Payment; and (d) costs and attorneys’ fees for Class Counsel. The Net Settlement Amount shall be available for Participating Members. From the Net Settlement Amount, the Settlement Administrator will calculate each Participating Member Payment based on the following formula:

- i. **PAGA Amount.** Each Aggrieved Employee who was employed by Cal Ag at any time during the PAGA Period, shall receive a portion of the Fifty Thousand Dollars (\$50,000.00) that has been designated as the PAGA Amount based on their proportionate share of PAGA Workweeks worked during the PAGA Period, by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee’s PAGA Workweeks during the PAGA Period, and the denominator of which is the total PAGA Workweeks of all Aggrieved Employees during the PAGA Period.
- ii. **Remainder.** The remainder of the Net Settlement Amount shall be distributed to each Settlement Class Member based on their proportionate share of Class Workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member’s Class Workweeks during the Class Period, and the denominator of which is the total Class Workweeks of all Settlement Class Members during the Class Period.

Within thirty calendar days following the full funding of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Participating Member Payments and mail Participating Member Payments to Participating Members.

- B. **Participating Member Payment Tax Treatment.** For purposes of calculating applicable taxes and withholdings for the payment to Participating Members described in Paragraph 6(A)(ii), twenty percent (20%) of each such payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each such payment shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Additionally, 100% of the PAGA Amount paid to Aggrieved Employees shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of these payments to each Participating Member above, none of the Participating Member Payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

- C. **Deadline to Negotiate Participating Member Payment.** Each Participating Member who receives a Participating Member Payment must negotiate the settlement check within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Participating Members whose checks are not negotiated within the one hundred eighty (180) day-period will not be reissued and will be transferred by the Settlement Administrator to Boys & Girls Clubs of Kern County. Settlement checks will not be sent out to any Participating Members whose Notice Packets are returned as undeliverable.
- D. Defendants shall be deemed to have fully discharged their obligations to each Participating Member when the Settlement Administrator mails each Participating Member a settlement check, regardless of whether such checks are actually received and/or negotiated by Participating Members. Neither Plaintiffs nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by his, her, or its own acts of omission or commission, the same is true for the Settlement Administrator.

7. **Preliminary Approval**. Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown of Stansbury Brown Law, PC and Jeremy Bollinger, Ari Moss, Dennis Moss and Jorge A Flores of Moss Bollinger LLP as Class Counsel;
- C. Appointing Juan Gabriel Hernandez as Class Representatives for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice and Request for Exclusion Form), and directing the mailing of same in English and Spanish;
- G. Scheduling a Final Approval hearing;
- H. Plaintiffs shall submit the proposed settlement to the Labor Workforce Development Agency ("LWDA") pursuant to Labor Code § 2699(1)(2). Proof of this submission will be provided to the Court and to Defendants' respective Counsel; and
- I. If Final Approval is granted, Plaintiffs shall submit a copy of the Superior Court's judgement to the LWDA after entry of the judgement or order, pursuant to Labor Code § 2699(1)(3).

8. **Notice Procedures.** Following preliminary approval, Participating Members shall be notified as follows:

- A. Within thirty (30) days after entry of an order preliminarily approving this Settlement Agreement, Cal Ag will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Aggrieved Employees and Class Members, as well as the Class and PAGA Workweeks worked by each Aggrieved Employee and Class Member during the Class Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Class Members and Aggrieved Employees through the National Change of Address (“NCOA”) database to determine any updated addresses for Class Members and Aggrieved Employees; (ii) update the addresses of any Class Member or Aggrieved Employee for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Class Member or Aggrieved Employee in English and Spanish at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Class Member or Aggrieved Employee immediately, and in any event within three (3) business days of obtaining the updated address.
- D. **Opt-Out/Request for Exclusion Procedures.** Any Class Member who wishes to opt-out of the Settlement must complete and mail or fax a Request for Exclusion (defined below) to the Settlement Administrator within Sixty (60) days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Request for Exclusion Form must: (1) contain the name, address, telephone number of the Class Member; (2) contain a statement that the Class Member wishes to be excluded from the class settlement; (3) be signed by the Class Member; and (4) be faxed or postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form fails to comply with items (1), (2), or (4), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion Form not containing a Class Member’s telephone number will be deemed valid. The date of the postmark on the Request for Exclusion Form, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who

requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to their share of the PAGA Amount) or have any right to object, intervene, appeal, or comment thereon. Any Class Member who does not submit a Request for Exclusion Form is automatically deemed a Settlement Class Member.

- ii. Defendants' Right to Void. If 6% or more members of the Class timely submit opt-out requests, Defendants shall have the right (but not the obligation) to void this Settlement. Defendants must exercise this right to void the settlement, if at all, within 10 calendar days before the final approval hearing. The Parties shall not encourage anyone to opt-out of the Settlement. If Defendants exercise this right and if any settlement administration costs are due and payable, Defendants agree that Cal Ag will be solely responsible for paying the outstanding settlement administration costs.

E. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel as well as filing them with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendants' counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Class Member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) objections must be postmarked on or before the Response Deadline.

F. **Challenges to Participating Member Payment Calculations.** Each Notice Packet mailed to a Class Member or Aggrieved Employee shall disclose the amount of the Class Member's or Aggrieved Employee's estimated Participation Payment as well as all of the information that was used from Cal Ag's records in order to calculate the Participating Member Payment, including the number of Class Workweeks during the Class Period and PAGA Workweeks during the PAGA Period. Class Members and Aggrieved Employees will have the opportunity, should they disagree with Cal Ag's records regarding the number of Class Workweeks or PAGA Workweeks stated in their Notice Packet to challenge the data provided. In order to challenge Cal Ag's data, the Class Member or Aggrieved Employee must provide documentation and/or an explanation demonstrating that Cal Ag's data is incorrect and evidencing the correct number of Class Workweeks or PAGA Workweeks that the Class Member or Aggrieved Employee believes they should have been credited with and/or evidence of the correct date their employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge

and any supporting documentation to counsel for the Parties within five (5) days of receipt.

- G. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Class Member's or Aggrieved Employee's Participating Member Payment, the allocation of W-2 wages, and the number of Class Workweeks and PAGA Workweeks. Where the information submitted by Cal Ag from its records differ from the information submitted by the Class Member or Aggrieved Employee, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Participating Member Payment. Such determination shall be binding upon the Class Member, Aggrieved Employee, and the Parties.
9. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:
- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
 - B. Approving Plaintiffs' application for Settlement Administrator's fees and expenses, Plaintiffs' Service Awards, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the PAGA Payment; and
 - C. Entering judgment pursuant to California Rule of Court 3.769.
10. **Non-Admission.** Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, that they have any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.
11. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties or their

representatives, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

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

If to Defendant Cal Ag: Seth Mehrten, Esq.
BARSAMIAN & MOODY
A Professional Corporation
1141 W. Shaw Avenue, #104
Fresno, CA 93711
smehrten@theemployerslawfirm.com

If to Defendant Wonderful: Reid Davis, Esq.
ROLL LAW GROUP PC
11444 W Olympic Blvd.
Los Angeles, CA 90064
reid.davis@roll.com
legalnotice@roll.com

If to Defendant Boswell: Jon C. McNutt, Esq.
MUSICK, PEELER & GARRETT LLP
624 South Grand Avenue, Suite 2000
Los Angeles, CA 90017
j.mcnutt@musickpeeler.com

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

Jeremy Bollinger, Esq.
MOSS BOLLINGER LLP
15300 Ventura Blvd., Suite 207
Sherman Oaks, California 91403
jeremy@mossbollinger.com

13. **Financial Hardship Declaration.** Parties acknowledge and agree that the amount of the Gross Settlement Amount reflects a significant discount of the value of the Released Class Claims and the Released PAGA Claims due to the financial condition of Cal Ag, who will be solely and exclusively responsible for payment of the Gross Settlement Amount. Plaintiffs' motion for approval will represent to the Court that the distressed settlement amount was a factor in the negotiation of the Gross Settlement Amount. Within five calendar days of the Parties'

execution of the long form settlement agreement, Cal Ag will provide a draft of a declaration from Cal Ag's owner, chief executive officer, chief financial officer, or the equivalent person most knowledgeable of the company's financial condition to Class Counsel for comment. Plaintiffs will submit the final signed declaration to the Court in support of approval of the Settlement.

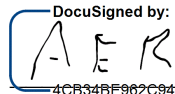
14. **Limitation on Publicity.** Plaintiffs and Class Counsel will not make any public disclosure of the settlement or discuss the settlement or this Settlement Agreement with anyone other than those necessary to effectuate the filing of the Motion for Preliminary Approval, until after the Motion for Preliminary Approval is filed. Class Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any public disclosure of the settlement until after the Motion for Preliminary Approval is filed. Prior to and following Preliminary Approval of the Settlement, Plaintiffs and Class Counsel will not have any communications with any media other than to direct any media inquiries to the public records of the Lawsuit and will not publicize the Settlement, including on social media. Class Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any media comment on the settlement and its terms. Class Counsel further agrees not to use the settlement of the Lawsuit or any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Furthermore, Plaintiffs and Class Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA. Neither Plaintiffs nor Class Counsel shall engage in any disparagement of any type related to this settlement.
15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.
16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.
17. **Failure to Obtain Final Approval.** If the court fails to grant either preliminary or final approval, the Parties shall be restored to their positions at the time of the execution of this memorandum, which shall include but not be limited to, all funds paid by Cal Ag into the Qualified Interest-Bearing Settlement Account shall be returned to Cal Ag, with the exception that if any settlement administration costs are due and payable, Plaintiffs and Defendant Cal Ag agree to split those costs evenly (50% from Plaintiffs; 50% from Cal Ag).

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[SIGNATURES ON FOLLOWING PAGE]

EXECUTION BY PARTIES AND COUNSEL

Date: 3/15/2023

DocuSigned by:


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Ana E. Ramirez, Plaintiff

Date: _____

Juan Gabriel Hernandez, Plaintiff

Date: _____

_____, on behalf of
Defendant Cal Ag Resources, Inc.

Date: _____

_____, on behalf of
Wonderful Orchards, LLC

Date: _____

_____, on behalf of
J.G. Boswell Company

Approved as to form:

Date: _____

BARSAMIAN & MOODY

Seth Mehrten
Counsel for Defendant Cal Ag Resources, Inc.

Date: _____

ROLL LAW GROUP PC

Reid Davis
Counsel for Defendant Wonderful Orchards, LLC

EXECUTION BY PARTIES AND COUNSEL

Date: _____

Ana E. Ramirez, Plaintiff

Date: 3/22/2023

JUAN G. HERNANDEZ
Juan Gabriel Hernandez, Plaintiff

Date: _____

_____, on behalf of
Defendant Cal Ag Resources, Inc.

Date: _____

_____, on behalf of
Wonderful Orchards, LLC

Date: _____

_____, on behalf of
J.G. Boswell Company

Approved as to form:

Date: _____

BARSAMIAN & MOODY

Seth Mehrten
Counsel for Defendant Cal Ag Resources, Inc.

Date: _____

ROLL LAW GROUP PC

Reid Davis
Counsel for Defendant Wonderful Orchards, LLC

EXECUTION BY PARTIES AND COUNSEL

Date: _____

Ana E. Ramirez, Plaintiff

Date: _____

Juan Gabriel Hernandez, Plaintiff

Date: _____

_____, on behalf of
Defendant Cal Ag Resources, Inc.

DocuSigned by:



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Date: _____

3/9/2023

_____, on behalf of
Wonderful Orchards, LLC

Date: _____

_____, on behalf of
J.G. Boswell Company

Approved as to form:

Date: _____

BARSAMIAN & MOODY

Seth Mehrten

Counsel for Defendant Cal Ag Resources, Inc.

Date: _____

3/9/2023

ROLL LAW GROUP PC



Reid Davis

Counsel for Defendant Wonderful Orchards, LLC

EXECUTION BY PARTIES AND COUNSEL

Date: _____

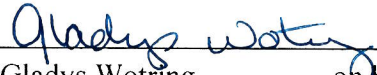
Ana E. Ramirez, Plaintiff

Date: _____

Juan Gabriel Hernandez, Plaintiff

Date: _____
_____, on behalf of
Defendant Cal Ag Resources, Inc.

Date: _____
_____, on behalf of
Wonderful Orchards, LLC

Date: 03/14/2023

Gladys Wotring, on behalf of
J.G. Boswell Company

Approved as to form:

Date: _____
BARSAMIAN & MOODY

Seth Mehrten
Counsel for Defendant Cal Ag Resources, Inc.

Date: _____
ROLL LAW GROUP PC

Reid Davis
Counsel for Defendant Wonderful Orchards, LLC

EXECUTION BY PARTIES AND COUNSEL

Date: _____

Ana E. Ramirez, Plaintiff

Date: _____

Juan Gabriel Hernandez, Plaintiff

Date: Mar 28, 2023

Santiago Martin, Jr.

Santiago Martin, Jr., on behalf of
Defendant Cal Ag Resources, Inc.

DocuSigned by:

Cayd Cooper

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Date: 3/9/2023

_____, on behalf of
Wonderful Orchards, LLC

Date: _____

_____, on behalf of
J.G. Boswell Company

Approved as to form:

Date: 3/9/2023

BARSAMIAN & MOODY

Seth Mehrten

Seth Mehrten
Counsel for Defendant Cal Ag Resources, Inc.

Date: 3/9/2023

ROLL LAW GROUP PC

Reid Davis

Reid Davis
Counsel for Defendant Wonderful Orchards, LLC

Date: 3/23/2023

MUSICK, PEELER & GARRETT LLP

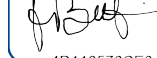


Jon C. McNutt
Counsel for Defendant J.G. Boswell Company

Date: 3/15/2023

MOSS BOLLINGER LLP

DocuSigned by:



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Jeremy F. Bollinger
Counsel for Plaintiff Ramirez and the Class

Date: March 23,
2023

STANSBURY BROWN LAW, PC



Daniel J. Brown
Counsel for Plaintiff Hernandez and the
Class