

HANSON BRIDGETT LLP
RAYMOND F. LYNCH, SBN 119065
rlynch@hansonbridgett.com
EMILY J. LEAHY, SBN 253866
ELeahy@hansonbridgett.com
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

Attorneys for Defendant
BLUE DIAMOND GROWERS

[Additional Counsel on Next Page]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JARED DEEVER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

BLUE DIAMOND GROWERS, a California
corporation; et al,

Defendants.

Case No. 34-2022-00316490-CU-OE-GDS
(Consolidated with Case Nos. 34-2022-
00319378-CU-OE-GDS and 34-2021-
00304425-CU-OE-GDS)

Assigned to Hon. Lauri A. Damrell, Dept. 22

**SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: March 9, 2022
Trial Date: None yet

AND RELATED CONSOLIDATED CASES.

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)

2 *david@tomorrowlaw.com*

Vedang J. Patel (SBN 328647)

3 *vedang@tomorrowlaw.com*

1460 Westwood Boulevard

4 Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

5 Attorneys for Plaintiffs

6 Zachary M. Crosner (SBN 272295)

7 *zach@crosnerlegal.com*

Brandon Brouillette (SBN 273156)

8 *bbrouillette@crosnerlegal.com*

Chad Saunders (SBN 257810)

9 *chad@crosnerlegal.com*

CROSNER LEGAL, PC

10 9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

11 Tel: (866) 276-7637

12 Larry W. Lee (State Bar No. 228175)

13 *lwlee@diversitylaw.com*

Christine S. Lee (State Bar No. 339947)

14 *christine@diversitylaw.com*

DIVERSITY LAW GROUP, P.C.

15 515 S. Figueroa St., Suite 1250

Los Angeles, California 90071

16 (213) 488-6555

17 (213) 488-6554 facsimile

18 William L. Marder (SBN 170131)

bill@polarislawgroup.com

19 **POLARIS LAW GROUP**

501 San Benito Street, Suite 200

20 Hollister, CA 95023

21 Telephone: (831) 531-4214

Facsimile: (831) 634-0333

22 Edward W. Choi, Esq. SBN 211334

23 edward.choi@choiandassociates.com

24 **LAW OFFICES OF CHOI & ASSOCIATES**

515 S. Figueroa St., Suite 1250

25 Los Angeles, CA 90071

Telephone: (213) 381-1515

26 Facsimile: (213) 465-4885

27 Attorneys for Plaintiff Jared Deaver and the Class

28

1 This Settlement Agreement and Release ("Settlement Agreement" or "Settlement" or
2 "Agreement") is made and entered into by and between Plaintiffs JARED DEEVER, DANIEL
3 RAMIREZ and BRAD SMITH (collectively "Plaintiffs"), individually and on behalf of others
4 similarly situated, and Defendant BLUE DIAMOND GROWERS ("Defendant" or "BDG").

5 **PRELIMINARY TERMS AND DEFINITIONS**

6 The following definitions are applicable to this Settlement Agreement. Definitions
7 contained elsewhere in this Settlement Agreement will also be effective:

8 1. "Action" means:

- 9 a. *Daniel Ramirez v. Blue Diamond Growers*, Case No. 34-2021-
10 00304425 (filed on July 15, 2021, consolidated for all purposes with
11 Case No. 34-2022-00316490);
- 12 b. *Brad Smith v. Blue Diamond Growers*, Case No. 34-2021-00310576
13 (filed on November 2, 2021, dismissed on April 19, 2023 and Plaintiff
14 Smith added as a named plaintiff to *Ramirez v. Blue Diamond Growers*
15 referenced in Section (1)(a) above);
- 16 c. *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00316490
17 (filed on March 9, 2022, consolidated for all purposes with Case No. 34-
18 2021-00304425);
- 19 d. *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00319378
20 (filed on May 9, 2022, consolidated for all purposes with Case No. Case
21 No. 34-2022-00316490).

22 2. "Attorneys' Fees and Costs" means reasonable attorney's fees for Class Counsel,
23 defined below, and all reasonable costs incurred and to be incurred by Class Counsel, including
24 but not limited to, costs associated with documenting the Settlement, securing the Court's approval
25 of the Settlement, administering the Settlement (separate and apart from Settlement
26 Administration Costs, defined below), obtaining entry of an Order and Judgment approving the
27 Settlement, as approved by the Court. Class Counsel will request not more than thirty-five percent
28 (35%) of the Gross Settlement Fund or One Million, Seven Hundred and Eighty-Two Thousand,

1 Seven Hundred and Thirty-Eight Dollars and Thirteen Cents (\$1,782,738.13) in attorneys' fees,
2 and not more than Eighty Thousand Dollars and No Cents (\$80,000.00) in reasonable actual
3 litigation costs and expenses. Defendant has agreed not to oppose Class Counsel's request for
4 attorney's fees and costs and expenses as set forth above.

5 3. "Class Counsel" shall mean Diversity Law Group, P.C., Polaris Law Group, Law
6 Offices of Choi & Associates, Bibiyan Law Group, P.C., and Crosner Legal PC.

7 4. "Court" means the Superior Court of the State of California for the County of
8 Sacramento.

9 5. "Class Data" means Class Member and PAGA Member identifying information in
10 Defendants' custody, possession, or control, including the Class Member's (1) name; (2) last
11 known address(es); (3) last known telephone number(s); (4) Social Security Number(s); (5) the
12 dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)),
13 and Pay Period during the Class Period and PAGA Period for every Class Member and PAGA
14 Member.

15 6. "Class Period" shall mean July 14, 2017 through August 23, 2024.

16 7. "Class Members" or "Settlement Class" shall mean all current and former non-
17 exempt California employees employed directly by BDG who worked at any time during the Class
18 Period.

19 8. "Class Notice" shall mean the Notice of Settlement approved by the Court.

20 9. "Effective Date" means the date when all of the following events have occurred: (1)
21 the Settlement Agreement has been executed by all Parties; (2) the Court has given preliminary
22 approval to the Settlement Agreement; (3) the Class Notice has been given to the Settlement
23 Class, providing Class Members with an opportunity to object to the terms of the Settlement or to
24 opt out of the Released Class Claims, defined below; (4) the Court has held a formal fairness
25 hearing and entered a final order and judgment approving the Settlement Agreement, and entering
26 judgment on the Settlement Agreement (the "Final Order and Judgment"); and (5) in the event
27 there are written objections filed prior to the final fairness hearing which are not later withdrawn
28 or denied, the later of the following events: (a) the period for filing any appeal, writ or other

1 appellate proceeding opposing the Court's Final Order and Judgment approving the Settlement
2 Agreement has elapsed without any appeal, writ or other appellate proceeding having been filed;
3 or, (b) if any appeal, writ or other appellate proceeding opposing the Court's Final Order and
4 Judgment approving the Settlement Agreement has been filed, five (5) business days after any
5 appeal, writ or other appellate proceedings opposing the Settlement Agreement has been finally
6 and conclusively dismissed with no right to pursue further remedies or relief.

7 10. "Employer Tax Portion" means the amount required to pay all employer-side
8 payroll taxes required by law, including the employer-side FICA, FUTA, and SDI contributions.

9 11. "Final Approval" means the Court's Order granting final approval of the Settlement
10 and entering judgment thereon.

11 12. "Gross Settlement Fund" means the Maximum Settlement Amount, defined below.
12 The Gross Settlement Fund is an all-in common fund settlement. There will be no reversion of any
13 portion of the Gross Settlement Fund to Defendant.

14 13. "Individual Settlement Payment" means each Participating Class Member's, defined
15 below, respective share of the Net Settlement Amount, defined below. The Individual Settlement
16 Payment includes the PAGA Payment.

17 14. "Labor & Workforce Development Agency Payment" means the payment of One
18 Hundred and Eighty-Seven Thousand, Five Hundred Dollars and No Cents (\$187,500.00) from the
19 PAGA Settlement, defined below, to the California Labor & Workforce Development Agency for
20 its portion of the civil penalties paid under the Private Attorneys General Act of 2004, California
21 Labor Code section 2698, *et seq.* ("PAGA").

22 15. "LWDA Letters" mean collectively each of the letters sent by Plaintiffs Smith,
23 Ramirez, and Deaver to the Labor & Workforce Development Agency alleging violations of
24 PAGA by Defendant.

25 16. "Maximum Settlement Amount" means the amount of Five Million, Ninety-Three
26 Thousand, Five Hundred and Thirty-Seven Dollars and Fifty Cents (\$5,093,537.50), to be paid by
27 Defendant which is inclusive of Attorneys' Fees and Costs, Plaintiff Enhancement Payments, the
28 PAGA Settlement, and the Settlement Administration Costs. The Employer Tax Portion

(including but not limited to FICA and FUTA) shall be paid by Defendant separately and in addition to the Maximum Settlement Amount.

17. "Net Settlement Amount" means the portion of the Gross Settlement Fund remaining after deducting the Plaintiffs' Enhancement Payment, Attorneys' Fees and Costs, the PAGA Settlement, and the Settlement Administration Costs, from the Gross Settlement Fund. The entire Net Settlement Amount will be distributed to the Participating Class Members, defined below. There will be no reversion of any portion of the Net Settlement Amount to Defendant.

18. "Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For an Objection to be valid, it must include: (i) the objector's full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of papers, briefs, or other documents upon which the objection is based, if any; and (vi) be postmarked on or before the Response Deadline, defined below. Alternatively, any Class Member may object by appearing at the Final Approval Hearing either with or without submitting a written Objection.

19. "Operative Complaints" means the Third Amended Class and Representative Action Complaint in *Daniel Ramirez, et al. v. Blue Diamond Growers*, Case No. 34-2021-00304425; and the Representative Action Complaint Under the Private Attorneys General Act of 2004 and the Class Action Complaint for Damages in *Jared Deaver v. Blue Diamond Growers*, Consolidated Case No. 34-2022-00316490.

20. "PAGA Members" means all current and former non-exempt California employees employed directly by BDG who worked at any time during the PAGA Period, defined below.

21. "PAGA Payment" means the payment of Sixty-Two Thousand Five Hundred Dollars and No Cents (\$62,500.00) from the PAGA Settlement, defined below, to be distributed to the PAGA Members for civil penalties under the PAGA.

22. "PAGA Period" means the period from July 14, 2020, through August 23, 2024.

23. "PAGA Settlement" means the amount of Two Hundred And Fifty Thousand Dollars and No Cents (\$250,000.00) payable from the Gross Settlement Fund for civil penalties under PAGA, which includes the Labor & Workforce Development Agency Payment and PAGA

1 Payment.

2 24. "Pay Period" means any weekly pay period during which a Class Member or
3 PAGA Member was paid by and received a wage statement from Defendant. .

4 25. "Participating Class Member" means any Class Member who does not submit a
5 timely and valid Request for Exclusion, defined below.

6 26. "Parties" means Plaintiffs and Defendant collectively.

7 27. "Plaintiffs' Enhancement Payment" means the payment to Plaintiffs in exchange for
8 a general release, as approved by the Court. Plaintiffs' Enhancement Payment will be paid from
9 the Gross Settlement Fund. Any funds allocated to Plaintiffs' Enhancement Payment but not
10 awarded by the Court will be included in the Net Settlement Amount and distributed pro rata to
11 the Participating Class Members. Plaintiffs will be solely responsible to pay any and all
12 applicable taxes on the payment made pursuant to this paragraph, and the Settlement
13 Administrator will issue IRS Forms 1099 to Plaintiffs for Plaintiffs' Enhancement Payment.

14 28. "Preliminary Approval" means the Court Order granting preliminary approval of
15 the Settlement.

16 29. "Released Class Claims" means all claims during the Class Period alleged or that
17 could have been alleged in the Action, including without limitation all claims during the Class
18 Period alleged in the Operative Complaints, all claims during the Class Period that could have
19 been alleged based on the factual allegations contained in the Operative Complaints, including but
20 not limited to all of the following claims for relief during the Class Period: (a) all claims for
21 failure to pay earned wages; (b) all claims for failure to pay minimum wages; (c) all claims for
22 failure to pay overtime wages; (d) all claims for failure to provide compliant meal and rest periods
23 or compensation in lieu thereof; (e) all claims for failure to timely pay all wages due upon
24 termination or resignation; (f) all claims for non-compliant wage statements; (g) all claims for
25 failure to reimburse business expenses; (h) all claims for violations of California Labor Code §
26 227.3; (i) all claims asserted through California Business & Professions Code § 17200 et seq.
27 arising out of the Labor Code violations referenced in the Operative Complaints; and (j) all claims
28 for injunctive relief, liquidated damages, penalties of any nature, interest, fees, including without

1 limitation fees under California Labor Code and California Code of Civil Procedure § 1021.5, and
2 costs. The Released Class Claims include, all of the following claims for relief during the Class
3 Period: violations of California Labor Code §§ 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210, 221,
4 223, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233-234, 245 et seq., 246 et seq., 256, 432, 510,
5 512, 558, 558.1, 1174, 1174.5, 1181.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198,
6 1198.5, 1199, 2802, 2810.5, 6401, 6402, 6403, 6409.6, and the applicable Wage Order(s).

7 30. "Released PAGA Claims" means as follows:

- 8 a. All claims for civil penalties under the Private Attorneys General Act of
9 2004 (California Labor Code § 2698 et seq.), during the PAGA Period
10 known and unknown under the Private Attorneys General Act of 2004
11 (California Labor Code § 2698 et seq.) arising out of the California
12 Labor Code violations alleged or that could have been alleged in the
13 Action, including, without limitation in the Operative Complaints and
14 LWDA Letters or that could have been alleged based on the factual
15 allegations contained in the Operative Complaints and LWDA Letters.
16 For avoidance of doubt, the PAGA claims being released by the LWDA
17 and PAGA Members are claims **that were or could have been brought**
18 **under PAGA**, based on the allegations in Plaintiffs' Operative
19 Complaints and LWDA Letters.
- 20 b. Waiver of Rights under California Civil Code Section 1542. The PAGA
21 Members' Released PAGA Claims include all such respective claims,
22 whether known or unknown by the releasing party. Thus, even if a
23 PAGA Member (including Plaintiffs) discovers facts in addition to or
24 different from those that they now know or believe to be true with
25 respect to the subject matter of the PAGA Members' Released PAGA
26 Claims, e.g. the claims brought in Plaintiffs' Operative Complaints or
27 LWDA Letters or that could have been brought based on the facts
28 therein, those claims will remain released and forever barred. Therefore,

1 with respect to those respective Released PAGA Claims, Plaintiffs and
2 the PAGA Members expressly waive and relinquish the provisions,
3 rights and benefits of California Civil Code section 1542, which reads:
4 **A general release does not extend to claims that the creditor or**
5 **releasing party does not know or suspect to exist in his or her favor**
6 **at the time of executing the release and that, if known by him or her,**
7 **would have materially affected his or her settlement with the debtor**
8 **or released party.**

9 31. "Released Parties" means Defendant Blue Diamond Growers and each of its
10 respective present and former parent companies, subsidiaries (including without limitation Blue
11 Diamond Growers Services and Blue Diamond Almond Growers), divisions, shareholders,
12 members, principals, officers, directors, exempt employees, agents, attorneys, insurers, successors
13 and assigns, and any individual or entity which could be liable for any of the Released Class
14 Claims as a joint employer, and Defendant's counsel of record. The Released Parties expressly
15 excludes all staffing agencies and professional employer organizations that placed employees at
16 Defendant's workplace.

17 32. "Request for Exclusion" means a timely letter submitted by a Class Member
18 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
19 forth the name, address, telephone number and last four digits of the Social Security Number of
20 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
21 the Settlement Administrator; (iv) state that the Class Member does not wish to be included in the
22 Settlement; and (v) be postmarked on or before the Response Deadline, defined below.

23 33. "Response Deadline" means the deadline by which Class Members must postmark
24 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
25 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
26 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday
27 or Federal holiday, in which case the Response Deadline will be extended to the next day on
28 which the U.S. Postal Service is open.

1 34. "Settlement Administration Costs" means the amount paid to the Settlement
2 Administrator for the reasonable costs of administration of the Settlement and distribution of
3 payments from the Gross Settlement Fund, which Settlement Administration Costs shall not
4 exceed Twenty Two Thousand Dollars and No Cents (\$22,000.00). These costs, will include,
5 *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099
6 and W-2 IRS Forms, distributing Class Notices, maintaining a web site and toll-free telephone
7 number, calculating Individual Settlement Payments, and distributing the Gross Settlement Fund
8 as set forth herein, and providing necessary reports and declarations. These costs shall be paid
9 from the Gross Settlement Fund. Any funds allocated to Settlement Administration Costs but not
10 incurred by or otherwise paid to the Settlement Administrator will be included in the Net
11 Settlement Amount and distributed pro rata to the Participating Class Members.

12 35. "Settlement Administrator" means Phoenix Settlement Administrators or any other
13 third-party class action settlement administrator agreed to by the Parties and approved by the
14 Court for the purposes of administering this Settlement. The Parties each represent that they do
15 not have any financial interest in the Settlement Administrator or otherwise have a relationship
16 with the Settlement Administrator that could create a conflict of interest.

17 **TERMS OF SETTLEMENT**

18 36. Defendant agrees to pay Five Million, Ninety-Three Thousand, Five Hundred
19 Thirty-Seven Dollars, and Fifty Cents (\$5,093,537.50) (the "Maximum Settlement Amount") on
20 an "all in," non-reversionary basis, inclusive of all Individual Settlement Payments, PAGA
21 Settlement, Plaintiffs' Enhancement Payment, Class Counsels' Attorneys' Fees and Costs, and the
22 Settlement Administration Costs. The employer portion of all payroll taxes shall be paid by
23 Defendant separately and in addition to the Maximum Settlement Amount.

24 37. Funding of the Maximum Settlement Amount. Defendant will deposit the
25 Maximum Settlement Amount, via wire transfer into a Qualified Settlement Account ("QSA") to
26 be established by the Settlement Administrator within thirty (30) calendar days of the Effective
27 Date.

28 38. Class Counsel's Fees and Costs. Defendant agrees not to oppose any application or

1 motion by Class Counsel for Attorneys' Fees and Costs, to be approved by the Court. Class
2 Counsel will seek an award of attorneys' fees not to exceed thirty-five percent (35%) of the
3 Maximum Settlement Amount, or One Million, Seven Hundred and Eighty-Two Thousand, Seven
4 Hundred and Thirty-Eight Dollars, and Thirteen Cents (\$1,782,738.13), and actual and reasonable
5 litigation costs and expenses not to exceed Eighty Thousand Dollars and No Cents (\$80,000.00).
6 The payment of Class Counsel's Attorneys' Fees and Costs shall be made from the Maximum
7 Settlement Amount. Any funds allocated to Attorneys' Fees and Costs but not awarded by the
8 Court will be included in the Net Settlement Amount and distributed pro rata to the Participating
9 Class Members. The Settlement Administrator will issue IRS forms 1099 to Class Counsel for
10 Attorneys' Fees and Costs. The Settlement Administrator shall issue payment of the attorneys'
11 fees and costs to Class Counsel no later than ten (10) calendar days after receipt of the Maximum
12 Settlement Amount.

13 39. To the extent any attorneys or law firm other than Class Counsel seek to recover
14 attorneys' fees and/or costs in the Action, such dispute shall be adjudicated by the judge deciding
15 preliminary and/or final approval of the Settlement Agreement. The attorneys' fees and costs
16 incurred, if any, in such a dispute will be borne by Class Counsel, and Defendant will have no
17 obligation to pay any amount to resolve any such dispute. The amount (if any) awarded to said
18 other attorneys or law firms shall be paid out of the amount allocated by the Court for Class
19 Counsel's Attorneys' Fees and Costs. In no event shall Defendant be responsible for paying any
20 amounts above the Maximum Settlement Amount for any disputed attorneys' fees and/or costs
21 between any attorneys. In other words, the Maximum Settlement Amount will not change due to
22 any additional attorneys' fees and/or costs claim or as a result of any dispute between any
23 attorneys.

24 40. Plaintiffs 's Enhancement Payment. In exchange for a general release, Defendant
25 agrees not to oppose Class Counsel's application or motion for Plaintiffs' Enhancement Payment
26 of Ten Thousand Dollars and No Cents (\$10,000.00) to each Plaintiff, for a total of Thirty
27 Thousand Dollars and No Cents (\$30,000.00). The payment of Plaintiffs' Enhancement Payment
28 shall be made from the Gross Settlement Fund. Any funds allocated to Plaintiffs' Enhancement

1 Payment but not awarded by the Court will be included in the Net Settlement Amount and
2 distributed pro rata to the Participating Class Members. Plaintiffs will be solely responsible to pay
3 any and all applicable taxes on the payments made pursuant to this paragraph and the Settlement
4 Administrator shall issue IRS Forms 1099 to Plaintiffs for Plaintiffs' Enhancement Payment. The
5 Settlement Administrator shall issue Plaintiffs' Enhancement Payment directly to Plaintiffs no later
6 than ten (10) calendar days after receipt of the Gross Settlement Fund.

7 41. Settlement Administration Costs. The Settlement Administrator will be paid for
8 the reasonable costs of administration of the Settlement and distribution of payments from the
9 Gross Settlement Fund, which Settlement Administration Costs shall not exceed. These costs, will
10 include, *inter alia*, the required tax reporting on the Individual Settlement Payments and
11 Individual PAGA Payments, the issuing of 1099 and W-2 IRS Forms, distributing Class Notices,
12 creating and maintaining a web site and toll-free telephone number, calculating Individual
13 Settlement Payments and Individual PAGA Payments, and distributing the Gross Settlement Fund
14 as set forth herein, and providing necessary reports and declarations. These costs shall be paid
15 from the Gross Settlement Fund. Any funds allocated to Settlement Administration Costs but not
16 incurred by or otherwise paid to the Settlement Administrator will be included in the Net
17 Settlement Amount and distributed pro rata to the Participating Class Members.

18 42. The Parties agree that after deducting Class Counsels' Attorneys' Fees and Costs,
19 Plaintiffs' Enhancement Payments, PAGA Member Payments, Labor & Workforce Development
20 Agency Payment, and the Settlement Administration Costs from the Maximum Settlement
21 Amount, the remaining amount shall represent the "Net Settlement Amount." The Net Settlement
22 Amount shall be distributed pro rata to Class Members who do not submit a valid and timely
23 Request for Exclusion based on the number of Pay Periods each Class Member worked during the
24 Class Period ("Individual Settlement Payments"). The Settlement Administrator shall issue the
25 Individual Settlement Payments directly to the Class Members no later than ten (10) calendar days
26 after receipt of the Maximum Settlement Amount.

27 43. Class Size: Defendant represents that there are approximately 2,392 Class Members
28 working approximately 427,104 total Pay Periods during the Class Period. This is a material

1 representation for Plaintiffs to enter into this Settlement Agreement.

2 **SETTLEMENT PAYMENT CALCULATION**

3 44. The Net Settlement Amount shall be determined by deducting the following
4 amounts from the Maximum Settlement Amount of \$5,093,537.50: (1) Class Counsel's Attorneys'
5 Fees and Costs, approved by the Court; (2) the Settlement Administration Costs; (4) Plaintiffs'
6 Enhancement Payment; (5) the PAGA Member Payments; and (6) the Labor & Workforce
7 Development Agency Payment.

8 45. Each Individual Settlement Payment shall be calculated by dividing the Class
9 Member's total number of Pay Period(s) during the Class Period by the total number of Pay
10 Period(s) for all Class Members during the Class Period. The resulting number shall be multiplied
11 by the Net Settlement Amount to arrive at each Individual Settlement Payment.

12 46. Each Individual Settlement Payment will be allocated twenty percent (20%) wages,
13 for which an IRS Form W-2 shall be issued and traditional payroll taxes and withholdings will be
14 made, and eighty percent (80%) penalties and interest, for which an IRS Form 1099 shall be
15 issued and no withholdings will be made. Class Members shall be solely responsible for any
16 personal income taxes owed on the amounts they receive. The Settlement Administrator shall
17 issue appropriate tax forms with each Individual Settlement Payment.

18 47. The PAGA Payment of \$62,500.00 shall be distributed pro rata to PAGA Members
19 based on the number of Pay Periods worked by each PAGA Member during the PAGA Period
20 ("PAGA Member Payment"). Each PAGA Member Payment shall be calculated by dividing the
21 PAGA Member's total number of Pay Periods during the PAGA Period as reflected in Defendant's
22 records by the total number of Pay Periods for all PAGA Members during the PAGA Period. The
23 resulting number shall be multiplied by the PAGA Payment to arrive at each PAGA Member
24 Payment. One hundred percent of each PAGA Member Payment will be allocated penalties for
25 which an IRS Form 1099 shall be issued and no withholdings will be made.

26 48. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
27 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
28 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER

1 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
2 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
3 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
4 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
5 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
6 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
7 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
8 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
9 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
10 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
11 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
12 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
13 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
14 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
15 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
16 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
17 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
18 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
19 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
20 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
21 AGREEMENT.

22 49. No Credit to Benefit Plans. Each Individual Settlement Payment paid to Class
23 Members under this Settlement Agreement, as well as any other payments made pursuant to this
24 Settlement Agreement, shall be excluded from and will not be utilized or considered to calculate
25 any additional benefits under any benefit plans to which any Class Member may be eligible,
26 including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
27 vacation plans, sick leave plans, PTO plans, pension plans, and any other benefit plan. Rather, it
28 is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or

51. Class Members shall have one hundred and eighty (180) days to cash Individual Settlement Payments. Any Settlement checks not cashed after 180 days from the date of mailing of Individual Settlement Payments shall be sent to the State of California Unclaimed Property Fund in the Class Members' or PAGA Members' name.

52. Phoenix Settlement Administrators [“Settlement Administrator”] confirmed that it maintains a Commercial Cyber Insurance Policy that covers data breaches and that it has added Defendant as a third-party beneficiary to that policy for purposes of administering this Settlement only. Provided that the Settlement Administrator maintains Defendant as a third-party beneficiary of its Commercial Cyber Insurance Policy and such coverage is confirmed, within five (5) calendar days after the Court's entry of an order granting preliminary approval of this Settlement Agreement, Defendant shall provide to the Settlement Administrator the Class Data. The Settlement Administrator shall ensure that all information provided shall be kept confidential and shall not be disclosed, either in writing or orally, by the Settlement Administrator, except that the Settlement Administrator shall be permitted to confirm redacted information as reflected in the Class Data with Class Counsel and Defendant's counsel. The Settlement Administrator shall ensure that that it uses due care with respect to the storage, custody, use, and/or dissemination of the confidential information. The Settlement Administrator shall ensure that such information must be stored in a secure fashion and all persons who access the data must agree to keep it

1 confidential.

2 53. Within ten (10) calendar days of receipt of the Class Data, the Settlement
3 Administrator shall confirm the total number of Class Members and total number of aggregate Pay
4 Periods as reflected in the Class Data with Class Counsel and Defendant's counsel.

5 54. Within fifteen (15) calendar days after receipt of the Class Data, the Settlement
6 Administrator shall send the Notice substantially in the form attached hereto as Exhibit A and as
7 approved by the Court to the Class Members.

8 55. The Settlement Administrator will use the United States Postal Service National
9 Change of Address ("NCOA") List to verify the accuracy of all addresses on the Class Data before
10 the initial mailing date to ensure that the Notice is sent to all Class Members at the addresses most
11 likely to result in immediate receipt of the claim documents. It will be conclusively presumed
12 that, if an envelope so mailed has not been returned within thirty (30) calendar days of the mailing,
13 the Class Member received the Notice. With respect to any returned envelopes, the Settlement
14 Administrator will perform a routine skip trace procedure to obtain a current address and, if an
15 updated address is located, shall then re-mail the envelope to such address within three (3) court
16 days of the receipt of the returned envelope.

17 56. Certification Reports. The Settlement Administrator will provide all counsel with a
18 weekly report that certifies the number of Class Members who have submitted a valid Request for
19 Exclusion, Objection, and whether any Class Member submitted a challenge to any information
20 contained in the Class Notice. Additionally, the Settlement Administrator will provide to counsel
21 for the Parties any updated reports regarding the administration of the Settlement Agreement as
22 needed or requested.

23 57. Certification of Completion. Upon completion of administration of the Settlement,
24 the Settlement Administrator will provide a written declaration under oath to certify such
25 completion to the Court and counsel for all Parties.

26 **DISPUTE, REQUEST FOR EXCLUSION, AND OBJECTION PROCESS**

27 58. Each Class Member's unique Notice will state his or her total number of Pay
28 Periods and Individual Settlement Payment prior to tax withholdings. Class Members will have

1 forty-five (45) calendar days from the mailing of the Notice ("Response Deadline") to dispute his
2 or her total number of Pay Periods by submitting documentary evidence to the contrary to the
3 Settlement Administrator. No Pay Period dispute documentation will be considered if postmarked
4 after the 45 calendar-day period. Any disputes regarding a Class Member's total Pay Periods will
5 be resolved and decided by the Settlement Administrator prior to the date of mailing the Individual
6 Settlement Payments, and the Settlement Administrator's decision will be final, binding, and non-
7 appealable.

8 59. Defendant has the option to rescind this Settlement Agreement if more than Seven
9 and a Half Percent (7.5%) of the Class Members timely and validly submit a Request for
10 Exclusion. If Defendant rescinds this Settlement Agreement pursuant to this provision, Defendant
11 shall be solely responsible for all Settlement administration costs incurred by the Settlement
12 Administrator up to the date of rescission.

13 60. Class Members may submit a Request for Exclusion by following the directions in
14 the Notice. Any Request for Exclusion must be postmarked not more than forty-five (45) calendar
15 days after the date the Notice is mailed to the Class Members (or not more than ten (10) calendar
16 days after the date the Notice is re-mailed, in the circumstance described above). Requests for
17 Exclusion that do not include all required information, or that are not submitted on a timely basis,
18 will be deemed null, void, and ineffective. Persons who are eligible to, and do, submit valid and
19 timely Requests for Exclusion will not participate in the Settlement, nor will they be bound by the
20 terms of the proposed Settlement, if it is approved, or the final judgment.

21 61. Objections to the Settlement must be submitted to the Settlement Administrator and
22 postmarked not more than forty-five (45) calendar days after the date the Notice is mailed to the
23 Class Members (or not more than ten (10) calendar days after the date the Notice is re-mailed, in
24 the circumstance described above). The Settlement Administrator shall promptly forward any
25 Objections received to counsel for the Parties. Class Counsel and Counsel for Defendant shall file
26 any responses to Objections no later than five (5) court days before the date of the final fairness
27 and approval hearing. The Class Notice shall include specific instructions to Class Members for
28 submitting Objections. A Class Member who wishes to object but who fails to comply with the

1 instructions set forth in the Class Notice shall be deemed not to have objected.

2 **RELEASE OF CLAIMS**

3 62. **Release by Class Members.** Upon the Settlement Administrator's receipt of the
4 Maximum Settlement Amount, and the Employer Tax Portion, all Class Members who do not
5 timely submit a Request for Exclusion fully release the Released Parties, defined above, for the
6 duration of the Class Period.

7 63. **Release by PAGA Members.** Upon the Settlement Administrator's receipt of the
8 Maximum Settlement Amount, and the Employer Tax Portion, all PAGA Members fully release
9 the Released Parties, defined above, for the duration of the PAGA Period.

10 64. **General Release by Plaintiffs.** In consideration and upon payment of Plaintiffs'
11 Enhancement Payment, Plaintiffs Smith, Ramirez, and Deaver and their respective heirs, agents,
12 successors, and assigns hereby releases and forever discharges the Released Parties from all rights,
13 claims, demands, liabilities, actions, damages, causes of action, charges of whatever nature, that
14 Plaintiffs have or could have against the Released Parties, whether legal, equitable, statutory,
15 contract, tort, or otherwise (including any claims arising under or based on common law), arising
16 from or in any way related to each Plaintiffs' employment with BDG, relating to any matter arising
17 or accruing up to and including the date of entry of a Court order granting final approval of this
18 Settlement, whether known or unknown. Such claims include any and all known and unknown
19 claims for violation of the California Labor Code, the California Government Code, the California
20 Business and Professions Code, the Private Attorneys General Act, the applicable Industrial
21 Welfare Commission Orders or any similar state or federal law, whether for economic damages,
22 non-economic damages, liquidated damages, punitive damages, restitution, penalties, alleged
23 unpaid wages, interest, other monies, or other relief based on any facts, circumstances,
24 transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to
25 act that have been asserted or could have been asserted based on the facts alleged in this litigation
26 through the date of entry of a Court order granting final approval of this Settlement, including any
27 and all claims that Plaintiffs have arising out of or relating directly or indirectly in any manner
28 whatsoever to the facts alleged or which could have been alleged or asserted in the Operative

1 Complaints in the Action, including but not limited to any and all claims under PAGA and
2 California Labor Code Sections 200-204, 210, 216, 218, 218.5, 218.6, 225.5, 226, 226.3, 226.6
3 226.7, 500, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197.1, 1198, and 2698, *et. seq.*,
4 California Code of Civil Procedure sections 382 and 1021.5, and applicable Wage Order(s), based
5 on the facts alleged in the Action through the date of entry of a Court order granting approval of
6 this Settlement. Plaintiffs hereby execute a general release of all claims and a waiver of rights
7 under Code of Civil Procedure Section 1542, including but not limited to a release of any and all
8 claims under the Age Discrimination in Employment Act, the Americans with Disabilities Act, the
9 Family Medical Leave Act, Title VII of the Civil Rights Act, the California Fair Employment and
10 Housing Act and the California Family Rights Act. Plaintiffs shall waive the right to participate in,
11 or to receive recovery from, any other representative action, class action or PAGA action brought
12 by any other employee against any Released Party.

13 65. It being the intent of Plaintiffs and Defendant to fully and finally compromise and
14 settle all matters of any nature that have arisen up to and including the date of this Settlement
15 Agreement, Plaintiffs waive all rights and benefits afforded under California Civil Code section
16 1542, which provides:

17 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
19 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
20 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
21 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
22 **DEBTOR OR RELEASED PARTY."**

23 66. Settlement Terms Bind All Class Members Who Do Not Submit A Request for
24 Exclusion. Any Class Member who does not submit a timely and valid Request for Exclusion will
25 be bound by its terms, including those pertaining to the Released Class Claims, as well as any
26 Judgment entered by the Court if it grants final approval of the Settlement.

27 **SETTLEMENT APPROVAL PROCESS**

28 67. Class Counsel shall be responsible for preparing the Motion for Preliminary
Approval and the Motion for Final Approval. Class Counsel agree to file Plaintiffs' Motion as
soon as practicable after full execution of this Agreement and to be heard as soon as feasible on

1 the Court's calendar. Class Counsel agree to provide Defendant's counsel with a draft of Plaintiffs'
2 Motion for Preliminary Approval and Plaintiffs' Motion for Final Approval, along with all
3 supporting documents for the motions, respectively, at least five (5) business days prior to filing
4 each motion.

5 68. Class Counsel agrees to provide a copy of this Settlement Agreement to the Labor
6 & Workforce Development Agency at the same time they submit it to the Court.

7 69. Plaintiffs will file the Motion for Final Approval of this Settlement Agreement per
8 Code prior to the final approval hearing, unless otherwise ordered by the Court.

9 70. Other than filing Plaintiffs' motions for preliminary and final approval of the
10 Settlement, Plaintiffs and Class Counsel agree that they will not publicize the Settlement in any
11 way, including on Class Counsels' or any other website. Plaintiffs and Class Counsel also agree
12 not to disclose or make any comments to the media or any persons about the Settlement of the
13 Action, other than in response to inquiries from Class Members. However, Class Counsel may
14 add the Maximum Settlement Amount to any aggregate verdict and Settlement count without
15 naming or referencing the Action in any way. Furthermore, nothing herein shall prohibit Class
16 Counsel from exercising their ethical duties in assisting Class Members with this Settlement.

17 **NO ADMISSION**

18 71. Nothing contained herein, nor the consummation of this Settlement Agreement, is
19 to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
20 part of Defendant, and Defendant expressly denies any such liability. The Parties hereto have
21 entered into this Settlement Agreement with the intention of avoiding further disputes and
22 litigation with the attendant inconvenience and expenses.

23 **PARTIES' AUTHORITY**

24 72. The signatories hereto hereby represent that they are fully authorized to enter into
25 this stipulation and bind the Parties hereto to the terms and conditions hereof.

26 **MUTUAL FULL COOPERATION/RETURN TO STATUS QUO**

27 73. The Parties agree to fully cooperate with each other to accomplish the terms of this
28 Settlement Agreement, including, but not limited to, execution of such documents and to take such

1 other action as may reasonably be necessary to implement the terms of this Settlement Agreement.
2 The Parties shall use their best efforts, including all efforts contemplated by this Settlement
3 Agreement and any other efforts that may become necessary by order of the Court, or otherwise,
4 to effectuate this Settlement Agreement and the terms set forth herein, including any amendments
5 to this Settlement Agreement. If for any reason the Settlement is not approved, including without
6 limitation, at the preliminary or final approval stage, the Parties agree to address any concerns
7 raised by the Court using best efforts and working together in good faith to obtain approval;
8 among other things, if the Court does not grant Plaintiffs' motion(s) for preliminary and/or final
9 approval, Plaintiffs agree that they will file further motions for approval if necessary. If, however,
10 the Parties are unable to obtain final approval, they agree that this case shall return to the status
11 quo pre execution of the Mediator's Proposal on May 14, 2024, the Settlement Agreement shall be
12 considered void *ab initio* and shall be of no force or effect whatsoever and shall not be referred to
13 or utilized for any purposes whatsoever by any Parties.

14 **MUTUAL PREPARATION**

15 74. The Parties have had a full opportunity to negotiate the terms and conditions of this
16 Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more
17 strictly against one party than another merely by virtue of the fact that it may have been prepared
18 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
19 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

20 **MODIFICATION**

21 75. This Settlement Agreement may not be changed, altered, amended or modified,
22 except in writing and signed by the Parties, and approved by the Court. This Settlement
23 Agreement may not be discharged except by performance in accordance with its terms or by a
24 writing signed by the Parties.

25 **ENTIRE AGREEMENT**

26 76. This Settlement Agreement contains the entire agreement between the Parties
27 relating to the proposed Settlement and transaction contemplated herein, and all prior or
28 contemporaneous agreements, understandings, representations, and statements, whether oral or

1 written and whether by a party or such party's legal counsel, are merged herein. No rights
2 hereunder may be waived except in writing.

3 **BINDING ON ASSIGNS**

4 77. This Settlement Agreement shall be binding upon and inure to the benefit of the
5 Parties hereto and their respective heirs, trustees, executors, administrators, agents, successors and
6 assigns.

7 **COUNTERPARTS**

8 78. This Settlement Agreement may be executed in counterparts, and when each party
9 has signed and delivered at least one such counterpart, each counterpart shall be deemed an
10 original, and, when taken together with other signed counterparts, shall constitute one Settlement
11 Agreement, which shall be binding upon and effective as to the Parties. For purposes of this
12 Settlement Agreement, a facsimile signature shall be as valid and enforceable as an original.

13 **COURT'S CONTINUING JURISDICTION**

14 79. The parties consent to the Superior Court of the State of California for the County
15 of Sacramento, and to the Judge who approves the Settlement Agreement (or other Judge as may
16 in the future be assigned) to retain jurisdiction over this case and this Settlement Agreement in
17 order to enforce, construe, and interpret this Settlement Agreement and the settlement, to supervise
18 all notices, the administration of the settlement and this Agreement and distribution of the
19 Maximum Settlement Amount, and to hear, adjudicate, and resolve any disputes arising from or
20 related to the Settlement and/or this Agreement, pursuant to California Code of Civil Procedure
21 section 664.6.

22 **INTERIM STAY OF PROCEEDINGS**

23 80. The Parties agree to hold all proceedings in this case, except such proceedings
24 necessary to implement and complete the Settlement, in abeyance pending approval of this
25 Settlement Agreement, including the deadline for Plaintiffs to bring this action to trial pursuant to
26 California Code of Civil Procedure section 583.310.

27 **PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND**
28 **RELEASE INCLUDES A RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS BY**

1 **PLAINTIFFS.**

3 **IT IS SO STIPULATED AND AGREED:**

4 Date: _____, 2024

Plaintiff Jared Deaver

6 Date: _____, 2024

Plaintiff Daniel Ramirez

8 Date: _____, 2024

Plaintiff Brad Smith

10 Date: December 9, 2024

Defendant Blue Diamond Growers

12 **IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS
APPLICABLE TO COUNSEL.**

14 DATED: December 10, 2024

HANSON BRIDGETT LLP

By:

Raymond F. Lynch
RAYMOND F. LYNCH
EMILY J. LEAHY

Attorneys for Defendant
BLUE DIAMOND GROWERS

19 DATED: _____, 2024

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee
Shalom Christine Choo
Attorneys for Plaintiff JARED DEEVER and the
Class

PLAINTIFFS.

IT IS SO STIPULATED AND AGREED:

Date: 12/10/2024, 2024

DocuSigned by:

Jared Deaver

Plaintiff Jared Deaver

Date: _____, 2024

Plaintiff Daniel Ramirez

Date: _____, 2024

Plaintiff Brad Smith

Date: _____, 2024

Defendant Blue Diamond Growers

IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS APPLICABLE TO COUNSEL.

DATED: _____, 2024

HANSON BRIDGETT LLP

By: _____

RAYMOND F. LYNCH

EMILY J. LEAHY

Attorneys for Defendant

BLUE DIAMOND GROWERS

DATED: December 10, 2024

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Shalom Christine Choo

Attorneys for Plaintiff JARED DEEVER and the Class

1 DATED: December 10, 2024

POLARIS LAW GROUP

2
3 By: 

4 William L. Marder
5 Attorneys for Plaintiff Plaintiff JARED DEEVER
6 and the Class

7
8 DATED: December 10, 2024

LAW OFFICES OF CHOI & ASSOCIATES

9
10 By: 

11 Edward W. Choi
12 Attorneys for Plaintiff JARED DEEVER and the
13 Class

14
15 DATED: _____, 2024

BIBIYAN LAW GROUP, P.C.

16
17 By: _____

18 David D. Bibiyan
19 Vedang J. Patel
20 Attorneys for Plaintiffs DANIEL RAMIREZ and
21 BRAD SMITH

22
23 DATED: _____, 2024

CROSNER LEGAL, P.C.

24
25 By: _____

26 Chad Saunders
27 Attorneys for Plaintiffs DANIEL RAMIREZ and
28 BRAD SMITH

1 **PLAINTIFFS.**

3 **IT IS SO STIPULATED AND AGREED:**

4 Date: 12/10/2024, 2024

DocuSigned by:

Jared Deaver

Plaintiff Jared Deaver

6 Date: _____, 2024

Plaintiff Daniel Ramirez

8 Date: _____, 2024

Brad Smith

Plaintiff Brad Smith

10 Date: _____, 2024

Defendant Blue Diamond Growers

12 **IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS
13 APPLICABLE TO COUNSEL.**

14 DATED: _____, 2024

HANSON BRIDGETT LLP

16 By: _____

RAYMOND F. LYNCH

EMILY J. LEAHY

Attorneys for Defendant

BLUE DIAMOND GROWERS

19 DATED: December 10, 2024

DIVERSITY LAW GROUP, P.C.

21 By: _____

Larry W. Lee

Shalom Christine Choo

Attorneys for Plaintiff JARED DEEVER and the
Class

1 DATED: December 10, 2024

POLARIS LAW GROUP

2
3 By: 

4 William L. Marder
5 Attorneys for Plaintiff Plaintiff JARED DEEVER
6 and the Class

7
8 DATED: December 10, 2024

LAW OFFICES OF CHOI & ASSOCIATES

9
10 By: 

11 Edward W. Choi
12 Attorneys for Plaintiff JARED DEEVER and the
13 Class

14
15 DATED: _____, 2024

BIBIYAN LAW GROUP, P.C.

16
17 By: _____

18 David D. Bibiyan
19 Vedang J. Patel
20 Attorneys for Plaintiffs DANIEL RAMIREZ and
21 BRAD SMITH

22
23 DATED: December 11,, 2024

CROSNER LEGAL, P.C.

24
25 By: 

26 Chad Saunders
27 Attorneys for Plaintiffs DANIEL RAMIREZ and
28 BRAD SMITH

1 **PLAINTIFFS.**

2

3 **IT IS SO STIPULATED AND AGREED:**

4 Date: _____, 2024

Plaintiff Jared Deaver

5

6 Date: **Dec 11, 2024**, 2024


Daniel Ramirez (Dec 11, 2024 16:53 PST)

Plaintiff Daniel Ramirez

7

8 Date: _____, 2024

Plaintiff Brad Smith

9

10 Date: _____, 2024

Defendant Blue Diamond Growers

11

12 **IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS**
13 **APPLICABLE TO COUNSEL.**

13

14 DATED: _____, 2024

HANSON BRIDGETT LLP

14

15

By: _____

16

RAYMOND F. LYNCH

17

EMILY J. LEAHY

18

Attorneys for Defendant

BLUE DIAMOND GROWERS

19

20 DATED: _____, 2024

DIVERSITY LAW GROUP, P.C.

21

By: _____

22

Larry W. Lee

23

Shalom Christine Choo

24

Attorneys for Plaintiff JARED DEEVER and the
Class

25

26

27

28

1 DATED: _____, 2024

POLARIS LAW GROUP

2
3 By: _____

William L. Marder

Attorneys for Plaintiff Plaintiff JARED DEEVER
and the Class

4
5
6 DATED: _____, 2024

LAW OFFICES OF CHOI & ASSOCIATES

7
8 By: _____

Edward W. Choi

Attorneys for Plaintiff JARED DEEVER and the
Class

9
10
11 DATED: 12/12 _____, 2024

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

12
13 By: _____

David D. Bibiyan

Vedang J. Patel

Attorneys for Plaintiffs DANIEL RAMIREZ and
BRAD SMITH

14
15
16
17 DATED: _____, 2024

CROSNER LEGAL, P.C.

18
19 By: _____

Chad Saunders

Attorneys for Plaintiffs DANIEL RAMIREZ and
BRAD SMITH

20
21
22

23

24

25

26

27

28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Sacramento Superior Court
Jared Deaver v. Blue Diamond Growers, Case No. 34-2022-00316490
Consolidated with:
Daniel Ramirez v. Blue Diamond Growers, Case No. 34-2021-00304425
Brad Smith v. Blue Diamond Growers, Case No. 34-2021-00310576
Jared Deaver v. Blue Diamond Growers, Case No. 34-2022-00319378

Notice of Class and PAGA Action Settlement

You are not being sued. This notice affects your rights. Please read it carefully
A California Court authorized this Notice. This is not a solicitation from a lawyer.

To: “Class Member” which means all current and former non-exempt California employees employed directly by Blue Diamond Growers (“BDG” or “Defendant”) who worked at any time from July 14, 2017 through August 23, 2024 (the “Class Period”).

“PAGA Members” means all current and former non-exempt employees employed directly by BDG who worked at any time from July 14, 2020 through August 23, 2024, for certain California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) claims. These definitions are for settlement purposes only and are not an admission of any wrongdoing by Defendant.

You have received this Notice because Defendant’s records indicate that you are a Class Member and/or PAGA Member and are entitled to a settlement payment.

YOUR ESTIMATED CLASS AND PAGA PAYMENTS

According to Defendant’s records, you worked a total of ____ Pay Periods during the Class Period and your estimated gross Individual Settlement Payment is approximately \$____.

According to Defendant’s records, you worked a total of ____ Pay Periods during the PAGA Period your estimated PAGA Member Payment \$____.

Based on the above, your total estimated gross payment from the Settlement is approximately \$____.

On _____, 2024, the Honorable Lauri A. Damrell of the Sacramento County Superior Court granted preliminary approval of this class action and PAGA settlement. **Unless you choose to opt out of the Class Settlement by following the procedures described below, you will be deemed a Participating Class Member. If the Court grants final approval of the settlement, Participating Class Members and all PAGA Members will be mailed a check for their share of the Net Settlement Amount.** The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _____.m. on [INSERT DATE] in Department 22 of the Sacramento County Superior Court located at 720 9th Street, Sacramento, California 95814.

The Final Approval Hearing may be rescheduled by the Court to another date and/or time. Please check with the Settlement Administrator or Class Counsel for any scheduling changes. Contact information is provided below. As discussed below, you may also review the Court's online records at <https://www.saccourt.ca.gov>.

If you move, you must send the Settlement Administrator your new address; otherwise, you may not receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

On July 15, 2021, Plaintiff Daniel Ramirez filed a class action against BDG entitled *Daniel Ramirez v. Blue Diamond Growers*, Case No. 34-2021-00304425 ("Ramirez Action"). On November 2, 2021, Plaintiff Brad Smith filed a class action against BDG entitled *Brad Smith v. Blue Diamond Growers*, Case No. 34-2021-00310576 ("Smith Action"). On April 19, 2023, Plaintiff Brad Smith was dismissed and added as a named plaintiff to *Ramirez v. Blue Diamond Growers* action. On March 9, 2022, Plaintiff Jared Deaver filed a class action against BDG entitled *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00316490 ("Deaver Class Action"). On May 9, 2022, Plaintiff Jared Deaver filed a representative Private Attorney General Act ("PAGA") action against BDG entitled *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00319378 ("Deaver PAGA Action"). All of the foregoing lawsuits were consolidated into a single lawsuit.

On May 14, 2024, the Parties participated in a mediation with Honorable Daniel Buckley (ret.), a neutral, experienced, and well-respected class action mediator. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. With Judge Buckley's guidance, the Parties were able to negotiate a complete settlement of Plaintiffs' claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi & Associates, Bibiyan Law Group, P.C., and Crosner Legal PC (collectively, "Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement.

Defendant has denied, and continues to deny, the factual and legal allegations in the case, and believes that it has valid defenses to Plaintiffs' claims. By agreeing to settle, Defendant is not admitting liability on any of the factual or legal allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Maximum Settlement Amount of \$5,093,537.50. This amount is inclusive of (1) Individual Settlement Payments; (2) Attorneys' Fees of up to 35% in the amount of \$1,782,738.13; (3) Costs up to \$80,000.00; (4) Plaintiff Enhancement Payments of \$10,000 each (\$30,000 total); (5) the PAGA Settlement of \$250,000; and (6) the Settlement Administration Costs of up to \$22,000. After

deducting the above payments, a total of approximately \$2,991,299.38 (the “Net Settlement Amount”) will be allocated to Class Members who do not opt out of the Settlement (“Participating Class Members”) Additionally, all PAGA Members will receive a proportional share of the \$62,500.00 PAGA PAGA Member Payment, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Amount are based on Pay Periods Issued to Each Participating Class Member. “Pay Periods” means the number Pay Periods worked by the Class Members during the Class Period. To determine each Participating Class Member’s estimated gross share of the Net Settlement Amount, the Settlement Administrator will use the following formula: Each Participating Class Members shall be entitled to receive a pro rata portion of the Net Settlement Amount (their “Individual Settlement Payment”), calculated based upon the number of Pay Periods worked during the Class Period, divided by the total number of Pay Periods worked by all Participating Class Members during the Class Period. The Settlement Administrator will calculate the number of Pay Periods worked to Participating Class Members, the amount to be paid per Pay Periods, and the Individual Settlement Payment to be paid to each Participating Class Member.

According to Defendant’s records, you worked a total of ____ Pay Periods during the Class Period and your estimated gross Individual Settlement is approximately \$ ____.

Payments from PAGA Payment. “PAGA Member Payments” shall mean each PAGA Member’s share of 25% of the PAGA Amount. To determine each Participating Class Member’s estimated gross share of the PAGA Member Payment, the Settlement Administrator will use the following formula: Each PAGA Member shall be entitled to receive a pro rata portion of the PAGA Member Payment, calculated based upon the number of Pay Periods worked during from July 14, 2020, through August 23, 2024 (the “PAGA Period”), divided by the total number of Pay Periods worked by all PAGA Members during the PAGA Period. The Settlement Administrator will calculate the number of Pay Periods worked by PAGA Members, the amount to be paid per Pay Period, and the PAGA Member Payment to be paid to each PAGA Member. A Request for Exclusion does not exclude an PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and all PAGA Members will receive their portion of the PAGA Amount even if he or she submits a valid Request for Exclusion.

According to Defendant’s records, you worked a total of ____ Pay Periods during the PAGA Period your estimated Individual PAGA Payment \$ ____.

Your Total Estimated Gross Payment: Based on the above, your total estimated gross payment from the Settlement is approximately \$ _____. If you believe the pay period information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs). All disputes must be postmarked on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o Phoenix Settlement Administrators

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

1 **Timing of Payment.** The Court will hold a Final Approval Hearing on _____, 2025 to decide whether
2 to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. If there are
3 appeals, it is uncertain whether they will be resolved and when. Resolving appeals can take time, often more
4 than a year. You can check on the progress of the case by contacting the Settlement Administrator or as
discussed below by visiting the Court's website, or going in person to the Clerk's office. *Please be patient.*

5 **Taxes on Settlement Payments.** Participating Class Members' Individual Settlement Payment will be
6 allocated twenty percent (20%) wages, for which an IRS Form W-2 shall be issued and traditional
7 payroll taxes and withholdings will be made, and eighty percent (80%) penalties and interest, for
8 which an IRS Form 1099 shall be issued and no withholdings will be made. One hundred percent
of each PAGA Member Payment will be allocated penalties for which an IRS Form 1099 shall be
issued and no withholdings will be made.

9 **Fee and Cost Award for Class Counsel.** Class Counsel will request attorneys' fees in the amount of
10 up to 35% which is currently estimated at \$1,782,738.13 of the Maximum Settlement Amount.
11 Class Counsel will also request reimbursement of reasonable and actual litigation expenses incurred
12 in prosecuting this Action, not to exceed \$80,000. The Court will not determine the amount of fees
13 and costs until the Final Approval Hearing. If any portion of the amounts requested for attorneys'
14 fees and costs are not awarded by the Court, that portion will be included in the Net Settlement
Amount for distribution to Participating Class Members. These attorneys' fees and costs shall
compensate Class Counsel for the work they have performed and the expenses they have incurred
in this Action. Class Members are not personally responsible for any of Class Counsel's attorneys'
fees and costs.

15 **Incentive Award and General Release Payment to the Class Representative.** Class Counsel
16 will also seek Incentive Award of no more than \$10,000 for each Plaintiff for acting as representative
17 plaintiffs on behalf of the Class and signing a general release of all claims. This payment will be in
18 addition to whatever payment Plaintiffs are otherwise entitled to as a Class Member. If approved
19 by the Court, this amount will be paid from the Maximum Settlement Amount for their risk and
services on behalf of the Class, which included, among other things, reviewing documents,
providing written statements, participating in meetings with Class Counsel, and performing other
services of that nature, as well as their general release of all claims against Defendant.

20 **Your Options Under the Settlement**

21 ***Option 1 – Automatically Receive a Payment from the Settlement***

22 If want to receive your payment from the Settlement, then no further action is required on your part. You will
23 automatically be issued a payment of your share of the Settlement if and when the Settlement receives final
approval by the Court.

24 If the Court grants final approval of the Settlement, you will be mailed a check for your share of the
25 Net Settlement Amount and be deemed to have released or waived the Class Released Claims. If
26 you are an PAGA Member, your check will include your share of the PAGA Member Payment and
you will be deemed to have released or waived the PAGA Released Claims:

27 **"Released Class Claims"** means all claims during the Class Period alleged or that could
28 have been alleged in the Action, including without limitation all claims during the Class
Period alleged in the Operative Complaints, all claims during the Class Period that could

1 have been alleged based on the factual allegations contained in the Operative Complaints,
2 including but not limited to all of the following claims for relief during the Class Period: (a)
3 all claims for failure to pay earned wages; (b) all claims for failure to pay minimum wages;
4 (c) all claims for failure to pay overtime wages; (d) all claims for failure to provide compliant
5 meal and rest periods or compensation in lieu thereof; (e) all claims for failure to timely pay
6 all wages due upon termination or resignation; (f) all claims for non-compliant wage
7 statements; (g) all claims for failure to reimburse business expenses; (h) all claims for
8 violations of California Labor Code § 227.3; (i) all claims asserted through California
9 Business & Professions Code § 17200 et seq. arising out of the Labor Code violations
10 referenced in the Operative Complaints; and (j) all claims for injunctive relief, liquidated
11 damages, penalties of any nature, interest, fees, including without limitation fees under
California Labor Code and California Code of Civil Procedure § 1021.5, and costs. The
Released Class Claims include, all of the following claims for relief during the Class Period:
violations of California Labor Code §§ 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210, 221,
223, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233-234, 245 et seq., 246 et seq., 256, 432,
510, 512, 558, 558.1, 1174, 1174.5, 1181.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5,
1198, 1198.5, 1199, 2802, 2810.5, 6401, 6402, 6403, 6409.6, and the applicable Wage
Order(s). This release does not include the PAGA released claims.

12 **"Released PAGA Claims"** means All claims for civil penalties under the Private Attorneys
13 General Act of 2004 (California Labor Code § 2698 et seq.), during the PAGA Period known
14 and unknown under the Private Attorneys General Act of 2004 (California Labor Code §
15 2698 et seq.) arising out of the California Labor Code violations alleged or that could have
16 been alleged in the Action, including, without limitation in the Operative Complaints and
17 LWDA Letters or that could have been alleged based on the factual allegations contained in
18 the Operative Complaints and LWDA Letters. For avoidance of doubt, the PAGA claims
19 being released by the LWDA and PAGA Members are claims that were or could have been
20 brought under PAGA, based on the allegations in Plaintiffs' Operative Complaints and
21 LWDA Letters. This release does not include the Class Released Claims. b. Waiver
22 of Rights under California Civil Code Section 1542. The PAGA Members' Released PAGA
23 Claims include all such respective claims, whether known or unknown by the releasing party.
24 Thus, even if a PAGA Member (including Plaintiffs) discovers facts in addition to or
25 different from those that they now know or believe to be true with respect to the subject
26 matter of the PAGA Members' Released PAGA Claims, e.g. the claims brought in Plaintiffs'
27 Operative Complaints or LWDA Letters or that could have been brought based on the facts
28 therein, those claims will remain released and forever barred. Therefore, with respect to
those respective Released PAGA Claims, Plaintiffs and the PAGA Members expressly
waive and relinquish the provisions, rights and benefits of California Civil Code section
1542, which reads:

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.

There shall be no right for any PAGA Member to opt out or otherwise exclude himself or
herself from the release of PAGA claims. The Final Approval Order and the Judgment
entered as a result of this Settlement shall have res judicata and preclusive effect to the fullest
extent allowed by law.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Class Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator. Your request for exclusion must: (i) set forth your name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by you; (iii) be returned to the Settlement Administrator; (iv) clearly state that you do not wish to be included in the Settlement; and (v) be faxed or postmarked on or before _____, 2025. Sign, date, and mail the request for exclusion by First Class U.S. Mail to the address below.

Settlement Administrator
c/o Phoenix Settlement Administrators

The Request for Exclusion must be postmarked no later than _____, 2025 [insert Response Deadline]. If you receive a re-mailed Notice, you will be provided a ten (10) day extension to mail a Request for Exclusion. If you submit an untimely Request for Exclusion, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive an Individual Settlement Payment from the Net Settlement Amount.
- Not release the Class Released Claims.
- If you are an PAGA Member, you will still release the PAGA Released Claims and receive and Individual PAGA Payment.

Option 3 – Object to the Settlement

You may object to the proposed Settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must: (i) contain your full name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and be postmarked by _____, 2025.

All written objections must be mailed to the Settlement Administrator and postmarked no later than _____ 2025 [insert Response Deadline]. By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the Settlement, you must follow the directions described above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only. In the event that you submit both a Request for Exclusion and an Objection, the Request for Exclusion will be valid and Objection will be invalid.

Even if you do not submit a written objection, you may also appear at the Final Approval Hearing set for _____, 2025 at _____ .m. in Department 22 of the Sacramento Superior Court located at 720 9th Street, Sacramento, California 95814 and discuss any objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. Whether or not the Court overrules your objection, you are deemed bound to the Settlement and to have released the Released Claims, and, if you are an PAGA Member, the Released PAGA Claims.

Additional Information

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement. You can get a copy of the Settlement Agreement and other case documents by calling 1-8xx-xxx-xxxx, or by writing to the Settlement Administrator at [insert address]. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Sacramento's Electronic Filing and Service Website at <https://www.saccourt.ca.gov>, or (b) in person at Superior Court of California, County of Sacramento, 720 9th Street, Sacramento, California 95814, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

This notice is also available in Urdu, Punjabi, Farsi, and Mandarin using the links below:

اس نوٹس کے اردو میں ترجمہ کے لیے جائیں۔ [INSERT PHOENIX WEBSITE URL FOR URDU]

ਇਸ ਨੋਟਿਸ ਦੇ ਪੰਜਾਬੀ ਵਿੱਚ ਅਨੁਵਾਦ ਲਈ ਇੱਥੇ ਜਾਓ [INSERT PHOENIX WEBSITE URL FOR PUNJABI]

برای ترجمہ فارسی این اطلاعیہ به ادامه مطلب بروید [INSERT PHOENIX WEBSITE URL FOR FARSI]

如需本通知的中文翻译，请访问 [INSERT PHOENIX WEBSITE URL FOR MANDARIN]

Notice of Final Judgment. Should the Court granted final approval of this Settlement, a copy of the Final Order and Judgment will be available at [INSERT PHOENIX WEBSITE URL]

You also can contact Class Counsel:

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan

david@tomorrowlaw.com

Vedang J. Patel

vedang@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555

Fax: (310) 300-1705

Zachary M. Crosner

zach@crosnerlegal.com

Brandon Brouillette

bbrouillette@crosnerlegal.com

Chad Saunders

chad@crosnerlegal.com

CROSNER LEGAL, PC

9440 Santa Monica Blvd. Ste

301

Beverly Hills, CA 90210

Tel: (866) 276-7637

Larry W. Lee

lwlee@diversitylaw.com

Christine S. Lee

[christine@diversitylaw.co](mailto:christine@diversitylaw.com)

[m](#)

DIVERSITY LAW

GROUP, P.C.

515 S. Figueroa St., Suite

1250

Los Angeles, California

90071

(213) 488-6555

(213) 488-6554 facsimile

1 Edward W. Choi
2 [edward.choi@choiandassociates.c](mailto:edward.choi@choiandassociates.com)
3 [om](mailto:edward.choi@choiandassociates.com)

4 **LAW OFFICES OF CHOI &**
5 **ASSOCIATES**

6 515 S. Figueroa St., Suite 1250
7 Los Angeles, CA 90071
8 Telephone: (213) 381-1515
9 Facsimile: (213) 465-4885

William L. Marder
bill@polarislawgroup.com

POLARIS LAW GROUP

501 San Benito Street, Suite
200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

**PLEASE DO NOT CALL THE COURT WITH ANY QUESTIONS RELATED TO THE
SETTLEMENT.**