

SETTLEMENT AGREEMENT

This twelve-page settlement agreement, not including exhibits, ("Settlement") is made and entered into between Plaintiff Antonio Montes ("Plaintiff"), acting in his capacity as private attorney general, and Defendant Trinity Packing Company, Inc. ("Defendant").

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "The Action" means the matter entitled *Antonio Montes v. Trinity Packing Company, Inc.*, Case No. VCU286784, and as set forth in Plaintiff's correspondence to the California Labor and Workforce Development Agency, dated April 29, 2021 ("1st LWDA Notice", and supplemental correspondence, dated March 23, 2022 ("2nd LWDA Notice") (Collectively the 1st LWDA Notice and 2nd LWDA Notice are referred to herein as the "LWDA Notices").
2. "Aggrieved Employees" consist of all Trinity Packing Company, Inc.'s non-exempt employees who worked for Trinity Packing Company, Inc. in California at any time from April 29, 2020 to February 22, 2022.
3. "Defendant" means Trinity Packing Company, Inc.
4. "Court" means the Superior Court of California for the County of Tulare.
5. "Effective Date" means the date upon which the Parties sign the Settlement Agreement.
6. "Individual Settlement Award" means the amount to be paid to each Aggrieved Employee based on the formula described herein.
7. "LWDA" means the California Labor and Workforce Development Agency.
8. "Maximum Settlement Amount" is a non-reversionary sum of Two Hundred and Fifteen Thousand Dollars and Zero Cents (\$215,000.00), which represents the total amount payable under this settlement by Defendant (subject to the Allowance of Variance described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, and payment of Plaintiff's attorneys' fees and costs.

9. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Courts approval) are subtracted from the Maximum Settlement Amount: (a) Plaintiff's attorneys' fees up to approximately one third of the Maximum Settlement Amount, currently estimated at \$72,000.00 and (b) Plaintiff's reasonable verified litigation costs up to \$8,000.

10. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2689, *et seq.*

11. "PAGA Period" means the time period between April 29, 2020 to February 22, 2022.

12. "PAGA Released Claims" means any and all PAGA claims that were pled in the operative complaint in the Action and the LWDA Notices.

13. "Parties" means Plaintiff and Defendant.

14. "Plaintiff" means Antonio Montes.

15. "Plaintiff's Counsel" means Daniel J. Brown of Stansbury Brown Law, PC.

II. RECITALS

1. Plaintiff alleges that Defendant failed to provide the Aggrieved Employees with accurate wage statements, failed to provide compliant meal and rest periods or premium pay in lieu thereof, failed to include incentive payments in determining the rate of overtime pay causing Aggrieved Employees to be underpaid all overtime wages, and consequently failed to pay all wages at separation of employment. Plaintiff also alleges that Defendants failed to provide compliant accurate wage statements that included all necessary information, including Defendant's physical address. Plaintiff also alleged that Defendant failed to reimburse Aggrieved Employees for mileage expense incurred from using their personal vehicles for work purposes. Plaintiff alleges that Defendant is therefore liable for civil penalties under PAGA. Defendant denies these allegations. More specifically, Defendant alleges that it has robust policies regarding meal periods and rest breaks and that it provided all legally required meal and rest breaks pursuant to those

policies; that it fully compensated employees for all wages and premiums due; employees never had to use their personal vehicle for work purposes; and that it provided employees with accurate wage statements. In making this Settlement, Defendant does not admit to the sufficiency of any claims, allegations, assertions, or contentions made against them in the Action.

2. On April 29, 2021, Plaintiff provided a written notice of his intent to file a claim for civil penalties under PAGA to the LWDA and Defendant, alleging the Defendant violated a variety of California Labor Codes, as described in Section II.1. On March 23, 2022, Plaintiff provided supplemental written notice to the LWDA and Defendant of his allegation that Defendant failed to include the value of incentive payments in the regular rate of pay for overtime purposes causing an underpayment of overtime to Aggrieved Employees.

3. On April 29, 2021, Plaintiff filed a class action complaint entitled *Antonio Montes v. Trinity Packing Company, Inc., et al.*, Tulare County Superior Court, Case No. VCU286784, alleging causes of action for: (1) Meal Period Violations; (2) Rest Period Violations; (3) Failure to Reimburse Necessary Business Expenses (4) Wage Statement Violations; (5) Waiting Time Penalties; and (6) Unfair Competition.

4. On July 1, 2021, Plaintiff amended his complaint to add a seventh cause of action for civil penalties under the Private Attorneys General Act.

5. On September 13, 2021, the Parties' counsel filed a request for dismissal of Plaintiff's class and individual claims without prejudice pursuant to a valid arbitration agreement entered into between Plaintiff and Defendant.

6. On September 15, 2021, the Court approved Plaintiff's request for dismissal and ordered Plaintiff's class and individual claims be dismissed without prejudice. Plaintiff's action thereafter proceeded with a single cause of action for civil penalties under the Private Attorneys General Act.

7. After Plaintiff's class and individual claims were dismissed, The Parties agreed to participate in a full-day mediation with the Laurie Quigley Saldaña, Esq. (Ret) to take place on February 22, 2022 via "Zoom" videoconference. Plaintiff propounded informal discovery requests

to Defendant in anticipation of the mediation pertaining to Plaintiff and the other aggrieved employees' time and pay records amongst other information and documents in order to allow for Plaintiff's counsel to investigate Plaintiff's allegations and value the PAGA claim.

8. On February 22, 2022, the Parties participated in a mediation with Ms. Saldaña. While the Parties did not reach a settlement, in the months that followed the Parties engaged in formal discovery and further settlement discussions, eventually leading to a tentative settlement of Plaintiff's individual claims and the PAGA claims.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission:** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

2. **Maximum Settlement Amount:** Defendant shall pay Two Hundred and Fifteen Thousand Dollars and Zero Cents (\$215,000.00) as the non-reversionary Maximum Settlement Amount. Defendant will not pay more than the Maximum Settlement Amount (subject to the Allowance of Variance below). Defendant shall bear responsibility for administration of the Settlement to the Aggrieved Employees.

3. **Allowance for Variance:** Defendant represents that as of February 22, 2022, Aggrieved Employees worked combined 21,571 pay periods during the PAGA Period. If the actual number of pay periods worked during the PAGA Period is five percent (5%) more than 21,571 pay periods, then Defendant shall have the option to either: (i) increase the Maximum Settlement Amount on a pro-rata basis equal to the percentage that the actual pay periods are greater than

21,571 (e.g., if the actual number of pay periods is 25% greater than 21,571, Defendant will increase the Maximum Settlement Amount by 25%); or (ii) agree that the PAGA period shall only run through the date on which the number of pay periods reached is 21,571.

4. **Net Settlement Amount:** The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

- a. **Plaintiff's Attorneys' Fees and Costs:** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to approximately one-third of the Maximum Settlement Amount (currently estimated to be \$72,000) and actual costs incurred in prosecuting this Action, up to \$8,000. In the event the Court approves a net payment less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). Defendant will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.
- b. **Payment to Plaintiff for General Release and Enhancement:** Defendant will not oppose Plaintiff's request of up to (\$5,000.00) for Plaintiff's Enhancement Payment, subject to Court approval, in recognition of Plaintiff's general release of claims, contributions to the Lawsuit, and service to the Settlement Class. Defendant will report this payment on IRS Form 1099 issued to Plaintiff. The Parties agree and specifically negotiated that this Enhancement Payment is made in part to compensate Plaintiff for entering into a general release of all of his individual claims which may have arisen from his employment to the greatest extent permitted by law. If the Court does not approve the enhancement payment, then the general release identified in paragraph seven (7) below will be void.

5. **Allocation of Net Settlement Amount:** The Net Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees, pursuant to Labor Code §

2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA period.

6. **PAGA Release:** Upon entry of an Order approving the Settlement, Plaintiff and the Aggrieved Employees will release any and all PAGA Released Claims against Defendant, and each of its past and present agents, employer representatives, officers, directors, shareholders, attorneys, accountants, insurers, receivers, advisors, consultants, divisions, assigns, successors, heirs, predecessors in interest, (collectively, the "Released Parties") based on the facts pled in the operative complaint and LWDA Notices that arose during the PAGA Period, including for violations of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804, and 2698 *et seq.* ("PAGA Released Claims"). Upon entry of the Order approving the settlement and judgement entered thereon and conditioned on full payment of the Maximum Settlement Amount, Plaintiff and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **Parties Mutual Release of Unknown Claims:** The Parties have agreed to release, in addition to the PAGA Released Claims described above, all claims, whether known or unknown, under federal law or state law against each other and the Released Parties arising from Plaintiff's employment relationship. Each Party understands that this release includes unknown claims and that he or it 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

However, to the extent that either Party has claims that cannot be released as a matter of law (i.e., workers' compensation claims), then only those claims will not be released.

8. **Releases Effective Upon Full Payment:** The Releases identified in Paragraph 6 and 7 will become effective upon full payment of the Maximum Settlement Amount pursuant to section IV of this Settlement.

9. **Covenants and Representation by Plaintiff:**

- a. Plaintiff represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.
- b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of the Settlement and the consequences of signing this Settlement.

10. **Judgement:** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgement in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering an order as set forth herein. The order will not release or bar any claims other than the PAGA Released Claims as to Aggrieved Employees and the Parties' mutual release of claims identified in Paragraph 7 of this section. The Court's entry of judgment shall not be deemed a finding against or an admission by Defendant of any liability. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for approval of this Settlement.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator:** The Parties agree that Defendant will internally handle the administration of the Settlement.

2. **Provision of Information for Aggrieved Employees:** The person(s) in charge of administering the Settlement for Defendant ("Settlement Administrator") shall provide counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to circulate said payments. The Settlement Administrator shall obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments. Any information provided to the Settlement Administrator, including employee contact information, will be considered confidential and shall only be used for the purposes of performing the terms of this Agreement and for no other purposes.

3. **Explanatory Letter and Individual Settlement Payments:** Upon compiling the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

No later than thirty (30) days after Court approval of the Settlement, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with the Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail. Each Individual Settlement Award shall be deemed penalties and reported using IRS Form 1099.

Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be transferred to the Reedley Boys & Girls Club.

4. **Undeliverable Notices:** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any Checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct

address using a Skip-Trace or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual Settlement Award through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

5. **Payment of Remainder:** No later than thirty (30) days after Court approval of the Settlement, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; and (3) Plaintiff's Enhancement Payment.

6. **Accounting:** Within fourteen (14) business days following the initial mailing of the Individual Settlement Payments, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences:** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, no counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **MISCELLANEOUS PROVISIONS**

1. **Successors:** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

2. **Costs and Fees:** The Parties shall bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiffs claims, except as otherwise set forth specifically herein.

3. **Governing Law:** This Settlement shall be construed under and governed by the laws of the State of California. Any questions of validity, interpretation or performance of any of

its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Tulare.

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

5. **Judgement and Continued Jurisdiction:** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

6. **Amendment or Modification:** This Settlement may be amended or modified only by written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

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

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

9. **Acknowledgement that the Settlement is Fair and Reasonable:** The Parties believe this settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

10. **Waiver:** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

11. **Enforcement of Action:** The Parties agree that the Tulare County Superior Court shall have jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure Section 664.6. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

12. **Mutual Preparation:** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one or more of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

13. **Representation by Counsel:** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

14. **Cooperation and Execution of Necessary Documents:** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate

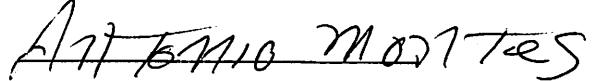
the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

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

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: October 11, 2022

Antonio Montes



Antonio Montes, Plaintiff

Dated: October 11, 2022

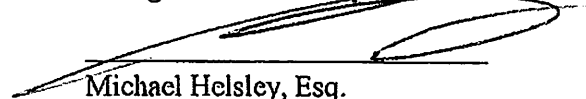
Stansbury Brown Law, PC



Daniel J. Brown, Esq.
Attorney for Plaintiff

Dated: October 16, 2022

Wanger Jones Helsley PC



Michael Helsley, Esq.
Steven M. Crass, Esq.
Attorneys for Defendant

Dated: October 7, 2022

Trinity Packing Company, Inc



By: David E. White

Its: President

EXHIBIT A

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

ANTONIO MONTES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

TRINITY PACKING COMPANY, INC., a
California corporation; and DOES 1
through 100,

Defendants.

Case No. VCU286784

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 ET SEQ.)**

Complaint Filed: April 29, 2022

You have been identified as a current or former non-exempt employee of Defendant Trinity Packing Company, Inc. ("Defendant") from April 29, 2020 through February 22, 2022 ("PAGA Period") ("Aggrieved Employee").

On April 29, 2021, Plaintiff Antonio Montes ("Plaintiff") filed a lawsuit against Defendant. As amended, Plaintiff's lawsuit seeks to recover civil penalties for Defendant's alleged failure to pay all wages during employment and upon separation of employment, failure to maintain accurate records, failure to provide proper meal and rest periods, failure to timely pay all wages, failure to reimburse necessary business expenses, and failure to issue accurate and complete wage statements to Aggrieved Employees (the "Action").

Defendant denies Plaintiff's allegations in the Action and disputes all of Plaintiff's claims.

Plaintiff and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the Action. The Court approved the settlement on <<<<<<DATE OF PAGA APPROVAL>>>>>. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon entry of an Order approving the Settlement, Plaintiff and the Aggrieved Employees will release any and all PAGA Released Claims against Defendant, its past or present officers, directors, and shareholders (collectively, the "Released

Parties”) based on the facts pled in the operative complaint and LWDA Notices that arose during the PAGA Period, including for violations of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804, and 2698 et seq. (“PAGA Released Claims”). Upon entry of the Order approving the settlement and judgement entered thereon and conditioned on full payment of the Maximum Settlement Amount, Plaintiff and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

If you have any questions, you may contact either Plaintiff’s Counsel or Defendant’s Counsel.

Plaintiff’s Counsel’s contact information: Daniel J. Brown, Esq. Stansbury Brown Law, PC, 2610 ½ Abbot Kinney Blvd., Venice, CA 90291, (323) 204-3124

Defendant’s Counsel’s contact information: Michael Helsley, Esq. and Steven Crass, Esq., of Wanger Jones Helsley PC, 265 E. River Park Circle, Suite 310, Fresno, CA 93720, (559) 233-4800.