

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Jacquelyne VanEmmerik (SBN 339338)
MOON & YANG, APC
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
Email: kane.moon@moonyanglaw.com
Email: allen.feghali@moonyanglaw.com
Email: jacquelyne.vanemmerik@moonyanglaw.com

*Attorneys for Plaintiff,
Jorge Guzman Pimentel*

Ian B. Wieland (SBN 285721)
Charles P. Hamamjian (SBN 298685)
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483
Email: ian@sw2law.com
Email: charles@sw2law.com

*Attorneys for Defendant,
ASP Farm Services, LLC*

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

JORGE GUZMAN PIMENTEL, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

ASP FARM SERVICES, LLC., a limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: BCV-21-101285

[Honorable Eric J. Bradshaw, Division J]

**JOINT STIPULATION OF CLASS AND
PAGA ACTION SETTLEMENT**

Complaint Filed: June 7, 2021
Trial Date: Not Set

JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT

This Joint Stipulation of Class and PAGA Action Settlement (“Joint Stipulation” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff JORGE GUZMAN PIMENTEL (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated, and Defendant ASP FARM SERVICES, LLC (“Defendant”). Plaintiff and Defendant will be referred to herein individually as “Party” and collectively as “Parties.” THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

For purposes of this Settlement and Release:

1. “Action” means the above-captioned action entitled *Jorge Guzman Pimentel v. ASP Farm Services, LLC*, Superior Court of the State of California, County of Kern, Case Number BCV-21-101285.
2. “Class Counsel” means Moon & Yang, APC.
3. “Defendant’s Counsel” means Sagaser, Watkins & Wieland, PC.
4. “Complaint” means the First Amended Class Action and Representative Action Complaint filed in the Action.
5. “Class Period” means the period from June 7, 2017, through February 14, 2023.
6. “Class” or “Class Member(s)” means all current and former non-exempt employees of Defendant in California at any time during the Class Period.
7. “Settlement Class Members” means all Class Members who do not submit timely and code-compliant exclusion requests to the Settlement Administrator.
8. “Covered Workweeks” means the number of weeks a Class Member worked for Defendant in California during the Class Period. The Parties estimate that the number of weeks worked by all Class Members from June 7, 2017, through February 14, 2023, is 17,905.
9. “PAGA” means the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, et. seq.).
10. “PAGA Period” means the period from June 5, 2020, through February 14, 2023.
11. “PAGA Employee(s)” or “Aggrieved Employee(s)” means all current and former non-exempt employees of Defendant in California at any time during the PAGA Period.

12. “PAGA Representative” means Plaintiff.

13. “PAGA Pay Periods” means the number of pay periods a PAGA Employee worked for Defendant in California during the PAGA Period.

14. “Settlement Payments” means all of the payments to the Settlement Class Members (“Class Settlement Payments”) and all of the payments to the PAGA Employees (“PAGA Settlement Payments”).

15. “Response Deadline” means the date sixty (60) days after the Settlement Administrator initially mails the Notice of Settlement (defined below) to Class Members and the last date on which Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice of Settlement, the Response Deadline will be thirty (30) calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

STIPULATED BACKGROUND

16. On June 5, 2021, Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under PAGA.

17. On June 7, 2021, Plaintiff filed a Class Action Complaint in the Superior Court for the State of California, County of Kern. The complaint alleged: (1) Failure to Pay Minimum Wage [Labor Code §§ 204, 1194, 1194.2 and 1197]; (2) Failure to Pay Overtime Compensation [Labor Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Labor Code §§ 226.7 and 512]; (4) Failure to Authorize and Permit Rest Breaks [Labor Code § 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Labor Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Labor Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Labor Code § 226]; and (8) Unfair Business Practices [Business & Professions Code §§ 17200, et. seq.]. The complaint further indicated that Plaintiff sought to represent all persons that worked for Defendant in California as an hourly paid non-exempt employee at any time during the period beginning four years before the filing of the complaint and ending when Notice to the Class is sent.

18. On September 8, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint adding a single cause of action for Civil Penalties under PAGA.

1 19. On December 14, 2022, the Parties engaged in a successful mediation before professional
2 mediator, Tripper Ortman, Esq.

3 20. On January 5, 2023, the Parties executed a binding Memorandum of Understanding, which
4 reflects their good faith compromise of the claims raised in the Action, which was reached through
5 assessment of the mutual risks and costs of further litigation and an arms-length negotiation and mediation
6 before professional mediator, Tripper Ortman, Esq.

7 21. Now therefore, the Parties enter into the instant Joint Stipulation and, solely for purposes of
8 settling the Action and addressing the above identified discrepancies, the Parties and their respective
9 Counsel stipulate and agree that the requisites for establishing class certification with respect to the Class
10 Members and Released Claims have been met and are met. More specifically, for settlement purposes
11 only, the Parties stipulate and agree that:

12 (a) The Class is ascertainable and so numerous as to make it impracticable to join all
13 Class Members.

14 (b) There are common questions of law and fact including, but not limited to, the
15 following:

- 16 1) Whether or not Defendant paid proper wages to the Class;
- 17 2) Whether or not Defendant provided meal periods to the Class;
- 18 3) Whether or not Defendant provided rest periods to the Class;
- 19 4) Whether or not Defendant paid proper meal or rest period pay to the Class;
- 20 5) Whether or not Defendant reimbursed any and all business expenses
21 incurred by the Class;
- 22 6) Whether or not Defendant paid proper compensation timely upon
23 separation of employment to former Class Members;
- 24 7) Whether or not Defendant timely paid proper compensation throughout
25 Class Members' employment;
- 26 8) Whether or not Defendant provided accurate and complete itemized wage
27 statements to the Class;
- 28

- 1 9) Whether or not waiting-time penalties are available to Class Members who
2 are no longer employed by Defendant for violation of Labor Code § 203;
3 10) Whether or not Defendant maintained adequate and requisite records; and
4 11) Whether or not Defendant engaged in unlawful or unfair business practices
5 affecting the Class in violation of Business and Professions Code §§
6 17200-17208.

7 (c) Plaintiff's claims are typical of the claims of the Class Members.

8 (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the
9 Class.

10 (e) The prosecution of separate actions by individual members of the Class would
11 create the risk of inconsistent or varying adjudications, which would establish
12 incompatible standards of conduct.

13 (f) Questions of law and fact common to the members of the Class predominate over
14 any question(s) affecting any individual member in the Class, and a class action is
15 superior to other available means for the fair and efficient adjudication of the
16 controversy.

17 22. Should, for whatever reason, the Settlement as amended not become effective, the fact that
18 the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on,
19 and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class
20 Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant
21 expressly reserves its right to oppose claims or class certification in this or any other action should this
22 Settlement not become effective.

23 23. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
24 claims alleged or which could have been alleged in the Complaint, and Defendant further denies that, for
25 any purpose other than settling this lawsuit, that the Action is appropriate for class or representative
26 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the
27 Class Members have been paid proper wages, have been provided meal periods or they have been made
28 available as required, have been provided rest periods or they have been authorized and permitted as

1 required, have been reimbursed for any and all necessary business expenses incurred, have been paid
2 timely and proper wages upon separation of employment, and have been provided with accurate and
3 complete itemized wage statements. Defendant contends, among other things, that it has complied at all
4 times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare
5 Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times
6 with the California Business and Professions Code.

7 24. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
8 all disputes and claims arising from or related to the Complaint.

9 25. Class Counsel has conducted a thorough investigation into the facts of the Action,
10 including an extensive review of relevant documents, and has diligently pursued an investigation of the
11 claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class
12 Counsel is of the opinion that the Settlement with Defendant, for the consideration and on the terms set
13 forth in the Settlement, is fair, reasonable and adequate, and is in the best interest of the Class in light of all
14 known facts and circumstances, including the risk of significant delay, the risk the Class will not be
15 certified by the Court, the defenses asserted by Defendant, and the numerous potential appellate issues.
16 Defendant and Defendant's Counsel also agree that the Settlement is fair, adequate and reasonable and in
17 the best interest of the Class.

18 26. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
19 preliminary and final approval of this Settlement.

20 27. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
21 to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the
22 Court.

23 **PRIMARY TERMS OF SETTLEMENT**

24 28. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
25 set forth herein, the Parties agree, subject to the Court's approval, as follows:

- 26 (a) It is agreed by and among Plaintiff (on behalf of himself and the Class) and
27 Defendant that the Action and any claims, damages, or causes of action arising out
28 of the disputes which are the subject of this Action, be settled and compromised as

1 between the Class and Defendant, subject to the terms and conditions set forth in
2 this Settlement and the approval of the Court.

3 (b) Effective Date: The Effective Date of the Settlement means the last date to occur of
4 the following: (a) if there are no objections to the Settlement, then the date of final
5 approval by the Court; (b) if there are objections to the Settlement, and if an appeal,
6 review, or writ is not sought from the order granting final approval of the
7 settlement, the thirty-first (31st) day after service of notice of entry of the order; or
8 (c) if an appeal, review, or writ is sought from the order, the day after the order is
9 affirmed or the appeal, review, or writ is dismissed or denied, and the order is no
10 longer subject to judicial review. Prior to the Effective Date, Defendant will not be
11 required to fund this Settlement, in whole or in part, through the claims
12 administrator or any third party. Defendant will fund this Settlement within thirty
13 (30) days of the Effective Date, and the Settlement Administrator will distribute the
14 fund installments within twenty-one (21) days of receipt.

15 (c) Escalator Clause: As of February 14, 2023, the Parties estimate that Class
16 Members worked 17,905 workweeks. In the event the total number of Covered
17 Workweeks worked by all Class Members during the Class Period increases by
18 more than ten percent (10%), Defendant shall have the option to either increase the
19 Gross Settlement Amount on a pro-rata basis equal to the percentage increase in
20 the number of workweeks worked by the Class Members above ten percent (10%)
21 or limit the Class Period end date to one on which the number of workweeks does
22 not exceed 19,696.

23 (d) Gross Settlement Amount: "Gross Settlement Amount" means Defendant's
24 maximum total payment under the Settlement. The Gross Settlement Amount is
25 Four Hundred Sixty-Five Thousand Five Hundred Thirty Dollars and Zero Cents
26 (\$465,530.00) and includes Class Settlement Payments, Attorney's Fees and Costs,
27 Settlement Administration Costs, the Service Payment to the Plaintiff, and the
28 PAGA Allocation. To the extent any portion of the Class Settlement Payments

constitutes wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Further, Defendant will be responsible for any additional payment required under the Escalator Clause. Defendant will otherwise, at no time and for no reason whatsoever, be required to contribute additional funds to the Gross Settlement Amount.

(d) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

(e) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement Class Payment.

(f) Net Settlement Amount: The Net Settlement Amount means the amount to be allocated to Class Settlement Payments. The Net Settlement Amount is the Gross Settlement Amount (\$465,530.00) minus the following sums, subject to approval by the Court: (1) Attorney's Fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$155,176.67); (2) Litigation Costs (not to exceed \$25,000.00); (3) the Service Payment to the Plaintiff (not to exceed \$10,000.00); (4) the PAGA Allocation (\$40,000.00); and (5) Settlement Administration Costs (estimated not to exceed \$20,000).

(g) Payroll Taxes and Required Withholdings: To the extent any portions of the Class Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. The Settlement Administrator will calculate and submit Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

(h) Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"

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

CONTEMPLATED BY THIS AGREEMENT.

- (i) Class Settlement Payments (Excludes PAGA Settlement Payments): Class Settlement Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the total number of Covered Workweeks worked by a Class Member during the Class Period to the total number of Covered Workweeks worked by all Settlement Class Members during the Class Period as follows:
- $$[\text{Covered Workweeks worked by Settlement Class Member}] \div [\text{Sum of all Covered Workweeks worked by all Settlement Class Members}] \times [\text{Net Settlement Amount}] = \text{individual Settlement Payment for Settlement Class Member.}$$
- Class Settlement Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or abandoned checks shall be transmitted by the Settlement Administrator to the *cypres* designee, California Farmworker Foundation.
- (j) PAGA Settlement Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation, after the PAGA Penalty Amount is deducted therefrom. Each PAGA Employee will be paid a pro-rata share of the PAGA Settlement Payment calculated by the Settlement Administrator. PAGA Employees will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the total number of PAGA Pay Periods worked by the PAGA Employee during the PAGA Period to the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period as follows:
- $$[\text{PAGA Pay Periods worked by PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}] \times [\text{PAGA Settlement Payment}] = \text{individual PAGA Settlement Payment for PAGA Employee.}$$
- PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time

1 Class Settlement Payments issue to the Settlement Class Members and at the same
2 time the PAGA Penalty Payment is sent to the LWDA. Uncashed, unclaimed or
3 abandoned checks shall be transmitted by the Settlement Administrator to the *cy*
4 *pres* designee, California Farmworker Foundation.

5 (k) Allocation of Settlement Payments: The Parties have agreed that Class Settlement
6 Payments will be allocated as follows: 20% to alleged unpaid wages, 40% to
7 alleged unpaid interest, and 40% to alleged unpaid civil and statutory penalties.
8 The PAGA Allocation will be entirely allocated to penalties. Appropriate federal,
9 state and local withholding taxes will be taken out of the wage allocations, and
10 each Settlement Class Member will receive an IRS Form W-2 with respect to this
11 portion of the Class Settlement Payment. Settlement Class Member's share of
12 payroll taxes and other required withholdings will be remitted by the Settlement
13 Administrator to the appropriate taxing authorities as set forth above, along with
14 Defendant's employer portion of FICA and FUTA contributions, based on the
15 payment of claims to the Settlement Class Members. IRS Forms 1099 will be
16 issued by the Settlement Administrator to each Settlement Class Member and/or
17 PAGA Employee reflecting the payments for penalties and interest. Settlement
18 Class Members and PAGA Employees are responsible to pay appropriate taxes due
19 on the Class Settlement Payments and PAGA Settlement Payments they receive.
20 To the extent required by law, IRS Forms 1099 and W-2 will be issued to each
21 Settlement Class Member and PAGA Employee with respect to such payments.

22 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
23 Payments to Settlement Class Members and PAGA Employees shall be deemed to
24 be paid to such Settlement Class Member or PAGA Employee solely in the year in
25 which such payments actually are received by the Settlement Class Member or
26 PAGA Employee. It is expressly understood and agreed that the receipt of such
27 Settlement Payments will not entitle any Settlement Class Member or PAGA
28 Employee to additional wages, compensation or benefits under any company

1 bonus, contest or other compensation or benefit plan or agreement in place during
2 the period covered by the Settlement up to and including the date the Settlement
3 becomes effective, nor will it entitle any Settlement Class Member or PAGA
4 Employee to any increased retirement, 401(k) benefits or matching benefits or
5 deferred compensation benefits. It is the intent of all Parties that the Settlement
6 Payments provided for in this Settlement are the sole payments to be made by
7 Defendant to the Settlement Class Members and PAGA Employees, and that the
8 Settlement Class Members and PAGA Employees are not entitled to any new or
9 additional compensation or benefits as a result of having received the Settlement
10 Payments (notwithstanding any contrary language or agreement in any benefit or
11 compensation plan document that might have been in effect during the period
12 covered by this Settlement).

13 (m) Attorney's Fees and Costs: Attorney's fees and costs are the reasonable fees and
14 expenses incurred by Class Counsel as a result of litigating the Action. Subject to
15 approval by the Court, Defendant will not object to Class Counsel's application for
16 attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount, or
17 \$155,176.67, and reimbursement of litigation costs not to exceed \$25,000.00. Any
18 portion of the fees or costs not awarded by the Court shall be added to the Net
19 Settlement Amount.

20 (n) Service Payment: The Service Payment is the payment to Plaintiff for his service as
21 Class Representative and in exchange for his general release. Subject to approval
22 by the Court, Defendant will not object to Class Counsel's application for a Service
23 Payment of up to \$10,000.00. It is understood that the Service Payment is in
24 addition to the individual Settlement Payments to which the Plaintiff and Class
25 Representative is entitled along with the other Settlement Class Members. The
26 Settlement Administrator will issue an IRS Form 1099 for the Service Payment to
27 the Plaintiff. The Plaintiff will be individually responsible for correctly
28 characterizing this compensation on personal income tax returns for tax purposes

1 and for paying any taxes on the amounts received. Should the Court approve a
2 Service Payment in an amount less than that set forth above, the difference
3 between the lesser amount(s) approved by the Court and the Service Payment
4 amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff
5 agrees not to opt out or object to the Service Payment as the Class Representative.

6 (o) Settlement Administrator: The Settlement Administrator will be ILYM Group,
7 Inc., or such Settlement Administrator as may be mutually agreeable to the Parties
8 and approved by the Court.

9 (p) Settlement Administration Costs: Settlement Administration Costs are those costs
10 incurred by the Settlement Administration, which result from the fulfillment of the
11 Settlement terms. Settlement Administrator Costs are estimated not to exceed
12 \$20,000.00 and shall be paid regardless of the outcome of this Settlement. If the
13 Settlement does not become final and effective, the cost of the Settlement
14 Administrator will be shared equally by Plaintiff and Defendant.

15 (q) PAGA Allocation: The PAGA Allocation is the portion of the Gross Settlement
16 Amount that the Parties have agreed to allocate to resolution of the Released
17 PAGA Claims. The Parties have agreed that the PAGA Allocation will be
18 \$40,000.00. Pursuant to PAGA, Seventy-Five Percent (75%), or \$30,000.00, of the
19 PAGA Allocation will be paid to the Labor and Workforce Development Agency
20 ("LWDA") ("PAGA Penalty Payment") and Twenty-Five Percent (25%), or
21 \$10,000.00, of the PAGA Allocation will be paid to the PAGA Employees
22 ("PAGA Settlement Payment").

23 (r) Funding of Settlement Account: Defendant will fund the settlement account within
24 thirty (30) calendar days of the Effective Date.

25 (s) Mailing of Settlement Payments: The Settlement Administrator shall cause the
26 Settlement Payments to be mailed to the Class Members within twenty-one (21)
27 calendar days of the receipt of funding.

28 (t) Notice of Settlement: Each Class Member will be mailed a notice setting forth the

1 material terms of the Settlement, along with instructions about how to object or
2 request exclusion from the Settlement (“Notice”). For each Class Member, there
3 will be pre-printed information on the mailed Notice, based on Defendant’s
4 records, stating the Class Member’s Covered Workweeks during the Class Period,
5 PAGA Pay Periods during the PAGA Period, and estimated individual payment
6 under the Settlement, including the Class Settlement Payment and PAGA
7 Settlement Payment. As discussed below, the PAGA Settlement Payment will be
8 distributed irrespective of any exclusion request. The pre-printed information based
9 on Defendant’s records shall be presumed to be correct. A Class Member may
10 dispute the pre-printed information on the Notice as to his or her Covered
11 Workweeks during the Class Period or PAGA Pay Periods during the PAGA
12 Period. Class Members must submit any dispute regarding the information on the
13 Notice as to his or her Covered Workweeks or PAGA Pay Periods within the
14 Response Deadline. Unless a disputing Class Member submits documentary
15 evidence in support of his or her dispute, the records of the Defendant will be
16 determinative.

17 (u) Settlement Notice Language: The Notice will issue in English and Spanish. If there
18 is any ambiguity between the English and Spanish translation, the English version
19 will be controlling.

20 (v) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
21 Class Members submitting a Request for Exclusion will nevertheless receive their
22 pro-rata share of the PAGA Settlement Payment. If the Court approves the
23 compromise of the PAGA Claim, all Class Members are bound by the Court’s
24 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
25 California Labor and Workforce Development Agency at or before the time
26 Plaintiff files the motion for preliminary approval.

27 (w) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
28 Defendant’s records used to calculate Covered Workweeks or PAGA Pay Periods,

1 and the Parties' counsel cannot resolve the dispute informally, the matter will be
2 referred to the Settlement Administrator. The Settlement Administrator will review
3 Defendant's records and any information or documents submitted by the Class
4 Member and issue a non-appealable decision regarding the dispute. The Class
5 Member must submit information or documents supporting his or her position to
6 the Settlement Administrator prior to the expiration of the Response Deadline.
7 Information or documents submitted after the expiration of the Response Deadline
8 will not be considered by the Settlement Administrator, unless otherwise agreed to
9 by the Parties.

10 (x) Right of Class Member to Request Exclusion from the Settlement: Any Class
11 Member may request to be excluded from the Settlement Class by mailing a
12 "Request for Exclusion" from the Settlement within the Response Deadline,
13 stating, as follows or in substantially similar terms:

14 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
15 IN THE *PIMENTEL V. ASP FARM SERVICES, LLC* CLASS ACTION
16 LAWSUIT, KERN COUNTY SUPERIOR COURT, CASE NUMBER
17 BCV-21-101285. I UNDERSTAND THAT IF I ASK TO BE
18 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
19 RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER
20 THAN MY SHARE OF THE PAGA SETTLEMENT PAYMENT."

21 Any Request for Exclusion must include the name, address, telephone number, last
22 four digits of the Class Member's Social Security Number, and the signature of the
23 Class Member requesting exclusion. Any such request must be made in accordance
24 with the terms of the Notice, and the Notice will advise Class Members of these
25 requirements. Any Class Member who timely requests exclusion in compliance
26 with these requirements (i) shall not have any rights under this Settlement other
27 than a right to receive a pro-rata share of the PAGA Settlement Payment if the
28 Class Member is also a PAGA Employee; (ii) shall not be entitled to receive any
Settlement Payments under this Settlement other than as stated herein; and (iii)
shall not be bound by this Settlement or the Court's Order and Final Judgment
other than as it applies to the PAGA Claim.

(y) Right of Settlement Class Member to Object to The Settlement: Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member may (1) appear at the Final Approval Hearing, remotely or in person, to explain any objection, (2) have an attorney object for the Settlement Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any Settlement Class Member chooses to submit a written objection, the written objection should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; and (3) the grounds for the objection; and be postmarked within the Response Deadline to permit adequate time for processing and review by the Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to a declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by filing a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663, to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Settlement Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Settlement Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Settlement Class Member's objection, the Settlement Class Member will still be bound by the terms of this Agreement and the Settlement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or

1 some other number of days as the Court shall specify) before the final approval
2 hearing, file responses to any written objections submitted to the Court. Class
3 Counsel will not represent any Class Members with respect to any objections to the
4 Settlement.

5 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

6 29. Subject to the Court's approval, and subject to reconsideration by the Parties after a
7 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
8 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both
9 in English and Spanish, to the Class Members. The Settlement Administrator will independently review
10 the Covered Workweeks and PAGA Pay Periods attributed to each Settlement Class Member and PAGA
11 Employee and will calculate the estimated amounts due to each Settlement Class Member and PAGA
12 Employee in accordance with this Settlement. The Settlement Administrator shall report, in summary or
13 narrative form, the substance of its findings. The Settlement Administrator shall be granted reasonable
14 access to Defendant's records in order to perform its duties. The Settlement Administrator will provide
15 Defendant's Counsel and Class Counsel a weekly report which certifies: (i) the number of Class Members
16 who have submitted valid Requests for Exclusion; (ii) the number of any deficient Requests for Exclusion;
17 and (iii) whether a Class Member has submitted a challenge to information contained in his or her Notice
18 Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
19 reports regarding the administration of the Settlement Agreement as needed or requested.

20 30. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
21 Amount from Defendant, the Settlement Administrator will issue and send out the Class Settlement
22 Payment checks to the Settlement Class Members and PAGA Settlement Payment checks to the PAGA
23 Employees. Tax treatment of the Class Settlement Payments and PAGA Settlement Payments will be as
24 set forth herein, and in accordance with state and federal tax laws. The Settlement Administrator will also
25 issue a payment to Class Counsel and itself for Court-approved services performed in connection with the
26 Settlement.

27 31. All disputes relating to the Settlement Administrator's performance of its duties shall be
28 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of

the Settlement until all payments and obligations contemplated by the Settlement have been fully carried out.

ATTORNEY'S FEES AND COSTS

32. In consideration for resolving this matter and in exchange for the release of all claims by the Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount, or \$155,176.67, and litigation costs not to exceed \$25,000.00. The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorney's fees and/or litigation costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount. The Parties agree that there is no prevailing party, and the Class and Class Counsel shall not be entitled to any fees or costs other than those awarded out of and deducted from the Gross Settlement Amount. As with the Class Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be distributed by the Settlement Administrator to Class Counsel within twenty-one (21) calendar days of the receipt of settlement funds by the Settlement Administrator. In the event that the Court awards less than twenty-five percent (25%) of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal that portion of any Final Approval Order and Judgment.

THE NOTICE PROCESS

33. A Notice in approximately the form attached hereto as "Exhibit A," and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by First Class United States mail. The Notice shall be issued in English and Spanish.

- (a) Within twenty (20) calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) full name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's locations in California. This database shall be based on

1 Defendant's payroll and other business records and shall be provided in a
2 reasonable format to the Settlement Administrator. Defendant agrees to consult
3 with the Settlement Administrator prior to the production date to ensure that the
4 format will be acceptable to the Settlement Administrator. The Settlement
5 Administrator will run a check of the Class Members' addresses against those on
6 file with the U.S. Postal Service's National Change of Address List. This check
7 will be performed only once per Class Member by the Settlement Administrator.
8 Absent mutual written agreement of counsel for the Parties or Court order, the
9 Settlement Administrator will keep this database confidential and secure and use it
10 only for the purposes described herein and will return this database to Defendant
11 upon final approval of the settlement or destroy electronic records containing the
12 database after the Settlement is final and all payments are distributed as required
13 under this Agreement.

14 (b) Within fourteen (14) calendar days after the Class database is provided to the
15 Settlement Administrator, the Settlement Administrator will mail the Notices to the
16 Class Members by First Class United States mail.

17 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
18 the initial Response Deadline shall be resent to the forwarding address, if any, on
19 the returned envelope. A returned Notice will be forwarded by the Settlement
20 Administrator any time that a forwarding address is provided with the returned
21 mail. If there is no forwarding address, the Settlement Administrator will do a
22 computer search for a new address using the Class Member's social security
23 number or other information. In any instance where a Notice is re-mailed, that
24 Class Member will have until the extended Response Deadline as described above
25 to submit objections or request exclusion. A letter prepared by the Settlement
26 Administrator will be included in the re-mailed Notice in that instance, stating the
27 extended Response Deadline. Upon completion of these steps by the Settlement
28 Administrator, Defendant and the Settlement Administrator shall be deemed to

1 have satisfied their obligations to provide the Notice to the affected Class Member.
2 The affected Class Member shall remain a member of the Settlement Class and
3 shall be bound by all the terms of the Settlement and the Court's Order and Final
4 Judgment.

5 (d) Class Counsel shall provide to the Court, at least five (5) calendar days prior to the
6 final approval hearing, or such other date as set by the Court, a declaration by the
7 Settlement Administrator of due diligence and confirming mailing of the Notices.

8 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

9 34. As set forth above, each Settlement Class Member will have until the expiration of the
10 applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the
11 Settlement Class Member's Covered Workweek information on the Notice. No disputes will be honored if
12 they are submitted after the Response Deadline unless the Parties mutually agree to accept the untimely
13 dispute. Each Settlement Class Member is responsible to maintain a copy of any documents sent to the
14 Settlement Administrator and a record of proof of mailing.

15 35. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
16 Settlement Class Members and PAGA Employees as provided herein. Class Settlement Payments and
17 PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain
18 valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
19 automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement Class
20 Member within that time, and the Settlement Class Member's relevant claims will remain released by the
21 Settlement. Settlement Payment checks which have expired will not be reissued.

22 36. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Payment
23 Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the *cy pres*
24 designee, California Farmworker Foundation, in the name of each Settlement Class Member and/or PAGA
25 Employee who failed to cash their Class Settlement Payment or PAGA Settlement Payment check prior to
26 the void date.

27 37. Upon completion of its calculation of Class Settlement Payments and PAGA Settlement
28 Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a

report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE CLASS MEMBERS AND PAGA EMPLOYEES AND PLAINTIFF

38. Release by Class and PAGA Employees. Upon final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, each Settlement Class Member (each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim), and each PAGA Employee (regardless of whether they have requested exclusion from the Settlement of Class claims), will release claims as follows:

- (a) **Released Parties.** Defendant and each of their past, present, and future agents, employees, representatives, administrators, officers, directors, members, shareholders, volunteers, attorneys, accountants, insurers, receivers, advisors, consultants, partners, partnerships, parents, divisions, owners, subsidiaries, affiliates or related companies, assigns, successors, heirs, predecessors in interest, joint venturers, trustees, investors, fiduciaries, and commonly controlled corporations, as well as any individual or entity who or which could be jointly liable with Defendant for any of the Released Claims, and all persons or entities acting by, through, under, or in concert with any of them, and Defendant's counsel of record in the Action. ("Releasees").
- (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Effective Date and (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Therefore, Settlement Class Members will not release the Released Claims and PAGA Employees will not release the Released PAGA Claims until both the Effective Date of the Settlement has occurred **and** Defendant has paid all amounts owing under the

1 Settlement.

2 (c) **Claims Released by Settlement Class Members.** Each and every Settlement
3 Class Member, on behalf of himself or herself and his or her heirs and assigns,
4 hereby releases Releasees from the following claims for the entire Class Period:

- 5 1) all claims under state, federal, or local law, whether statutory or common
6 law, arising out of the claims alleged by Plaintiff in the operative
7 complaint, or which could have been alleged by Plaintiff in the operative
8 complaint by reason or in connection with any matter or fact set forth or
9 referred to in the operative complaint. Without limiting the foregoing, the
10 release shall include claims for unpaid wages, failure to pay minimum
11 wages, overtime compensation, straight time compensation, rest and
12 recovery time, non-productive time; failure to provide compliant meal, rest,
13 and/or recovery periods; failure to pay premiums at all or at the correct rate
14 for any violation of meal, rest, and recovery period obligations; failure to
15 provide legally complaint wage statements; failure to timely pay regular
16 and final wages; failure to reimburse business expenses; unfair business
17 practices and unfair competition; failure to pay all hours worked; failure to
18 keep accurate records; liquidated damages; interest; declaratory relief; any
19 and all related penalties, including, but not limited to, recordkeeping
20 penalties, wage statement penalties, minimum wage penalties, meal and
21 rest period penalties, and waiting time penalties; statutory penalties and/or
22 civil penalties; attorneys' fees and costs; liquidated damages; and/or
23 interest associated with any of the foregoing. Such released claims shall
24 include, but are not limited to those claims arising under California Labor
25 Code sections 201, 202, 203, 204, 206, 210, 218, 218.5, 218.6, 221, 223,
26 224, 226 *et seq.*, 226.2, 226.3, 226.7, 246 *et seq.* (related to paid sick
27 leave), 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194 *et seq.*,
28 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and/or those arising under

the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 9, 11, 12, 13, and 18 of the applicable Wage Order(s)); California Business and Professions Code section 17200 *et seq.*; the California Civil Code sections 3287, 3289, and 3294; California Code of Civil Procedure section 1021.5; and any claims under the Fair Labor Standards Act (29 U.S. §§201 *et seq.*) arising during the Class Period. (“Released Claims”);

(d) **Claims Released by the Class Members, Including PAGA Employees.** Each and every Class Member, including all PAGA Employees, hereby releases Releasees from the following claims for the entire PAGA Period, regardless of whether they have requested exclusion from the Settlement as to Class claims:

- 1) all claims for penalties and any other available relief pursuant to California Labor Code § 2698 *et seq.*, alleged in the operative complaint, or which could have been alleged by Plaintiff in the Complaint by reason or in connection with any matter or fact set forth or referred to in the operative complaint, against Defendant and Released Parties (“Released PAGA Claims”).

39. Release by Plaintiff and the Class Representative. Upon final approval by the Court of this Settlement and Defendant’s payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Plaintiff and Class Representative, will release claims as follows:

- (a) The Plaintiff and Class Representative hereby fully and finally releases and discharges the Releasees from any and all of the Released Claims and from any and all other claims, charges, complaints, liens, demands, agreements, contracts, covenants, actions, suits, causes of action, penalties, wages, obligations, debts, expenses, damages, attorney’s fees and costs, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, known or unknown, suspected or unsuspected, that the Plaintiff and Class Representative had, now has, or may

hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Plaintiff and Class Representative's hiring by, employment with, separation of employment with, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of any Released Party (the "Class Representative's Released Claims"), arising or accruing from the beginning of time up through the Final Approval Date Order Date ("Class Representative's Released Period"). The Class Representative's Released Claims include, but are not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code §§ 17200, et. seq.; the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12900, et. seq.; the California Healthy Workplaces, Healthy Families Act, Cal. Labor Code §§ 245, et seq., the California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et. seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et. seq.; the Fair Labor Standards Act, 29 U.S.C. §§ 201, et. seq., the Portal-to-Portal Act, 29 U.S.C. §§ 251, et. seq., and the Families First Coronavirus Response Act.

(b) The Plaintiff and Class Representative also acknowledges that he has read Section 1542 of the Civil Code of the State of California, which provides as follows:

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.

40. The Plaintiff and Class Representative further warrants that he understands that Section 1542 gives him the right not to release existing claims of which he is not now aware unless he voluntarily chooses to waive this right. Having been so apprised, Plaintiff and Class Representative shall nevertheless voluntarily waive the rights described in Section 1542 and elects to assume all risks and to release the

claims set forth herein, that now exist in his favor, whether known or unknown.

EMPLOYMENT BY DEFENDANT

41. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

42. The Parties shall submit this Joint Stipulation to the Court in support of Plaintiff's motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness.

Upon execution of this Joint Stipulation, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a hearing on Plaintiff's motion for preliminary approval, and later scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of Attorney's Fees and Costs and the Class Representative's Service Payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Conditionally certifying a Class for settlement purposes only;
- (c) Approving the Notice as to form and content;
- (d) Directing the mailing of the Notice by the Settlement Administrator;
- (e) Preliminarily approving the Settlement, subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the putative Class; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

43. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;

- (c) Approving the Service Payment to the Plaintiff;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement;
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action; and,
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the Settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirming that the State's claims for civil penalties pursuant to PAGA are extinguished.

NULLIFICATION AND TERMINATION

44. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify the Class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of the Service Payment; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

45. If 10% or more of the Class Members timely and validly opt out of this Settlement, or if the Court fails to approve material terms of this Settlement, including the scope of the release, then Defendant, in its sole and exclusive discretion, may terminate, withdraw, nullify and void this Settlement any time prior to the date the Court enters final approval of this Settlement, but no more than ten (10) business days of being notified by the Settlement Administrator of the 10% or greater opt-out rate or of the Court's denial of this Settlement with prejudice. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a weekly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than thirty (30) calendar

1 days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be solely
2 responsible for the costs incurred by the Settlement Administrator for the settlement administration.

3 46. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
4 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
5 proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all
6 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
7 neither entered into nor filed with the Court.

8 **PARTIES' AUTHORITY**

9 47. The signatories hereto hereby represent that they are fully authorized to enter into this
10 Settlement and bind the Parties hereto to the terms and conditions thereof.

11 **MUTUAL FULL COOPERATION**

12 48. The Parties agree to fully cooperate with each other to accomplish the terms of this
13 Settlement including, but not limited to, execution of such documents and taking such other action as
14 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall
15 use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may
16 become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth
17 herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance
18 and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's
19 preliminary and final approval of this Settlement.

20 **NO PRIOR ASSIGNMENTS**

21 49. The Parties and their respective counsel represent, covenant, and warrant that they have not
22 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
23 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
24 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
25 Gross Settlement Amount or any right to attorneys' fees or costs.

26 **NO ADMISSION OF LIABILITY**

27 50. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
28 deemed an admission of liability, culpability, negligence or wrongdoing on the part of Defendant.

Defendant denies all of the claims and contentions alleged by Plaintiff in this case. Defendant does not admit, and specifically denies, that it has violated any federal, state or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its current or former employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any violations or failures to comply with any applicable law. Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

ENFORCEMENT ACTIONS

51. In the event that one or more of the Parties to this Settlement 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 shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

52. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

Class Counsel:

Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
MOON & YANG, APC
1055 West Seventh Street, Suite 1880

Defendant's Counsel:

Ian B. Wieland (SBN 285721)
Charles P. Hamamjian (SBN 298685)
SAGASER, WATKINS & WIELAND, P
5260 North Palm Avenue, Suite 400
Fresno, California 93704

Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
allen.feghali@moonyanglaw.com
jacquelyne.vanemmerik@moonyanglaw.com

Telephone: (559) 421-7000
Facsimile: (559) 473-1483
ian@sw2law.com
charles@sw2law.com

CONSTRUCTION

53. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, including but not limited to an all-day mediation with Tripper Ortman, Esq., and this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

54. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

55. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

CONFIDENTIALITY

56. The Parties and their counsel agree that none of them will issue any marketing materials, press release, social media post, internet or website announcement, or otherwise initiate any contact with the press, respond to any press inquiry or have any communication with the press regarding the Settlement or the terms of this Settlement. Class Counsel will not communicate with other wage-and-hour plaintiffs' counsel about this Settlement, nor utilize it in any way in their marketing or advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement with anyone other than his counsel, tax advisors or spouses, except as required or authorized by law. Additionally, Class Counsel agree that the fact that the Action was filed and/or settled will not be included in any filing or court submission in any other case or controversy unless required to do so by applicable law or done in

1 submissions to courts or arbitrators in connection with establishing adequacy as class counsel or relevant
2 experience in wage and hour lawsuits. Nothing herein shall prevent Class Counsel from communicating
3 with Class Members regarding the Action or this Settlement. Class Counsel and the Class Representative
4 further agree that this Confidentiality term is a material term, and that breach of this provision shall be
5 deemed a material breach of this Settlement.

6 **INTEGRATION CLAUSE**

7 57. This Settlement contains the entire agreement between the Parties relating to the
8 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
9 understandings, representations, and statements, whether oral or written and whether by a Party or such
10 Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The
11 Parties expressly recognize California Civil Code § 1625 and California Code of Civil Procedure §
12 1856(a), which provide that a written agreement is to be construed according to its terms and may not be
13 varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
14 representations or terms will modify, vary or contradict the terms of this Agreement.

15 **AMENDMENT OR MODIFICATION**

16 58. This Settlement Agreement may be amended or modified only by a written instrument
17 mutually signed by counsel for all Parties or their successors-in-interest.

18 **WAIVER OF APPEALS**

19 59. The Parties agree to waive appeals and to stipulate to class certification for purposes of
20 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
21 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent (25%)
22 of the Gross Settlement Amount as attorney's fees.

23 **BINDING ON ASSIGNS**

24 60. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
25 their respective heirs, trustees, executors, administrators, successors and assigns.

26 **CLASS COUNSEL SIGNATORIES**

27 61. It is agreed that because the members of the Class are so numerous, it is impossible or
28 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class

Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

62. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

FINAL JUDGMENT

63. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety at or following the final approval hearing. The final judgment may be included in the Order granting Final Approval of the Settlement.

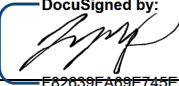
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and PAGA Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 3/1/2023

By: _____

DocuSigned by:

F82839FA08E745E...

JORGE GUZMAN PIMENTEL

Defendant:

Dated:

ASP FARM SERVICES, LLC

By: _____

Print Name

Signature

Title

//

//

Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

62. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

FINAL JUDGMENT

63. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety at or following the final approval hearing. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and PAGA Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: By: _____
JORGE GUZMAN PIMENTEL

Defendant:

Dated: ASP FARM SERVICES, LLC

By: Monica Marquez
Print Name

Monica Marquez
Signature

Hr Manager
Title

//

//

Plaintiff's Counsel:

Dated: 03/01/2023

MOON & YANG, APC

By: 

Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.

*Attorneys for Plaintiff,
Jorge Guzman Pimentel*

Defendant's Counsel:

Dated:

SAGASER, WATKINS & WIELAND, PC

By: _____

Ian B. Wieland, Esq.
Charles P. Hamamjian, Esq.

*Attorneys for Defendant,
ASP Farm Services, LLC*

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

Plaintiff's Counsel:

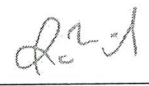
Dated: MOON & YANG, APC

By: _____
Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.

*Attorneys for Plaintiff,
Jorge Guzman Pimentel*

Defendant's Counsel:

Dated: February 27, 2023 SAGASER, WATKINS & WIELAND, PC

By:  _____
Ian B. Wieland, Esq.
Charles P. Hamamjian, Esq.

*Attorneys for Defendant,
ASP Farm Services, LLC*