

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

2 David S. Winston, Esq. CA Bar No. 301667

3 david@employmentlitigators.com

4 1880 Century Park East, Suite 511

5 Los Angeles, California 90067

6 Phone: (424) 288-4568

7 Fax: (424) 532-4062

8 Attorneys for Plaintiffs and the Proposed Class

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF STANISLAUS**

11 MARIA GARCIA, an individual, on behalf of
12 herself and others similarly situated,

13 PLAINTIFF,

14 v.

15 GROWER DIRECT NUT COMPANY, INC.,
16 a California Corporation, and DOES 1 thru 50,
17 inclusive,

18 DEFENDANTS.

Case No.: CV-21-005425

[Assigned for All Purposes to the Hon. John D.
Freeland, Dept. 23]

**DECLARATION OF DAVID S. WINSTON
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Date: September 29, 2022

Time: 8:30 a.m.

Dept.: 23

Complaint Filed: September 30, 2021

Trial Date: None Set

- 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

1. I am an attorney licensed to practice before all of the courts of the State of California. I am the attorney of record for Plaintiff MARIA GARCIA in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

THE EXPERIENCE AND VIEWS OF CLASS COUNSEL

3. Prior to starting the Winston Law Group, P.C. in 2017, I regularly litigated class and representative actions as an Associate at Kingsley & Kingsley, represented employers in class, representative, and individual actions for Lewis Brisbois Bisgaard & Smith, and PAGA cases for one of the top 10 companies in the Fortune 500 while at Burke, Williams, & Sorensen, LLP.

5. I also have significant experience with Class Action Wage and Hour and PAGA litigation having briefed PAGA issues before the California Court of Appeal several times including in *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) and the appellant's brief in *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) while at Kingsley & Kingsley, APC.

- 2 -

DECLARATION OF DAVID S. WINSTON IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

1
2 a. *Porras et al. vs. Chipotle Services, LLC, Stanislaus County Superior Court (Case No.*
3 *CV-19-000937)*. This PAGA settlement was approved by the Hon. Sonny S. Sadhu on June 16, 2020 in
4 the gross amount of \$4,900,000.

5 b. *Miller et al. vs. Mattress Firm, Inc., Santa Clara County Superior Court (Case No.*
6 *17CV313148)*. This PAGA settlement was approved by the Hon. Thomas E. Kunle on December 17,
7 2018 in the gross amount of \$3,750,000.

8 c. *Smart & Final Wage and Hour Cases, Sacramento County Superior Court (JCCP*
9 *Number 5089)*. This PAGA settlement was approved by the Hon. Richard K. Sueyoshi on July 9, 2021
10 in the gross amount of \$3,470,000.

11 d. *Zirpolo vs. UAG Stevens Creek, Inc. (Penske), Santa Clara County Superior Court*
12 *(Case No. 17CV313457)*. The matter was finally approved for settlement by the Honorable Brian C.
13 Walsh on July 10, 2018 in the gross amount of \$3,275,000.

14 e. *Espindola et al. vs. Panda Express, LLC et al., San Bernardino County Superior Court*
15 *(Case No. CIVDS1931455)*. This PAGA settlement was approved by the Hon. David Cohn on April 13,
16 2021 in the gross amount of \$3,125,000.

17 f. *Westbrook vs. Winco Holdings Inc. et al., Riverside County Superior Court (Case No.*
18 *RIC1710168)*. The matter was finally approved for settlement by the Hon. Raquel A. Marquez on
19 January 15, 2019 in the gross amount of \$3,000,000.

20 g. *Amster et al. vs. Starbucks Corporation, San Bernardino County Superior Court (Case*
21 *No. CIVDS1922016)*. This PAGA settlement was approved by the Hon. Donald Alvarez on July 14,
22 2020 in the gross amount of \$3,000,000.

23 h. *Antonov et al. vs. GL HHR, LLC (Ken Garff Automotive) et al., San Bernardino County*
24 *Superior Court (Case No. CIVDS1724725)*. The matter was finally approved for settlement by the Hon.
25 David Cohn on December 11, 2018 in the gross amount of \$2,850,000.

26 i. *Scoggins et al. vs. Crossmark, Inc. et al., Ventura County Superior Court (Case No. 56-*
27 *2017-00492936-CU-OE-VTA)*. The matter was finally approved for settlement by the Hon. Matthew P
28 Guasco on January 23, 2020 in the gross amount of \$2,100,000.

1 j. *Smith et al. vs. Burlington Merchandising Corporation et al., San Bernardino County*
2 *Superior Court (Case No. CIVIDS1929684)*. This PAGA settlement was approved by the Hon. David
3 Cohn on October 23, 2020 in the gross amount of \$2,000,000.

4 k. *Castaing et al. vs. Hendrick Automotive Group et al., Alameda County Superior Court*
5 *(Case No. RG17879115)*. The matter was finally approved for settlement by the Hon. Brad Seligman on
6 June 24, 2019 in the gross amount of \$1,850,000.

7 l. *Westphal vs. New York Life Insurance Company, Placer County Superior Court (Case*
8 *No. S-CV-0040532)*. The matter was finally approved for settlement by the Hon. Michael Jones on
9 September 11, 2018 in the gross amount of \$1,701,366.

10 m. *Williams vs. Kaiser Foundation Health Plan, Inc., Alameda County Superior Court*
11 *(Case No. RG 18917898)*. The matter was finally approved for settlement by the Hon. Stephen Klaus
12 on August 19, 2020 in the gross amount of \$1,250,000.

13 n. *Vega vs. Cen Cal Plastering, Inc., San Joaquin County Superior Court (Case No. STK-*
14 *CV-UOE-2021-0005440)*. The PAGA Settlement was approved by the Hon. George J. Abdallah on
15 April 13, 2022 in the gross amount of \$1,200,000.

16 o. *Berbano and Centeno vs. Ingram Micro, Inc., San Bernardino County Superior Court*
17 *(Case No. CIVDS1826805)*. The matter was finally approved for settlement by the Hon. David Cohn on
18 September 17, 2019 in the gross amount of \$1,180,000.

19 p. *Chiefer and Goldenberg vs. WHGM, Inc. (Keyes Motors), Los Angeles County Superior*
20 *Court (Case No. LC106505)*. The matter was finally approved for settlement by the Hon. Rupert A.
21 Byrdsong on September 21, 2018 in the gross amount of \$1,150,000.

22 q. *Hollis vs. Union Pacific Railroad Co., Central District of California No. 5:17-Cv-*
23 *02449-JGB (SHKx)*. The matter was finally approved for settlement by the Hon. Jesus G. Bernal on
24 September 19, 2018 in the gross amount of \$1,083,965.

25 r. *Myers vs. Mor Furniture for Less, Inc., San Diego County Superior Court (Case No. 37-*
26 *2018-00055055-CU-OE-NC)*. The PAGA Settlement was approved by the Hon. Ronald Frazier on
27 November 27, 2018 in the amount of \$1,062,000.

1 s. *Grotte vs. Normal Life of California, Inc. et al., San Luis Obispo County Superior Court*
2 *(Case No. 18CV-0672)*. The matter was finally approved for settlement by the Hon. Tana L. Coates in
3 the gross amount of \$1,050,000 on June 24, 2020.

4 t. *Wilson et al. vs. DGDG 1, LLC et al. (Del Grande Automotive Group), Santa Clara*
5 *County Superior Court (Case No. 2018-1-CV-331434)*. The matter was finally approved by the Hon.
6 Thomas E. Kuhnle on January 17, 2020 in the gross amount of \$1,024,963.71.

7 u. *Perea vs. Drybar Holdings LLC, Los Angeles County Superior Court (Case*
8 *No.BC703413)*. The matter was finally approved for settlement by the Hon. Yolanda Orosco on
9 September 9, 2019 in the amount of \$1,000,000.

10 v. *Ali vs. Auto Nation, Inc. et al., San Diego County Superior Court (Case No. 37-2018-*
11 *00037616-CU-OE-CTL)*. The PAGA settlement was approved by the Hon. Ronald Frazier on
12 November 14, 2019 in the gross amount of \$851,000.

13 w. *Qunicho vs. Café Rio, San Bernardino County Superior Court (Case No.*
14 *CIVDS2011822)*. The PAGA settlement was approved by the Hon. Janet Frangie on December 14,
15 2021 in the gross amount of \$835,000.

16 x. *Ashe vs. Farmers Insurance Exchange et al., Los Angeles County Superior Court (Case*
17 *No. 18STCV00453)*. This Fair Credit Reporting Act class action was finally approved by the Hon.
18 Steven J. Kleifield on August 6, 2020 in the gross amount of \$800,000.

19 y. *Anderson vs. ABC Phones of North Carolina, Inc., Contra Costa County Superior Court*
20 *(Case No. MSC20-00957)*. The PAGA settlement was approved by the Hon. Edward G. Weil on
21 August 31, 2021 in the gross amount of \$790,000.

22 z. *Martinez vs. Vieira Agricultural Enterprises, LLC, Merced County Superior Court*
23 *(Case No. 19CV-04603)*. The matter was finally approved for settlement by the Hon. Brian McCabe on
24 February 26, 2021 in the gross amount of \$775,000.

25 aa. *Pia vs. 5G's Automotive, Inc., Tulare County Superior Court (Case No. VCU274628)*.
26 The matter was finally approved for settlement by the Hon. Brett Hillman on September 6, 2019 in the
27 gross amount of \$750,000.

1 *bb. Herrera vs. Inland Staffing et al., San Bernardino County Superior Court (Case No.*
2 *CIVDS2924284).* The matter was finally approved for settlement by the Hon. David S. Cohn on March
3 10, 2021 in the gross amount of \$750,000.

4 *cc. Kennedy vs. 99 Cents Only Stores, LLC, Los Angeles County Superior Court (Case No.*
5 *19STCV09311).* The PAGA settlement was approved by the Hon. Anthony Mohr on November 19,
6 2019 in the gross amount of \$700,000.

7 *dd. Sumlin vs. BNSF Railway Company, San Bernardino County Superior Court (Case No.*
8 *CIVDS1724126).* The matter was finally approved for settlement by the Hon. David Cohn on
9 September 5, 2018 in the gross amount of \$675,000.

10 *ee. Brown vs. Saks and Company, LLC, Central District of California (CV 17-04210 SJO*
11 *(JEM)).* This matter was finally approved for settlement by the Hon. S. James Otero on March 22, 2018
12 in the gross amount of \$638,800.

13 *ff. De La Hoya vs. Sierra West Finish, Inc., San Bernardino County Superior Court (Case*
14 *No. CIVSB2107351).* The matter was finally approved for settlement by the Hon. David Cohn on July
15 13, 2022 in the gross amount of \$625,000.

16 *gg. Myers vs. LBC Limited Partnership, San Bernardino County Superior Court (Case No.*
17 *CIVDS 1715068).* The matter was finally approved for settlement by the Hon. Janet Frangie on July 25,
18 2018 in the gross amount of \$600,000.

19 *hh. Bunkley vs. DMSD Foods et al., San Diego County Superior Court (Case No. 37-2020-*
20 *00017973-CU-OE-CTL).* This PAGA settlement was approved on July 9, 2021 by the Hon. Richard E.
21 L. Strauss in the gross amount of \$595,000.

22 *ii. Garcia vs. Optima Tax, Orange County Superior Court (Case No. 30-2019-01082473-*
23 *CU-OE-CXC).* This PAGA settlement was approved on July 31, 2020 by the Hon. William Claster in
24 the gross amount of \$550,000.

25 7. I also have experience with contested class certifications having successfully overseen
26 class certification in *Amaro v. Gerawan Farming, Inc.*, No. 1:14-CV-00147-DAD-SAB (E.D. Cal. May
27 19, 2016) resulting in the certification of three classes of more than 6,000 employees. I personally
28

1 drafted the motion for class certification, the reply in support of class certification, and the opposition
2 to the defendant's motion for reconsideration as well as the supporting documents.

3 8. Based upon my experience and after factoring in the risks associated with the claims, I
4 believe that this Settlement is fair and reasonable and should be approved. In my opinion, the proposed
5 Settlement provides substantial benefits and is fair, reasonable, adequate, and in the best interests of the
6 Class.

7 **PROCEDURAL AND FACTUAL HISTORY**

8 9. On September 30, 2021, Plaintiff filed and served a PAGA notice alleging that
9 Defendant violated Labor Code §§ 226(a)(6), 226(e), 226.3. That same day, Plaintiff filed a Class
10 Action Complaint in Stanislaus County Superior Court that alleged that Defendants failed to provide
11 accurate itemized wage statements and also included her own individual wage and hour claims
12 alleging that she was misclassified as an exempt employee. After exhausting her administrative
13 remedies under PAGA, Plaintiff filed an Amended Complaint that included the PAGA claim. Shortly
14 thereafter, the Parties agreed to mediate the matter.

15 10. In advance of the Mediation, Defendant provided information about the number of
16 Class Members (571) and the number of pay periods potentially at issue (10,064).

17 11. Defendant also provided information indicating that Plaintiff's PAGA Notice and
18 prosecution of this action catalyzed it to modify its wage statement policies and practices with respect
19 to the inclusion of the start dates of the pay period for which the employee is paid. Specifically,
20 Defendant provided my office with information and several exemplar wage statements indicating that
21 it updated its itemized wage statements to include the start date of the pay period for which the
22 employee is paid by December 2, 2022. Defendant's Counsel also advised me that Plaintiff was the
23 only employee during the Class Period who worked in the position with the responsibilities that she
24 alleges caused her to be misclassified under California law. As such, in my opinion, aside from the
25 alleged wage statement violations, no numerosity or typicality existed concerning any of the
26 individually alleged misclassification claims.

27 12. On May 2, 2022, Plaintiff and Defendant mediated the case with well-respected
28 mediator the John Harris, Esq. At the Mediation, Mr. Harris helped to manage the Parties'

1 expectations and provided a useful, neutral analysis of the issues and risks to both sides. With
2 significant assistance from the Mediator, the Parties agreed to the Proposed non-reversionary checks-
3 mailed Settlement presently pending before the Court.

4 13. I believe that the proposed Settlement is fair and reasonable and in the best interest of
5 the Class. *Id.*

6 14. The Parties reached a proposed settlement that requires Defendant to pay a gross
7 settlement amount of \$553,520, which represents \$55.00 per pay period. Attached hereto as **Exhibit 1**
8 is a true and correct copy of the Parties' Proposed Settlement.

10 **THE PROPOSED SETTLEMENT**

11 15. This Action concerns, and the Proposed Settlement Class is defined as all individuals
12 who received a wage statement from Defendant Grower Direct Nut Company, Inc. in California from
13 April 5, 2020 to December 2, 2021.

14 16. The Parties' Proposed Settlement provides for Defendant to pay a Gross Settlement
15 Amount of \$553,520.00. Pursuant to the Joint Stipulation, Class Counsel proposes the following
16 allocation of the Settlement to determine the Net Settlement Amount:

17	Gross Settlement Amount:	\$553,520.00
18	Attorneys' Fees (1/3):	up to \$184,506.67
19	Estimated Case Costs:	up to \$10,000.00
20	Estimated Service Awards:	up to \$7,500.00
21	Estimated Cost of Administration:	up to \$15,000.00
22	PAGA Payment To the LWDA (\$20,000 total in PAGA Penalties):	\$15,000.00

23	Estimated Net Settlement Amount	\$331,513.33
----	--	---------------------

24 17. The Net Settlement Amount (\$331,513.33) is the amount distributable to Participating
25 Class Members, and consists of the Gross Settlement Amount minus Court Approved Class Counsel's
26 attorneys' fees and litigation costs, Settlement Administrator Costs, the LWDA's portion of the PAGA
27 penalties as well as Service Awards for the Class Representative.

1 18. The Settlement is non-reversionary, and Defendant will pay 100 percent of the Gross
2 Settlement Amount.

3 19. The estimated average net settlement award each Class Member is expected to receive
4 is approximately \$580.58 (\$331,513.33/571 Class Members).

5 20. Each Participating Class Member will share pro-rata in the settlement fund based upon
6 the number of pay periods worked within the Class Period.

7 21. In my opinion, the proposed method of allocation is fair and reasonable and reflects the
8 value of the claims and the strength of Defendant's defenses.

9 **THE NOTICE PROCESS**

10 22. The Parties have agreed to use a reputable third-party claims administrator ILYM
11 Group, Inc. ("ILYM") to administer the Settlement.

12 23. Defendant must provide ILYM with the Class List and Notice data within thirty (30)
13 days after entry of the Preliminary Approval Order

14 24. Within forty-five (45) days after preliminary approval, ILYM will perform a national
15 change of address search for each Class Member, update the addresses per the results of the search,
16 populate the data for the estimated Net Settlement Award for each Class Member and mail the Notice
17 of Settlement to all Class Members via first-class, United State Mail.

18 25. With respect to those Class Members whose Notice of Settlement is returned to the
19 Settlement Administrator as undeliverable, the Settlement Administrator shall resend the class notice
20 to any available forwarding address and run a skip-trace in an effort to attempt to ascertain the current
21 address of the Class Member.

22 26. Class Members will have an opportunity to request exclusion from the Settlement Class
23 (*i.e.*, opt out) or to object to the Settlement at the Final Approval Hearing. Class Members will have
24 forty-five (45) calendar days from the date of mailing the Notices of Settlement within which to
25 exclude themselves or file an objection to the Settlement. Class Members wishing to exclude
26 themselves from the Settlement must mail a written request for exclusion to the Settlement
27 Administrator within the 45 day-deadline. To request exclusion, a Class Member must submit a letter
28 or postcard to the Settlement Administrator by the Response Deadline that includes the Class

1 Member's name, address for correspondence and identity verification purposes, signature, and should
2 state words to the effect of, "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
3 GARCIA VS. GROWER DIRECT NUT COMPANY, INC." If an opt-out is deficient, the Settlement
4 Administrator shall send a deficiency notice to the Class Member. *Id.* In addition, the Settlement
5 Agreement permits the Court to accept a late request for exclusion for good cause. *Id.*

6 27. Class Members will also be provided an opportunity to object. To object, a Class
7 Member should send to the Settlement Administrator a written objection that includes the Class
8 Member's name, current address for correspondence and identity verification purposes, provide each
9 specific reason in support of the objection, be signed by the Class Member, and be postmarked by the
10 Response Deadline. Winston. Class Members need not include legal arguments for their written
11 objections to be considered. If an objector also wishes to appear at the Final Approval and Fairness
12 Hearing, in person or through an attorney, he or she need not file a notice of intention to appear at the
13 same time as the objection is filed. Filing the notice of intention to appear is not necessary to preserve
14 the right to appear at the Final Approval and Fairness Hearing. Defendant will not discourage Class
15 Members from participating in the Settlement or encourage or advise Class Members to opt out or
16 object to the settlement.

17 28. In addition, Class Members may dispute Defendant's records of the number of pay
18 periods worked during the Class Period by notifying the Settlement Administrator that they dispute
19 the amount of pay periods listed in their Class Notice by the Response Deadline

20 **THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

21 29. A presumption of fairness exists where: (1) the settlement is reached through arm's
22 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
23 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
24 small. *Dunk*, 48 Cal.App.4th at 1802. To prevent fraud, collusion or unfairness to the class, the
25 settlement or dismissal of a class action requires court approval. *Malibu Outrigger Bd. of Governors v.*
26 *Sup. Ct.*, 103 Cal.App.3d 573, 578-79 (1980). The purpose of the requirement is the protection of
27 those class members, including the named plaintiff, whose rights may not have been given due regard
28 by the negotiating parties. *Officers for Justice*, 688 F.2d at 624. The trial court has broad powers to

determine whether a proposed class action settlement is fair. *Mallick v. Sup. Ct*, 89 Cal.App.3d 434 (1979). In my opinion, the Proposed Settlement satisfies each of these factors.

30. The Settlement Agreement was the product of thorough, arms-length negotiations conducted by experienced and informed counsel and represents a favorable resolution of the Class claims. The Parties only reached the Settlement following a mediation with well-respected mediator John Harris, Esq. after careful evaluation of the records substantiating the amount of damages reasonably likely to be awarded to the Class were the jury to award them the full value of their claims. At the Mediation, Mr. Harris helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.

31. In my opinion, the proposed settlement offers meaningful relief for Class Members who have already benefitted from the prosecution of this action through the non-monetary relief obtained through the catalyzation of Defendant's policy changes.

32. The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. In my opinion, the proposed settlement satisfies each of these factors.

33. My client and I conducted meaningful informal discovery before entering into settlement negotiations in this matter. As part of the informal discovery and mediation process, Defendant provided my office with information concerning the total number of class members (571), the total number of pay periods at issue during the relevant time period (10,064), and other relevant information requested including a sample of wage statements.

34. In my opinion, this discovery permitted Plaintiff and I to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

35. I am experienced in handling wage and hour class actions and support this Settlement.

THE STRENGTH OF PLAINTIFFS' CASE

36. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee;...(6) the inclusive dates of the period for which the employee is paid...(8) the name and address of the legal entity that is the employer..." A claim for damages under Section 226(e) requires a showing of three elements: (1) a violation of Section 226(a); (2) that is "knowing and intentional"; and (3) a resulting injury." *Garnett v. ADT LLC*, 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015).

37. Based upon my understanding of the claims, I was confident that the Class could establish that Defendant violated Labor Code section § 226(a)(6) and (e) by failing to include the start date of the pay period for which the employees were paid on their itemized wage statements during the period covered by this Settlement. Plaintiff and the Class Members' wage statements clearly improperly omitted the start date of the pay periods in violation of Labor Code § 226(a)(6). The paper itemized wage statements issued by Defendants did not include either the start date of the pay period or the address of the legal entity that is the employer.

38. Although I believed that Plaintiff and the Class would prevail in this action, at least some risk existed that Defendant could have attempted to pick-off class members as in *Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796, 798 (2009). Although Plaintiff would have sought catalyst fees in the event that Defendant engaged in such conduct and sought to certify an issues class that does not depend upon the establishment of damages, it is likely that these issues would have resulted in significant further litigation and appeals.

39. In my opinion, some risk also existed because of supply chain issues impacting the nut industry in California. As detailed in a recent New York Times article published on April 20, 2022, California's nut distribution business is suffering due to issues caused by supply chain disruptions. Attached hereto as **Exhibit 2** is a true and correct copy of an article from the New York Times dated April 20, 2022, titled "How America's Farmers Got Cut Out of the Supply Chain."

1 40. As with many other companies within the nut business, Defendant is also experiencing
2 financial challenges. Defendant's Counsel advised me that Defendant needed a modest payment plan
3 through May 2023.

4 41. In order to mitigate the risk to the Class, Defendant must start making regular
5 \$20,000.00 payments by the earlier of preliminary approval or September 1, 2022 through April 1,
6 2023 and will make another payment of \$393,520.00 on May 1, 2023. This will ensure that even if
7 Defendant's financial condition worsens, at least some funds will remain available to the Class
8 Members in the qualified settlement fund set-up by the Settlement Administrator.

9 42. Ultimately, the settlement—which provides for a gross recovery of more than 50% of
10 the value of the Labor Code § 226(e) penalties potentially available at trial—reflects the strength of
11 the Class' claims, the positioning of the action, and the financial challenges facing the nut industry.

12 43. Ultimately, the settlement—which provides for a gross recovery of more than the
13 amount of Labor Code § 226(e) penalties potentially available at trial—reflects the strength of the
14 Class' claims and the positioning of the action.

15 44. In my opinion, significant risk exists with respect to the amount of PAGA penalties that
16 a Court may award given their discretionary nature. Under PAGA, Courts can exercise their discretion
17 to reduce the amount of penalties awarded or if Labor Code § 226.3 applies even award \$0.00 in
18 PAGA penalties. Lab. Code § 226.3 ("In enforcing this section, the Labor Commissioner shall take
19 into consideration whether the violation was inadvertent, and in his or her discretion, may decide not
20 to penalize an employer for a first violation when that violation was due to a clerical error or
21 inadvertent mistake."). Indeed, one recent court in San Diego awarded \$5.00 per pay period in a
22 decision that subsequently affirmed on appeal. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
23 504 (2018) (post-trial award of \$5 per violation).). A similar methodology here would result in
24 penalties of approximately \$50,320.00 (10,064 pay periods x \$5.00 per pay period *i.e.* 5% of the total
25 exposure).

26 45. I believed that that significant risk existed that the Court would exercise its discretion
27 to severely reduce the amount of available PAGA penalties for several reasons. First, Defendant
28 presented evidence during the informal discovery process that the error resulted when the Company's

1 Sage payroll system was updated in early 2020. Second, in light of the somewhat sympathetic nature
2 of the factual basis for the Defendant’s alleged violation of the Labor Code and the fact that the Class
3 could also recover full statutory penalties under Labor Code § 226(e), it is possible that the Court
4 could find an additional award of civil penalties or a significant award would be unjust, arbitrary, and
5 oppressive or confiscatory. Under these circumstances, a court can award a lesser amount of PAGA
6 penalties or no PAGA penalties at all if Labor Code § 226.3 applies. Third, as discussed above, it is
7 well known that companies within Defendant’s industry are struggling financially and the imposition
8 of significant PAGA penalties on top of the available Labor Code § 226(e) penalties would only serve
9 to exacerbate the supply chain stress impacting the industry at the time of the mediation.

10 **THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER**
11 **LITIGATION**

12 46. Given the complexity and unsettled nature of many of the issues in this case—
13 including the split of authority regarding what type of PAGA penalties apply to wage statement
14 claims—it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An
15 appeal would result in further delay for the Class Members who are waiting for a resolution in this
16 matter.

17 47. There are always risks attendant to wage and hour cases given the evolving nature of
18 such claims. For instance, although until recently it was generally well-established that employees
19 could recover both wage statement and waiting time penalties based upon an employer’s failure to
20 provide lawful meal/rest periods, a recent appellate case held that such penalties are not recoverable.
21 *Id.*; *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019). While Plaintiff was
22 confident that she would prevail based upon present law with respect to at least some of his claims, the
23 plaintiff in *Naranjo* likely believed they would have as well and actually did on their derivative claims
24 prior to the California Court of Appeal’s recent ruling. As the *Naranjo* court explained, “[a]lthough
25 wage and hour lawsuits are ubiquitous in state courts, most settle before trial. Consequently, our
26 appellate courts have not had much opportunity to publish decisions addressing the derivative wage
27 claim issue[s].” *Naranjo*, 40 Cal. App. 5th at 468. While Plaintiff acknowledges that the California
28 Supreme Court reversed the appellate court decision in *Naranjo*, it is nevertheless emblematic of the

1 inherent risk associated with litigating wage and hour cases and the fact that a new appellate decision
2 can dramatically alter the strength of the employees' claims at any time.

3 48. Further, given the uncertain financial environment that presently exists within the nut
4 industry in California, it now always possible that even if Plaintiff and the Class prevailed at trial and
5 on appeal that the company could cease operations. Under those circumstances, the resulting judgment
6 would only amount to a paper or pyrrhic victory.

7 **THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL**

8 49. This case has not been certified to be tried as a class action. While there is strong
9 evidence to support certification, certification is always hard fought and subject to judicial discretion.
10 Moreover, in class actions, decertification is always a possibility. In attempting to certify a class, the
11 Parties would need to conduct deposition of the named Plaintiff and of the person most knowledgeable
12 regarding Defendant's wage statement policies. There is a risk for both sides as to what these
13 depositions will reveal and whether they will support class certification.

14 **THE AMOUNT OFFERED IN SETTLEMENT**

15 50. It was very difficult for the Parties to reach this Settlement.

16 51. Defendant asserted that Plaintiffs' claims were worth very little, if any, money and
17 doubted that Plaintiff could certify the proposed Class or prevail on the claims. Nevertheless, I believe
18 that Plaintiff and my firm catalyzed significant non-monetary relief through the modification of
19 Defendant's policies and practices with respect to the issuance of itemized wage statements and also
20 obtained meaningful monetary relief on behalf of the Class.

21 52. While admittedly it is difficult to quantify the exact value of the non-monetary relief, I
22 determined that the half of the up to \$4,000 penalty available under Labor Code § 226(e) reflecting six
23 (6) months of penalties provides a fair method of evaluating the non-monetary relief catalyzed through
24 the prosecution of this action as it represents the value assigned by the California Legislature for
25 violations of Labor Code § 226(a). Given that Labor Code § 226(e) provides for a penalty of \$50 per
26 initial violation and \$100 per subsequent violation up to \$4,000 per employee for the issuance of
27 inaccurate wage statements, when limiting the non-monetary relief to \$2,000.00 or half of the
28 maximum enjoyed by the Class, the settlement provides for at least \$1,142,000 in non-monetary relief

(571 class members x \$2,000.00 per class member in non-monetary relief). The consideration of the non-monetary benefits already enjoyed by the State and general public is significant because “[r]elief under PAGA is designed primarily to benefit the general public, not the party bringing the action” or the employees whose individual claims were never at issue. *Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 81 (2020).

53. To allow the Court to analyze the reasonableness of the Parties Proposed Settlement, I analyzed the maximum possible value of the claims at issue in this action. I determined the maximum exposure on the claims to be between \$1,997,350.00 and \$3,506,950.00 depending upon how the split of authority regarding PAGA penalties for Labor Code § 226 is resolved:

TOTAL DAMAGES IF PAGA PENALTIES ARE ASSESSED UNDER LABOR CODE SECTION 2699

Labor Code section 226(e) Penalties:

571 pay periods assessed at the initial violation rate x \$50 per pay period (\$28,550.00) + 9,493 pay period assessed at the subsequent violation rate x \$100 subsequent violation per pay period rate (\$949,300.00) = **\$977,850.00**

Labor Code § 2699 Penalties:

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 10,064 pay periods x \$100 = **\$1,006,400.00**

Total Damages: \$1,984,250.00 = \$990,950.00 (226(e) penalties) + \$1,006,400.00 (PAGA penalties calculated at the Labor Code section 2699 \$100 per pay period rate).

TOTAL DAMAGES IF PAGA PENALTIES ARE ASSESSED UNDER LABOR CODE SECTION 226.3

Labor Code section 226(e) Penalties:

571 pay periods assessed at the initial violation rate x \$50 per pay period (\$28,550.00) + 9,493 pay period assessed at the subsequent violation rate x \$100 subsequent violation per pay period rate (\$949,300.00) = **\$977,850.00**

Labor Code section 226.3 Penalties:

\$250 per employee penalty for initial violations x 10,064 violations = **\$2,516,000.00**

Total Damages: \$3,493,850.00 = \$990,950.00 (226(e) penalties) + \$2,516,000.00 (PAGA penalties calculated at the Labor Code section 226.3 rate \$250 per employee per violation).

54. In my opinion, the likely verdict amounts ranged from as little as \$0.00 to \$1,028,170 (\$977,850 in Labor Code § 226(e) penalties + \$50,320 in PAGA penalties (10,064 pay periods x \$5.00 per pay period). The monetary value of the Parties’ Proposed Settlement itself represents between 15.8% and 27.89% of the maximum possible exposure ((\$553,520.00 monetary settlement /

1 \$1,984,250.00 (if 2699 PAGA penalties apply) or \$3,493,850.00 (if 226.3 PAGA penalties apply)
2 depending upon whether or not Labor Code § 2699 or Labor Code § 226.3 penalties apply. When
3 taking into account the non-monetary relief obtained by Plaintiff and Class Counsel and the relief
4 obtained by the Class through the prosecution of this action, the Proposed Settlement represents
5 between 48.52% and 85.44% of the maximum exposure ((\$553,520.00 monetary settlement +
6 \$1,142,000.00 in non-monetary relief already enjoyed by the Class and State of California)
7 /\$1,984,250.00 (if 2699 PAGA penalties apply) or \$3,493,850.00 (if 226.3 PAGA penalties apply)
8 depending upon whether Labor Code section 2699 or 226.3 penalties are available under PAGA.

9 55. In evaluating the reasonableness of the settlement offers, Class Counsel considered
10 both their own experience with class wage statement claims and PAGA settlements as well as similar
11 settlements obtained by other firms. In the instant action, Plaintiff negotiated a monetary gross
12 settlement of \$969.38 per employee (\$553,520.00/571 Class Members) or \$55.00 per pay period
13 (\$553,520.00 gross settlement amount/10,064 pay periods) and an estimated net settlement amount of
14 \$580.58 (\$331,513.33/571 Class Members) or \$32.94 per pay period (\$331,513.33 estimated net
15 settlement amount /10,064 pay periods).

16 56. In my opinion, the amounts recovered by the Class under the terms of the Proposed
17 Settlement compare favorably with the many class action settlements approved by other courts. My
18 understanding is based in part on the below cases:

- 19 ■ *Raya v. Amazon*, Case No. 3:15-cv-02005 (N.D. Cal. Feb. 15, 2017) (approving a Class
20 Action and PAGA settlement of wage statement claims in the gross amount of \$600,000 for
21 28,247 employees that amounted to a gross settlement of \$1.05 per wage statement and a net
22 settlement of \$0.64 per wage statement);
- 21 ■ *Pelton vs. Panda Restaurant Group*, 2 :10-cv-08458 (C.D. Cal. Mar. 2012) (approving a
22 Class Action and PAGA settlement of wage statement claims that amounted to a gross
23 settlement of \$4.77 per wage statement and a net settlement of \$1.19 per wage statement);
- 23 ■ *Smith v. Wal-mart*, Case No. 3:16-cv-02832, (Doc. 69 Jan. 2, 2018) (preliminarily approved
24 class action settlement on January 2, 2018 for 110,000 employees resulting in a gross
25 settlement of \$14.54 per employee and an estimated net settlement of \$10.45 per employee);
- 24 ■ *Brown v. CVS Pharm., Inc.*, 2017 U.S. Dist. LEXIS 182309, at *1 (C.D.Cal. Apr. 24, 2017)
25 (approving a class action and PAGA settlement of wage statement claims that amounted to a
26 net settlement of \$12.32 per wage statement);
- 26 ■ *McKenzie v. Fed. Express Corp.*, 2012 U.S. Dist. LEXIS 103666, at *2 (C.D.Cal. July 2,
27 2012) (approving a class action and PAGA settlement of wage statement claims that
28 amounted to a net settlement of \$10.99 per wage statement).

1 57. Further, the average estimated net settlement award of \$580.58 recovered in this class
2 action is consistent with and exceeds the amounts awarded in other wage and hour class actions with
3 significantly broader releases. *See e.g., Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776,
4 at *4 (E.D. Cal. June 11, 2012) (approving a proposed wage and hour class action settlement for
5 unpaid overtime wages, non-compliant meal periods, unreimbursed business expenses, inaccurate
6 itemized wage statements of a reversionary settlement with a maximum settlement amount of
7 \$518,245 and a potential 45% reversion on a claims-made settlement for 3,327 Class Members with
8 an average settlement award of \$198.70); *Williams v. Centerplate, Inc.*, 2013 U.S. Dist. LEXIS
9 121307, at *4 (S.D.Cal. Aug. 26, 2013) (finally approving a wage and hour class action settlement for
10 non-compliant meal periods, non-compliant rest periods, unpaid overtime, unreimbursed business
11 expenses, waiting time penalties, inaccurate itemized wage statements for 9,394 class members in the
12 gross amount of \$650,000 with a reversion to the defendant of \$128,136.86, a net settlement fund of
13 \$239,363.14 and an average award of \$108.22 to the 2,212 class members who submitted claims).

14 58. After weighing the benefits and risks associated with each of the claims in light of the
15 factual challenges as well as Defendant's' potential defenses, I determined the amount offered in
16 settlement was fair and reasonable considering the risks and the likelihood of success on the merits.

17 **THE EXPERIENCE AND VIEWS OF COUNSEL**

18 59. I have extensive experience with litigating class and representative wage-and-hour
19 cases and have served as Class and/or PAGA Counsel in numerous wage and hour class action.

20 60. The Parties' Counsel, operating at arm's length, weighed the strengths and risks of this
21 case, and unanimously share the view that this is a fair and reasonable settlement in light of the nature
22 of the claims, realistic risk adjusted value of damages, complexities of the case and the state of the
23 law, the uncertainties of class certification and litigation.

24 61. After factoring in the risks explained herein, I believe that the proposed Settlement is
25 fair and reasonable.

26 ///

27 ///

28 ///

1 **THE PROPOSED PLAN OF ALLOCATION IS FAIR AND REASONABLE**

2 62. Plans of allocation are subject to the same standard of review as class action
3 settlements; they must be “fair, adequate and reasonable.” *See e.g., Officers for Justice v. Civil Service*
4 *Comm’n*, 688 F.2d 615, 624–625, 629–630 (9th Cir. 1982).

5 63. Here, the Net Settlement Amount shall be allocated among Settlement Class members
6 on a pro-rata basis based upon the number of pay periods worked during the Class Period. The
7 proposed method of allocation is fair and reasonable and reflects the strength and value of the claims
8 at issue in this action.

9 64. The proposed PAGA allocation reflects the fact that Defendant modified their policies
10 shortly after the initiation of this action, the significant monetary relief recovered through the
11 Proposed Settlement, the non-monetary relief enjoyed by the Class/State of California, and the fact
12 that even if Plaintiff prevailed on his PAGA claim the Court could still theoretically award \$0.00 in
13 PAGA penalties under Labor Code § 226.3.

14 **THE PROPOSED NOTICE FAIRLY APPRISES THE CLASS MEMBERS OF THE**
15 **TERMS OF THE SETTLEMENT AND OF THE CLASS MEMBERS’ RIGHTS**
16 **UNDER THE SETTLEMENT**

17 65. The standard for determining the adequacy of notice is whether the notice has “a
18 reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Sup. Ct.*,
19 50 Cal. App. 3d 960, 974 (1975). With respect to the contents of the Notice of Settlement, the “notice
20 given to the class must fairly apprise the class members of the terms of the proposed compromise and
21 of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan Ass’n*, 48
22 Cal.App.3d 134, 151–52 (1975).

23 66. Class Members will receive a detailed notice that provides class members with
24 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
25 their own remedies, or object to the Settlement.

26 67. The proposed notice will be distributed in English and Spanish.

27 68. In my opinion, the Court should approve the proposed Notice of Settlement because it
28 describes the proposed Settlement with enough specificity to allow Class Members to make an
informed choice regarding whether to participate.

**THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR
SETTLEMENT PURPOSES**

69. Plaintiff seeks to represent a clear and distinct class of Defendant's employees defined as all individuals who received a wage statement from Defendant Grower Direct Nut Company, Inc. in California from April 5, 2020 to December 2, 2021.

70. In the case at hand, Plaintiff contends that the proposed Class Members suffered the same injuries, in the same manner: whether Defendant violated Labor Code § 226(a)(6) and (8) by issuing itemized wage statements that did not contain the inclusive dates of the period for which the employee is paid and the address of the legal entity that is the employer.

71. Plaintiff contends that the proposed Class Members suffered the same injuries, in the same manner: they were issued itemized wage statements that did not include the start date of the employer and paper itemized wage statements that did not include the address of the legal entity that is the employer. Because the Proposed Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, Plaintiff contends that the questions of fact and claims are the same for each member of the class. Plaintiff contends that she will be able to establish that common questions of law and fact predominate.

72. I have reviewed Plaintiff's wage statements. Plaintiff received itemized wage statements that did not include the start date of the employer and paper itemized wage statements that did not include the address of the legal entity that is the employer.

73. In my opinion, Plaintiff Garcia is capable of and has fairly represented and adequately protected the interests of the proposed Class Members. Plaintiff interests in this litigation are coextensive with the interests of the proposed Class. Plaintiff Garcia assisted in gathering facts and information about the case and assisting in the factual development of the case. During the course of this litigation Defendant produced copies of Plaintiff's wage statements. I have reviewed Plaintiff's wage statements and understand that he received numerous statements that did not include the start date of the pay period as well as the name and address of the employer in violation of Labor Code § 226. In my opinion, Plaintiff Garcia incurred the same type of alleged damages as the Class. Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. This demonstrates her commitment to

bringing about the best possible results for the benefit of the proposed Class. Therefore, in my opinion, Plaintiff has and will adequately represent the proposed Settlement Class Members.

74. In my opinion, class certification appropriate because almost all of the issues of law and fact will be identical for each proposed Class Member. In the event that each person is required to bring an individual action against Defendants, the common factual and legal issues would have to be litigated and tried repeatedly. In this case, the methods of proof to be used will be similar across the class. As such, in my opinion, a class action will avoid duplication of legal and judicial resources that would result if the class is not certified.

ATTORNEYS FEES' AND COSTS

75. I am familiar with the contingent fee market throughout California, particularly as it pertains to complex employment, wage and hour, and class action litigation. During this litigation, I litigated this case without receiving any payment for my services or reimbursement of my firm's costs incurred for the benefit of the state of California and the aggrieved employees.

76. On behalf of my firm, I have negotiated numerous contingency fee agreements with plaintiffs, both as individuals and as representatives in class action suits. Many of those agreements provided that counsel will receive a fee that is between 33.33% and 50% of any recovery that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred out of the recovery amount.

77. Winston Law Group, P.C. has never been paid any money for attorneys' fees in this case and has advanced costs.

78. There are always risks attendant to billing cases on a contingency basis. It is not a foregone conclusion that every case taken on a contingency fee basis will result in a recovery or that the attorneys' fees recovered will actually compensate my firm for the amount of time expended in an action. Moreover, even when successful, a class action contingency law firm may only receive a small percentage of the amount of attorneys' fees incurred during the prosecution of a case. Where plaintiffs' counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm regularly undertakes. There is also always the possibility that the Plaintiff will not prevail and Class Counsel will not receive any compensation for its services and/or that the Defendant will declare

1 bankruptcy or lack the assets necessary to satisfy any judgment obtained against it. This has happened
2 in a case handled by Winston Law Group, P.C. For instance, in *Chamberlain vs. United Airlines, Inc.*,
3 Case No.: 3-18-cv-05246-RS, my firm spent more than 62.90 hours on the case and did not receive
4 any compensation for the \$28,934.00 in attorney time expended on the case.

5 79. When awarding attorneys' fees, courts have discretion to choose among two different
6 methods for calculating a reasonable attorney's fees award: 1) the common fund approach; or 2) the
7 lodestar approach *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016) ("The choice of a
8 fee calculation method is generally one within the discretion of the trial court, the goal under either the
9 percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their
10 efforts.") In *Laffitte*, the California Supreme Court held that "[t]he recognized advantages of the
11 percentage method – including relative ease of calculation, alignment of incentives between counsel
12 and the class, a better approximation of market conditions in a contingency case, and the
13 encouragement it provides counsel **to seek an early settlement and avoid unnecessarily prolonging**
14 **litigation** – convince us the percentage method is a valuable tool that should not be denied by our trial
15 courts." *Id.* (emphasis added). Similarly the Ninth Circuit has found that counsel should not "receive
16 a lesser fee for settling a case quickly." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).

17 80. California Courts have consistently found that "fee awards in class actions average
18 around one-third of the recovery" regardless of "whether the percentage method or the lodestar
19 method is used. *Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)("[F]ee awards in
20 class actions average around one-third of the recovery" regardless of "whether the percentage
21 method or the lodestar method is used.") (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn.
22 11 (2008); *McCrary v. Elations Co., LLC*, No. EDCV 13-0242 JGB (SPx), 2016 U.S. Dist. LEXIS
23 24050, at *2 (C.D. Cal. Feb. 25, 2016) ("most fee awards based on either a lodestar or percentage
24 calculation are 33%."); *McClellan v. Chase Home Fin. LLC*, No. SACV 12-1331-JGB (JEMx) 2015
25 U.S. Dist. LEXIS 118005, at *20 (C.D.Cal. Aug. 31, 2015) (explaining that while the attorneys' fee
26 award that approximated 32% of all sums paid under the Settlement Agreement was reasonable after
27 citing numerous other cases finding that an award of 33% of the common fund was common in class
28 actions.). In reaching its decision in *McClellan*, the court recognized that "California district courts

1 routinely award attorneys' fees in the range of 30-40% in class actions that result in the recovery of a
2 common fund under \$10 million.” *McClellan, LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist.
3 LEXIS 118005, at *20 (*quoting Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015
4 U.S. Dist. LEXIS 104704, 2015 WL 4730176, at *8 (E.D. Cal. Aug. 10, 2015) and *citing In re Mego*
5 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *Romero v. Producers Dairy Foods, Inc.*, No.
6 05-0484, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007)
7 (awarding 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages
8 after explaining that “fee awards in class actions average around one-third of the recovery.”); *Stuart v.*
9 *RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that a
10 fee award of 1/3 of the settlement was “well within the range of percentages which courts have upheld
11 as reasonable in other class action lawsuits.”); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-
12 IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of
13 the common fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist.
14 LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding a 33.34% fee on a \$5,800,000 settlement).

15 81. Based upon my experience, I believe that a common fund award is appropriate as my
16 firm’s efficient and diligent litigation of this case as well as our skill in obtaining a settlement that
17 exceeds the maximum value of the penalties and that also reflects the fact that attorneys’ fees were
18 recoverable as well.

19 **PLAINTIFF’S REQUESTED SERVICE AWARD IS REASONABLE**

20 82. Plaintiff is requesting a service award in an amount of \$7,500.00, to recognize her time
21 and efforts on behalf of the Class, including time spent in discussing legal issues with Class Counsel,
22 assisting with the factual development of the case, and participating in the mediation via phone during
23 the COVID-19 pandemic.

24 83. The service award requested by the Plaintiff represents approximately 1.35% of the
25 gross settlement value (*i.e.* \$7,500.00 / \$553,520.00=1.36%) of the case. The requested Service Award
26 falls well within the range of incentive payments typically awarded to Class Representatives in similar
27 class actions and should be approved.

1 84. In my opinion, the requested service award falls well within the range of incentive
2 payments typically awarded to Class Representatives in similar class actions. My opinion is based not
3 only upon my experience, but also my knowledge of other cases including, but not limited to *Bond v.*
4 *Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30,
5 2011) (approving \$11,250 service award to each of the two class representatives wage and hour class
6 action) and *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving
7 service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class
8 action).

9 85. Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided
10 checks issued as part of this settlement be paid to “nonprofit organizations or foundations to support
11 projects that will benefit the class or similarly situated persons, or that promote the law consistent with
12 the objectives and purposes of the underlying cause of action, to child advocacy programs, or to
13 nonprofit organizations providing civil legal services to the indigent.” In accordance with Code of
14 Civ. Proc. § 384, the Parties propose to designate CASA of Stanislaus County as the proposed *cy pres*
15 beneficiary. Neither I nor my firm have any interest and/or involvement with the governance of CASA
16 of Stanislaus County.

17 86. The Proposed Settlement was submitted to the LWDA. Attached hereto as **Exhibit 3** is
18 a true and correct copy of the email confirmation received from the LWDA for the submission of the
19 Proposed Settlement.

20
21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct.

23 Executed this 5th day of August 2022, in Los Angeles, California.
24

25 
26 DAVID S. WINSTON

Exhibit 1

WINSTON LAW GROUP, P.C.

David S. Winston, Esq. CA Bar No. 301667

david@employmentlitigators.com

1880 Century Park East, Suite 511

Los Angeles, California 90067

Phone: (424) 288-4568

Fax: (424) 532-4062

Attorneys for Plaintiff and the Proposed Class

HENDERSON HATFIELD, APC

Stacy L. Henderson, Esq. CA Bar No. 222216

stacy@hendersonhatfield.com

578 N Wilma Ave Ste A

Ripon, CA 95366

Phone: (209) 599-5003

Fax: (209) 599-5008

Attorneys for Defendant Grower Direct Nut
Company, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

MARIA GARCIA, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

vs.

GROWER DIRECT NUT COMPANY, INC., a
California Corporation, and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO.: CV-21-005425

[Assigned for All Purposes to the Hon. John D
Freeland, Dept. 23]

**CLASS ACTION SETTLEMENT
AGREEMENT**

1 This Class Action Settlement is made and entered into between Plaintiff Maria Garcia
2 (“Plaintiff”) on behalf of herself, as a representative of the Settlement Class, and as a Private Attorney
3 General on behalf of the State of California under PAGA (as defined below) and Defendant Grower
4 Direct Nut Company, Inc. (“Defendant”), (Plaintiff and Defendant hereinafter are collectively referred
5 to as the “Parties”). This is a non-reversionary checks-mailed settlement and Defendant (as defined
6 below) shall pay 100% of the Gross Settlement Amount (as defined below). This Settlement Agreement
7 is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e),
8 and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide
9 basis subject to the following terms and conditions. As detailed below, in the event the Court does not
10 enter an order granting final approval of the Class Settlement, as defined below, or the conditions
11 precedent are not met for any reason, this Settlement is void and of no force or effect whatsoever.

12 **I. DEFINITIONS**

13 As used in this Settlement Agreement, the following terms shall have the meanings specified
14 below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined
15 below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into
16 this definition section.

17 **A. Action.** “Action” shall mean the above captioned action titled *MARIA GARCIA, an*
18 *individual, on behalf of herself and others similarly situated, PLAINTIFF v. GROWER DIRECT NUT*
19 *COMPANY, INC., a California Corporation, and DOES 1 thru 50, inclusive, Defendants*, Stanislaus
20 County Superior Court, Case No. CV-21-005425.

21 **B. Administrative Expenses.** “Administrative Expenses” shall include all costs and
22 expenses associated with and paid to the third-party Settlement Administrator, which are anticipated not
23 to exceed \$15,000.00.

24 **C. Aggrieved Employee.** “Aggrieved Employee” shall mean all individuals who were
25 employed by Grower Direct Nut Company, Inc. in California as an employee and who received an
26 itemized wage statement at any point from April 5, 2020 to December 2, 2021. There are approximately
27 571 Aggrieved Employees.
28

1 **D. Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean
2 Class Counsel’s attorney fees and expenses as set forth in Section IV.G.

3 **E. Class Counsel.** “Class Counsel” shall mean David S. Winston of Winston Law Group,
4 P.C.

5 **F. Class, Settlement Class, Class Member or Settlement Class Member.** “Class,”
6 “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean all individuals who
7 received a wage statement from Defendant Grower Direct Nut Company, Inc. in California from April
8 5, 2020 to December 2, 2021. There are approximately 571 Class Members.

9 **G. Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action Settlement
10 and Hearing Date for Court Approval, as set forth in the form of **Exhibit A** attached hereto, or as
11 otherwise approved by the Court, which is to be mailed to Class Members.

12 **H. Class Participants.** “Class Participants” shall mean any and all Class Members who do
13 not timely Opt-Out of the Class Settlement.

14 **I. Class Period or Covered Period.** “Class Period” or “Covered Period” shall mean the
15 period from April 5, 2020 to December 2, 2021.

16 **J. Class Representative.** “Class Representative” shall mean Plaintiff Maria Garcia.

17 **K. Class Settlement.** “Class Settlement” shall mean the settlement embodied in this
18 Settlement Agreement, which is subject to Court approval.

19 **L. Court.** “Court” shall mean the Stanislaus County Superior Court.

20 **M. Defendant, Releasees, or Released Parties.** “Defendant,” “Releasees,” or “Released
21 Parties” shall mean and refer to Grower Direct Nut Company, Inc. and all of its current, former and future
22 parents, subsidiaries, dbas, divisions, related entities, joint ventures and affiliated entities, and each of
23 their respective current, former and future owners, officers, directors, shareholders, stockholders,
24 executives, partners, employees, co-employers, joint employers, investors, members, principles,
25 subsidiaries, affiliates, insurers, reinsurers, managers, agents, heirs, spouses, associates, representatives,
26 administrators, fiduciaries, trustees, accountants, auditors, company-sponsored employee benefit plans
27 of any nature, predecessors, successors, assigns, attorneys, and all other legal entities affiliated with the
28 foregoing, including, but not limited to, Aaron Martella and Lucio Salazar, individually and in their

representative capacities.

N. Defense Counsel. “Defense Counsel,” Defendant’s Counsel” or “Releasees’ Counsel” shall mean Stacy L. Henderson of Henderson Hatfield, APC.

O. Effective Date. “Effective Date” shall mean the first business day following the last of the following occurrences: (i) if no Class Member timely and properly intervenes, files a timely motion to vacate the Judgment under, or objects to the Settlement, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member timely intervenes or files a timely motion to vacate the judgment or objects to the Settlement, then sixty-one (61) days following the date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a Class Member timely intervenes or files a motion to vacate the Judgment, or objects to the Settlement, and files a timely appeal, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.

P. Final Approval and Fairness Hearing. “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

Q. Gross Settlement Amount. “Gross Settlement Amount” or “GSA” is the agreed upon non-reversionary settlement amount totaling \$553,520.00, which represents the non-reversionary amount payable in this Settlement by Defendant and includes attorneys’ fees and costs, costs of settlement administration by the Settlement Administrator, the Service Payment to the Class Representative of up to \$7,500.00, payment in the total amount of \$20,000 for Private Attorneys General Act (“PAGA”) penalties 75% or \$15,000.00 of which will be paid to the Labor & Workforce Development Agency (“LWDA”), and 25% or \$5,000.00 will be included in the amount allocated to the Settlement Class and in the Net Settlement Amount, and the amounts payable to the Settlement Class.

R. Hearing on Preliminary Approval. “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

S. Individual Settlement Amount. “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each Class Participant.

1 **T. Plaintiff.** “Plaintiff” shall mean the named Plaintiff Maria Garcia

2 **U. Released Claims.** “Claims” or “Released Claims” shall mean any and all causes of action
3 or claims that were asserted in the September 30, 2021 Complaint or November 17, 2021 First Amended
4 Complaint based upon Defendant’s alleged failure to provide legally compliant wage statements in
5 violation of California Labor Code sections 226, 226.3, and PAGA Penalties based on alleged underlying
6 wage statement violations pursuant to Labor Code sections 2698 *et seq.*, as well as any other related
7 claims that have been or could have been raised regarding or relating to the adequacy of wage statements
8 issued by Defendant/Releasees in California during the Class Period. The Released claims do not include
9 any claims for workers compensation, unemployment, or disability benefits or any other claims that
10 cannot legally be waived.

11 **V. Service Award.** “Service Award” shall mean the amount approved by the Court, not to
12 exceed \$7,500.00, to be paid to the Class Representative in recognition of her efforts and time on behalf
13 of the Class and as consideration for a full, general, and comprehensive release and Civil Code section
14 1542 waiver of the Class Representative’s Released Claims

15 **W. Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement
16 Amount minus Settlement Administration Expenses, Class Attorney Fees and Expenses, 75% of the
17 PAGA Payment payable to the LWDA, and the Service Award.

18 **X. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly request
19 exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than
20 the Response Deadline.

21 **Y. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor
22 Code sections 2698, *et seq.*, the PAGA, that the Parties have agreed is a reasonable sum to be paid in
23 settlement of the PAGA claims included in the Action, which is \$20,000.00 for PAGA penalties 75% or
24 \$15,000.00 of which will be paid to the LWDA, and 25% or \$5,000.00 will be included in the amount
25 allocated to the Settlement Class. Class Counsel shall give timely notice of the Class Settlement to the
26 LWDA under Labor Code section 2699(1)(2). Since PAGA does not permit employees to opt-out, any
27 Class Member who opts out shall still receive their pro-rata share of the PAGA penalties. *Baumann v.*
28 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) (explaining that PAGA “has no notice

1 requirement for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”);
2 *accord Arias v. Sup. Ct.* 46 Cal.4th 969, 986-987 (2009); *Williams v. Sup. Ct.*, 3 Cal.5th 531, 547, fn. 4
3 (2017) (explaining that aggrieved employees “do not own a personal claim for PAGA civil
4 penalties...and whatever personal claims the absent employees might have for relief are not at stake”).

5 **Z. Parties.** “Parties” shall mean Plaintiff and Defendant.

6 **AA. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
7 which the Court enters an order preliminarily approving this Settlement Agreement.

8 **BB. Response Deadline.** “Response Deadline” shall mean the date forty-five (45) days
9 following the date on which the Settlement Administrator first mails Class Notice to the Settlement Class
10 Members.

11 **CC. Settlement.** “Settlement” shall mean the settlement between the Parties, which is
12 memorialized in this Settlement Agreement and subject to approval by the Court.

13 **DD. Settlement Administrator.** “Settlement Administrator” shall mean ILYM Group, Inc.
14 (or another administrator to be agreed by the parties) who will be responsible for administration of the
15 Settlement and related matters.

16 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

17 **A. Plaintiff’s Claims and Procedural History.** Plaintiff alleges that Defendant failed to
18 provide accurate itemized wage statements to Plaintiff, the Class, and the Aggrieved Employees that
19 include the start date of the pay period as well as the name and address of the employer in violation of
20 Labor Code § 226. On September 30, 2020, Plaintiff filed a PAGA Notice with the LWDA and also filed
21 a Class Action Complaint in Stanislaus County Superior Court alleging violations of Labor Code § 226.
22 The Parties mediated the matter with well-respected third-party neutral John Harris, Esq. on May 2, 2022.
23 The Parties reached a settlement at the Mediation on April 14, 2022 with significant assistance from the
24 Mediator. At all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at
25 arm’s length.

26 **B. Discovery, Investigation, and Research.** In advance of the Mediation and the
27 submission of the Preliminary Approval Papers, Class Counsel conducted a detailed investigation of the
28 Settlement Class’ putative claims. This discovery and investigation among other things, information

1 about: (a) the number of Class Members/Aggrieved Employees (571), the number of pay periods at issue
2 (10,064); (b) investigation into the viability of class treatment of the claims asserted in the Action; (c)
3 analysis of potential class-wide damages, including information sufficient to understand Defendant's
4 potential defenses to Plaintiff and the Settlement Class Members' claims; (d) research of the applicable
5 law with respect to the claims asserted in the Complaint and the potential defenses thereto; (e) review
6 and analysis of information provided by Defendant about its relevant practices, and (f) examined a sample
7 of 10 exemplar Class Member wage statements following the change in policy.

8 The Parties agree that the above-described investigation and evaluation, as well as discovery and
9 the information exchanged during the settlement negotiations, are more than sufficient to assess the
10 merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis. The
11 Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims
12 of the Class Representative and of Defendant's defenses to them.

13 **C. Benefits of Class Settlement.** The extensive informal discovery conducted in this matter
14 have been adequate to give the Class Representative and Class Counsel a sound understanding of the
15 merits of their positions and to evaluate the worth of the claims of the Settlement Class. The informal
16 discovery conducted in this Action and the information exchanged by the Parties through discovery and
17 settlement discussions are sufficient to reliably assess the merits of the Parties' respective positions and
18 to compromise the issues on a fair and equitable basis.

19 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions
20 asserted in the Action have merit. Class Counsel has diligently pursued an investigation of Plaintiff's
21 claims against Defendant and Releasees. Based on their own independent investigation and evaluation,
22 Class Counsel is of the opinion that settlement with Defendant and Releasees for the consideration and
23 on the terms set forth in this Settlement is fair, reasonable, and adequate, and is in the best interest of the
24 Settlement Class in light of all known facts and circumstances and the various factual and legal defenses
25 asserted by Defendant.

26 Plaintiff and Class Counsel also recognize and acknowledge the expense and delay of continued
27 lengthy proceedings necessary to prosecute the Action against Defendant through trial and through
28 appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of

1 continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such
2 litigation. Plaintiff is mindful of the potential challenges and possible defenses to the claims alleged in
3 the Action.

4 Plaintiff and Class Counsel believe that the Settlement set forth in this Settlement Agreement
5 confers substantial benefits upon Plaintiff and the Settlement Class Members and that an independent
6 review of this Settlement Agreement by the Court in the approval process will confirm this conclusion.
7 Based on their own independent investigation and evaluation, Class Counsel has determined that the
8 Settlement set forth in the Settlement Agreement is in the best interests of Plaintiff and the Settlement
9 Class Members.

10 **D. Defendant's Denials of Wrongdoing and Liability.** Defendant has denied and continues
11 to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the Action.
12 Defendant has expressly denied and continues to deny all charges of intentional or knowing wrongdoing
13 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the Action.
14 Defendant contends that there is a good faith dispute as to whether it intentionally or knowingly failed to
15 comply in good faith with California's law related to the issuance of itemized wage statements, that no
16 Class Member or Aggrieved Employee was injured, and it has dealt legally and fairly with Plaintiff and
17 Settlement Class Members. Defendant further denies that, for any purpose other than settling this Action,
18 these claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded
19 that further proceedings in the Action would be protracted and expensive and that it is desirable that the
20 Action be fully and finally settled in the manner and upon the terms and conditions set forth in this
21 Settlement Agreement in order to dispose of burdensome and protracted litigation, to permit the operation
22 of Defendant's business without further expensive litigation and the distraction and diversion of its
23 personnel with respect to matters at issue in the Action. Defendant has also taken into account the
24 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant
25 has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner
26 and upon the terms and conditions set forth in this Settlement Agreement.

27 **E. Intent of the Class Settlement.** The Class Settlement set forth herein intends to achieve
28 the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action;

(3) discharge of Defendant and Released Parties from liability for any and all of the Released Claims and any and all claims arising out of the Action.

III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

A. The Settlement Class. For the purposes of this Settlement Agreement, the Parties agree to conditional class certification of the Settlement Class. Defendant's counsel believes this conditional certification is appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns.

B. Appointment of Class Counsel. For purposes of this Settlement Agreement and subject to the Court's approval, the Parties hereby agree to the appointment of Class Counsel as counsel for the Class and the effectuation of the Class Settlement pursuant to this Settlement Agreement.

IV. CLASS SETTLEMENT CONSIDERATION

A. Settlement Amount. The Parties agree to settle this Action for the Gross Settlement Amount of \$553,520.00. There shall be no reversion to Defendant or Releasees. The Gross Settlement Amount and other actions and forbearances taken by Defendant and Releasees shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class Attorneys' Fees and Expenses, (c) Settlement Administrative Expenses, (d) the Service Award, (e) PAGA Payment to the LWDA, and (f) any other obligation of Defendant and Releasees under this Settlement Agreement. After the Court issues an order preliminarily approving this Class Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class Settlement.

B. Non-Monetary Relief and Catalyzation of Policy Change. Although Defendant denies any liability of any kind associated with the claims alleged in the Lawsuit and denies any liability or intentional wrongdoing with regard to the alleged failure to provide itemized wage statements that complied with Labor Code section 226, Defendant acknowledges and represents that due to the initiation of this lawsuit and/or filing of Plaintiff's PAGA Notice it: 1) updated its direct deposit and paper wage statements to include the start date of each pay period; and 2) updated its itemized paper wage statements

1 to include the address of the legal entity that is the employer.

2 **C. Service Award for Class Representative.** The Class Representative may petition the
3 Court to approve a Service Award in an amount up to \$7,500.00 for her efforts on behalf of the Settlement
4 Class in this Action, including assisting in the investigation and consulting with Class Counsel and
5 providing crucial documents to Class Counsel. Defendant and Releasees shall not oppose any request by
6 Class Representative for a Service Award in such an amount. Any Service Award approved by the Court
7 shall be paid to the Class Representative from the Gross Settlement Amount and shall be in addition to
8 any distribution to which she may otherwise be entitled as a Settlement Class Member and Aggrieved
9 Employee. The Service Award shall not be considered wages, and the Settlement Administrator shall
10 issue the Class Representative an IRS Form 1099 reflecting such payment. The Class Representative
11 shall be responsible for the payment of any and all taxes with respect to her Service Award and shall hold
12 Defendant and Releasees harmless and indemnify Defendant and Releasees from any and all liability
13 with regard thereto.

14 **D. Payment to Class Participants.** Each Class Participant shall be eligible to receive
15 payment of the Individual Settlement Amount and shall receive a portion of the Net Settlement Amount
16 on a pro rata basis calculated by dividing the total number of pay periods worked by an individual Class
17 Participant during the Class Period by the total number of pay periods worked by all Class Participants
18 during the Class Period. As to a Class Member who opts out of the Settlement by submitting a valid
19 Request for Exclusion (as defined below) and/or whose Notice of Settlement is determined to be
20 undeliverable after reasonable re-mailing efforts made by the Settlement Administrator, the Class
21 Member's Total Settlement Payment will not be paid to the Class Member and will be added to the Net
22 Settlement Amount and re-distributed among eligible Participating Class Members on a pro-rata basis.

23 **E. Tax Treatment and Payment.** Because this is a settlement for penalties only, the Parties
24 agree that 100% of each settlement amount shall constitute penalties to be reported on an IRS form 1099
25 basis. The Parties understand that Plaintiff and the Class Participants who receive any payment pursuant
26 to this Settlement Agreement shall be solely responsible for any and all other individual tax obligations
27 associated with this Class Settlement and Defendant shall have no responsibility for state or federal
28 income tax payments on the Individual Settlement Payments.

1 **F. No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts
2 paid under the Class Settlement will modify any previously credited hours, days, or weeks of service
3 under any employee benefit plan, policy or bonus program sponsored by Defendant or Releasees. Such
4 amounts will not form the basis for additional contributions to, benefits under, or any other monetary
5 entitlement under Defendant or Releasees' sponsored benefit plans, policies, or bonus programs. The
6 payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently,
7 or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the
8 purposes of any of Defendant or Releasees' benefit plan, policy, or bonus program. Defendant and
9 Releasees retain the right to modify the language of its benefits plans, policies and bonus programs to
10 effect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not
11 for "pay periods" or any similar measuring term as defined by applicable plans, policies and bonus
12 programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional
13 contributions or benefits are not required by this Settlement Agreement. Defendant and Releasees do not
14 consider the Class Settlement payments "compensation" for purposes of determining eligibility for, or
15 benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by
16 Defendant or Releasees.

17 **G. Class Counsels' Attorneys' Fees and Expenses.** As part of the motion for final approval
18 of the Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees
19 and Expenses with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*,
20 \$184,506.67) and the award of costs and expenses of up to an additional \$10,000.00. Defendant and
21 Releasees agree not to object to any such fee, cost, or expense application in those amounts. As a
22 condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected
23 by this Section. Any Class Attorneys' Fees and Expenses awarded by the Court shall be paid from the
24 Gross Settlement Amount in arriving at the Net Settlement Amount and shall not constitute payment to
25 any Settlement Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees
26 or Expenses or if the Court's award of Class Attorney Fees or Expenses is less than set forth above, the
27 Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses
28 awarded and such amounts shall be distributed to the Class.

1 The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work
2 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent
3 the Settlement Class through the date of this Settlement Agreement; (b) all work to be performed and
4 costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be
5 performed and costs and expenses, if any, incurred in connection with administering the Class Settlement
6 through the Effective Date and dismissal of the Action, with prejudice; and (d) may be based on the
7 Catalyst Theory, Common Fund Doctrine, and/or other basis.

8 **V. SETTLEMENT ADMINISTRATION EXPENSES AND FUNDING**

9 **A. The Settlement Administrator's Costs and Expenses.** All costs and expenses due to
10 the Settlement Administrator in connection with its administration of the Class Settlement, including, but
11 not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out
12 requests and objections, and calculating, administering, and distributing Individual Settlement Amounts
13 to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall
14 not exceed \$15,000.00.

15 **B. Payments by Defendant.** Defendant will make the payments comprising the Gross
16 Settlement Amount in accordance with the following payment schedule: \$20,000.00 by the earlier of
17 September 1, 2022 or 10 days after preliminary approval, \$20,000.00 by October 1, 2022, \$20,000.00 by
18 November 1, 2022, \$20,000.00 by December 1, 2022, \$20,000.00 by January 1, 2023, \$20,000.00 by
19 February 1, 2023, \$20,000.00 by March 1, 2023, \$20,000.00 by April 1, 2023, and the remaining
20 \$393,520.00 by May 1, 2023.

21 **VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

22 **A. The Settlement Administrator.** The Settlement Administrator will be responsible for
23 mailing the Class Notice (**Exhibit A**) to Settlement Class Members, handling inquiries from Settlement
24 Class Members concerning the Class Notice, determination of Individual Settlement Amounts,
25 maintaining the settlement funds in an appropriate account, preparing, administering and distributing
26 Individual Settlement Amounts to Class Participants, issuing a final report and performing such other
27 duties as the Parties may direct.

28 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and

1 Defense Counsel summarizing any relevant information and updating them as to the number of validated
2 and timely objections and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel
3 and Defense Counsel, via e-mail, date-stamped copies of the original Opt-Outs and objections no later
4 than five (5) days after their receipt. The Settlement Administrator will provide Class Counsel with proof
5 of mailing of the Class Notice, without listing individual Class Member names which the Settlement
6 Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's
7 Final Approval and Fairness Hearing.

8 No later than fourteen (14) days prior to the Final Approval and Fairness Hearing, the Settlement
9 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
10 information regarding (a) the total amount of final Individual Settlement Amounts of each Class
11 Participant (b) the number of Class Participants to receive such payments, and (c) the final number of
12 Opt-Outs and objections.

13 Administrative Expenses are estimated not to exceed \$15,000.00. Prior to the calculation and
14 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total
15 Administrative Expenses through the conclusion of their services and such actual amount will be
16 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
17 Amounts. If the cost of administration is more than \$15,000.00, the additional cost will come from the
18 Gross Settlement Amount.

19 **B. Notice to Settlement Class Members.** Notice shall be provided to Settlement Class
20 Members in the following manner: Within 30 days after the Preliminary Approval Date, Defendant shall
21 provide the Settlement Administrator with a list of Class Members containing names, social security
22 numbers, last-known addresses and phone numbers, and the total number of pay periods worked by each
23 Class Member during the Class Period (the "Database"). The Database shall be marked "Confidential –
24 Settlement Administrator's Eyes Only." Class Counsel shall not receive a copy of this list.

25 Within 45 days following the Preliminary Approval Date, the Settlement Administrator shall
26 determine the number of pay periods for each Settlement Class Member and will perform a national
27 change of address search for each Class Member, update the results based upon the search results,
28 populate the data for the estimated Individual Settlement Amount for each Settlement Class Member,

1 and send each Settlement Class Member the Class Notice via first-class, United States mail. The Class
2 Notice shall also contain an easily understood statement alerting the Class Members that, unless they
3 elect to Opt-Out of the Class Settlement, the Settlement Class Member is releasing and waiving all
4 Released Claims against the Released Parties.

5 The Class Notice will inform Settlement Class Members of his/her estimated Individual
6 Settlement Amount share. Class Members may dispute Defendant's records of the number of pay periods
7 worked during the Class Period by submitting information to the Settlement Administrator no later than
8 45 days after being mailed the Class Notice by the Settlement Administrator, which is the defined
9 "Response Deadline." The Settlement Administrator will jointly work with Plaintiff and Defendant to
10 resolve disputes in good faith. If Plaintiff and Defendant cannot agree over the pay periods to be credited,
11 the Settlement Administrator shall make the final decision based on the information presented by the
12 Settlement Class Member and Defendant.

13 **C. Opt-Out Procedure.** Settlement Class Members who do not timely Opt-Out of the Class
14 Settlement will be deemed to participate in the Class Settlement and shall become a Class Participant
15 without having to submit a claim form or take any other action. In order to Opt-Out of the Class
16 Settlement, the Settlement Class Member must submit a letter or postcard to the Settlement Administrator
17 by the Response Deadline. The Opt-Out request must state the Settlement Class Member's name and
18 address for correspondence and identity verification purposes, signature, and should state words to the
19 effect of, "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN GARCIA VS.
20 GROWER DIRECT NUT COMPANY, INC." Absent a good cause finding by the Court, any Opt-Out
21 request that is not postmarked by the Response Deadline will be invalid. In the event that, prior to the
22 Response Deadline, any Class Notice mailed to a Settlement Class Member is returned as having been
23 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search
24 and seek an address correction for such Settlement Class Member(s), and a second Class Notice will be
25 sent to any new or different address obtained. Such Settlement Class Member(s) shall have an additional
26 14 days in which to Opt-Out.

27 If the Settlement Administrator determines that an Opt-Out request returned by a Settlement Class
28 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a

1 deficiency letter to that Settlement Class Member identifying the problem. If a Settlement Class Member
2 submits both a dispute and an Opt-Out request, the Settlement Administrator shall make reasonable
3 attempts to clarify as if the Opt-Out request were deficient. If the Class Member fails to cure the
4 deficiency, the Opt-Out request shall be disregarded and the claim will be paid, and the Class Member
5 will become bound by the judgment. Those Settlement Class Members who do not timely Opt-Out will
6 be bound by the Release of Released Claims set forth in this Settlement Agreement.

7 **D. Objections.** The Class Notice shall inform the Settlement Class Members of their right
8 to object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class
9 Settlement should submit a written objection to the Settlement Administrator no later than the Response
10 Deadline. All Class Member objections must include the Class Member's name, current address for
11 correspondence and identity verification purposes, provide each specific reason in support of the
12 objection, be signed by the Class Member, and be postmarked by the Response Deadline. Class Members
13 need not include legal arguments for their written objections to be considered. If an objector also wishes
14 to appear at the Final Approval and Fairness Hearing, in person or through an attorney, he or she need
15 not file a notice of intention to appear at the same time as the objection is filed. Filing the notice of
16 intention to appear is not necessary to preserve the right to appear at the Final Approval and Fairness
17 Hearing. Absent Class Members need not file anything with the Court. The Settlement Administrator
18 will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense
19 Counsel. Settlement Class Members may appear at the Final Approval Hearing, either in person (to the
20 extent permitted during the COVID-19 pandemic), through a remote method authorized by the Court, or
21 through a lawyer retained at their own expense. If a Class Member submits both a Request for Exclusion
22 and a written objection, the Settlement Administrator shall attempt to contact and determine whether the
23 Class Member would like to withdraw either the Request for Exclusion or the objection. If the Class
24 Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot contact
25 a Class Member who submits both a Request for Exclusion and an objection, the Request for Exclusion
26 shall be valid, and it shall be presumed that the Class Member does not wish to participate in the
27 Settlement.

28 **E. Settlement Administrator Declaration.** At least 30 days prior to the Final Approval and

Fairness Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

A. Allocation of the Gross Settlement Amount. The claims of all Settlement Class Members are settled for the Gross Settlement Amount of \$553,520.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$15,000.00;
2. The Class Attorney Fees and Expenses not to exceed \$184,506.67 in fees and expenses not to exceed \$10,000.00;
3. PAGA Payment of \$20,000.00, of which \$15,000.00 shall be paid to the LWDA;
4. Service Award, not to exceed \$7,500.00; and
5. The Net Settlement Amount, estimated to be \$331,513.33.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Section VII.A.1. – 4. prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in Section VII.A.1. – 4.

B. Calculation of the Individual Settlement Amounts. Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount payable to each Class Participant will be calculated as follows: the Settlement Administrator shall divide the Net Settlement Amount by the total number of wage statements issued to the Class Members during the Class Period in order to determine the amount each Class Member is entitled to for each pay period s/he was employed by Defendant during the Class Period (“Pay Period Amount”). The Settlement Administrator will multiply the Pay Period Amount by the total number of pay periods worked by each Class Member during the Class Period to arrive at the Individual Settlement

1 Amount for each Class Member. As to a Class Member who opts out of the Settlement by submitting a
2 valid Request for Exclusion (as defined below) and/or whose Notice of Settlement is determined to be
3 undeliverable after reasonable re-mailing efforts made by the Settlement Administrator, the Class
4 Member's Individual Settlement Payment will not be paid to the Class Member and will be added to the
5 Net Settlement Amount and re-distributed among eligible Participating Class Members on a pro-rata
6 basis.

7 Defendant and Releasees shall have no responsibility for deciding the validity of the Individual
8 Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no
9 involvement in or responsibility for the determination or payment of Employee's Taxes, and shall have
10 no liability for any errors made with respect to such Employee's Taxes. Plaintiff and Class Participants
11 shall be solely responsible for any and all tax obligation associated with their respective Individual
12 Settlement Amounts.

13 **C. Time for Payment of Attorney Fees and Expenses to Class Counsel.** The Settlement
14 Administrator shall distribute to Class Counsel the attorneys' fees and expenses approved by the Court
15 to Class Counsel no later than 15 days after Defendant deposits the entirety of the Gross Settlement
16 Amount with the Settlement Administrator.

17 **D. Time for Payment of Service Award to Class Representative.** The Settlement
18 Administrator shall distribute to the Class Representative the Service Award approved by the Court no
19 later than 15 days after Defendant deposits the entirety of the Gross Settlement Amount with the
20 Settlement Administrator.

21 **E. Time for Payment of PAGA Payment to the LWDA.** The Settlement Administrator
22 shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no
23 later than 15 days after Defendant deposits the entirety of the Gross Settlement Amount with the
24 Settlement Administrator.

25 **F. Time for Payment of Individual Settlement Amounts.** The Settlement Administrator
26 shall mail the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the
27 last-known address no later than 15 days after the Defendant deposits the entirety of the Gross Settlement
28 Amount with the Settlement Administrator. Under no circumstances shall the Settlement Administrator

1 distribute checks to Class Participants until all Individual Settlement Amounts have been considered,
2 calculated, and accounted for, and all of the remaining monetary obligations have been calculated and
3 accounted for. Within 200 days of the distribution of the Individual Settlement Amounts to the Class
4 Participants, the Settlement Administrator shall provide to Class Counsel a declaration of payment. In
5 the event that any Class Participant is deceased, payment shall be made payable to the estate of that
6 Settlement Class Member and delivered to the executor or administrator of that estate, unless the
7 Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101,
8 in which case payment shall be made to the affiant(s) or declarant(s).

9 **G. Non-Cashed Settlement Checks.** Any funds associated with checks that have not been
10 cashed within 180 days, will become void and the Individual Settlement Amount associated with the un-
11 cashed check shall be paid out in accordance with Civil Code section 384 to a *cy pres* agreed to by the
12 Parties as required by Code of Civil Procedure section 384 or any other method of distribution consistent
13 with Code of Civil Procedure section 384. The *cy pres* recipient shall be CASA of Stanislaus County or
14 other mutually agreeable *cy pres* recipient should the Court not approve the Parties' proposed beneficiary
15 and/or as otherwise consistent with Code of Civil Procedure section 384.

16 **VIII. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

17 **A. Non-Approval of the Settlement Agreement.** In the event that the Court fails to approve
18 the Settlement under the terms agreed to by the Parties, or if the appropriate appellate court fails to uphold
19 or affirm the Settlement or if the Settlement Agreement is otherwise terminated: (1) the Settlement
20 Agreement shall have no force and effect and the Parties shall be restored to their respective positions
21 prior to entering into it, and no Party shall be bound by any of the terms of the Settlement Agreement;
22 (2) Defendant and Releasees shall have no obligation to make any payments to the Settlement Class
23 Members, Plaintiff, or Plaintiff's counsel; (4) all amounts deposited by Defendant with the Settlement
24 Administrator shall immediately be returned to Defendant; (4) any preliminary approval order, final
25 approval order or judgment, shall be vacated; and (5) the Settlement Agreement and all negotiations,
26 statements, proceedings and data relating thereto shall be deemed confidential mediation settlement
27 communications and not subject to disclosure for any purpose in any proceeding. However, the Parties
28 shall first make good faith efforts to resolve any issues raised by the Court during the approval process.

1 **B. Parties' Rights to Void Class Settlement.** In the event that more than 5% of the Class
2 Members submit elections to opt-out of the settlement, Defendant will have the right to rescind and
3 terminate the Settlement without prejudice to its pre-settlement positions and defenses in the litigation.
4 Should the threshold for opt-outs be exceeded, the Settlement Administrator shall notify lead counsel for
5 all parties via email immediately. Should only 1 party choose to void the Class Settlement under this
6 paragraph, such party shall be responsible for all Settlement Administrator fees and costs actually
7 incurred. Should the Parties agree to void the Class Settlement under this paragraph, the Parties shall be
8 equally pay all Settlement Administrator fees and costs actually incurred.

9 **C. Invalidation.** Invalidation of any material portion of the Class Settlement shall invalidate
10 the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that the
11 remaining provisions of the Class Settlement are to remain in full force and effect.

12 **D. Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class
13 Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to continue
14 funding the Gross Settlement Amount or take any further actions required by this Settlement Agreement
15 until all appeal rights have been exhausted by operation of law. Any outstanding payments due from
16 Defendant under the terms' of the payment plan shall be made within 60 days of the resolution of any
17 appeal of the Settlement or Judgment.

18 **IX. MOTION FOR COURT APPROVAL**

19 **A. Preliminary Approval.** Class Counsel will submit this Settlement Agreement to the
20 Court along with a Motion for Preliminary Approval of the Class Settlement.

21 **B. Final Approval.** The Final Approval and Fairness Hearing shall be held before the Court
22 unless the Court orders otherwise. At the Final Approval and Fairness Hearing, Plaintiff shall move the
23 Court for the entry of the final order certifying the Class for settlement purposes only and approving the
24 Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of
25 California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action
26 consistent with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel
27 and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the
28 Court's determination. The Parties will comply with the Court's Procedural Guidelines for final Approval

of Class Action Settlements and with Code of Civ. Proc. § 384 that the Parties participate in a compliance hearing regarding the distribution of funds unless the Court takes such a hearing off-calendar after reviewing the Settlement Administrator's declaration of compliance or pursuant to another Court order.

X. RELEASES AND WAIVERS

A. Release of Claims by Settlement Class. Upon the Effective Date, each Settlement Class Member who has not submitted a timely Opt-Out request, and Plaintiff, each releases the Defendant and the Released Parties, and each of them, of and from any and all Released Claims during the Class Period.

It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims.

Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

B. Release of Claims by Plaintiff.

Plaintiff, on behalf of herself and her heirs, executors, administrators, and representatives, shall and does hereby forever releases, discharges and agrees to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, penalties, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which they may now have or may have after the signing of this Settlement Agreement, arising out of or in any way connected with her employment with Defendant and Releasees including, the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the

1 Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the California
2 Constitution; (o) the California Labor Code; (p) the California Government Code; (q) the California Civil
3 Code; (r) the California Wage Orders, and (s) any and all other federal, state and local statutes,
4 ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory,
5 common law or regulatory grounds as well as any other claims based on theories of wrongful or
6 constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory
7 estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other
8 federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief,
9 no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
10 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and
11 suffering, penalties and attorney fees and costs, and Plaintiff hereby forever releases, discharges and
12 agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and
13 costs arising out of the matters released in this Settlement Agreement.

14 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of Section
15 1542, which provides as follows:

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

19 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and
20 benefits she may have under Section 1542 as well as any other statutes or common law principles of a
21 similar effect. Plaintiff may hereafter discover facts in addition to or different from those which she now
22 knows or believes to be true with respect to the subject matter of all the claims referenced herein, but
23 stipulates and agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally and
24 forever settle and release any and all claims against the Defendant and the Released Parties, known or
25 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been
26 asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such
27 different or additional facts.

28 The Parties also wish to disclose to the Court for transparency purposes that Plaintiff is receiving
a settlement of \$32,000.00 in association with her separately pled individual misclassification claims

1 pending before this Court. The Parties represent and warrant that Class Counsel is not receiving any
2 attorneys' fees nor cost reimbursement in association with the Plaintiff's individual settlement.

3 **XI. DUTIES OF THE PARTIES**

4 **A. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
5 accomplish and implement the terms of this Settlement Agreement. Such cooperation shall include, but
6 not be limited to, execution of such other documents and the taking of such other actions as may
7 reasonably be necessary to fulfill the terms of this Class Settlement unless the Court denies the Proposed
8 Settlement with prejudice. The Parties shall use their best efforts, including all efforts contemplated by
9 this Settlement Agreement and any other efforts that may become necessary by court order or otherwise,
10 to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after
11 execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and Defense
12 Counsel, shall take all necessary and reasonable steps to secure the Court's approval of this Settlement
13 Agreement. The Parties will work together to make any non-material modifications of the Settlement
14 requested by the Court to obtain approval of the Parties' Proposed Settlement.

15 **B. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of
16 the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use their
17 best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral
18 attack, provided, however, that Defendant shall not be obligated to formally appear in the Action unless
19 the Court otherwise requires, nor file any motion or appeal.

20 **C. Duties Prior to Court Approval.** Class Counsel shall promptly submit this Settlement
21 Agreement with the Court for preliminary approval and determination by the Court as to its fairness,
22 adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, Class Counsel
23 shall apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
24 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the
25 Settlement Class Members, approving as to form and content the proposed Class Notice attached hereto
26 as **Exhibit A**, respectively, and directing the mailing of the Class Notice to Settlement Class Members.

27 **XII. MISCELLANEOUS PROVISIONS**

28 **A. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for

1 matters expressly represented herein, the facts in relation to the dispute and all claims released by the
2 terms of this Settlement Agreement may turn out to be other than or different from the facts now known
3 by each party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore
4 expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this
5 Settlement Agreement shall be in all respects effective and binding despite such difference.

6 **B. No Prior Assignments.** The Parties represent, covenant, and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
8 any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein
9 released and discharged except as set forth herein.

10 **C. Non-Admission.** Nothing in this Settlement Agreement shall be construed as or deemed
11 to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other
12 Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or
13 wrongdoing toward each other or any other person. Each of the Parties has entered into this Settlement
14 Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience,
15 expenses, and contingencies. Nothing herein shall constitute any admission by Defendant or Releasees
16 of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall
17 constitute any admission by Defendant regarding the merits of the Claims in this Action. Nothing herein
18 shall constitute an admission by Defendant that the Action was properly brought as a class or
19 representative action other than for settlement purposes. To the contrary, Defendant has denied and
20 continues to deny each and every material factual allegation and all Claims. To this end, the Class
21 Settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts
22 performed or documents executed pursuant to or in furtherance of this Settlement Agreement or the Class
23 Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any
24 wrongdoing or liability on the part of Defendant or Releasees or of the truth of any of the factual
25 allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used
26 as, an admission or evidence of any fault or omission on the part of Defendant or Releasees in any civil,
27 criminal or administrative proceeding in any court, administrative agency or other tribunal.

28 **D. Confidentiality, Media, or Press Inquiries.** Other than information necessary to secure

1 Court approval of this settlement, Plaintiff and Class Counsel agree to keep confidential all matters
2 relative to this Settlement, including the terms of the Settlement and the facts and circumstances leading
3 up to it. If asked about the disputes between the Parties, Plaintiff and Class Counsel shall provide no
4 other statement than “the matter has been resolved” or “the matter has settled.” Plaintiff and Class
5 Counsel may, however, discuss the terms of this Settlement with their spouses, attorneys, financial
6 advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual receiving
7 information about the terms of this Settlement shall be informed that the terms of this Settlement are
8 confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement.
9 Nothing in this Agreement shall prohibit Class Counsel from communicating with Class Members or
10 prohibit Class Counsel from disclosing this Settlement in declarations and/or other evidence submitted
11 to Courts concerning their qualifications to serve as Class Counsel.

12 **E. Non-Retaliation.** Defendant understands and acknowledges that it has a legal obligation
13 not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or
14 elects to Opt-Out of the Class Settlement. Defendant will refer any inquiries regarding this Class
15 Settlement to the Settlement Administrator or Class Counsel and will not discourage Settlement Class
16 Members who are employees, directly or indirectly, from participating in the Settlement or encourage or
17 advise Settlement Class Members to opt out or object to the Class Settlement.

18 **F. Construction.** The Parties hereto agree that the terms and conditions of this Settlement
19 Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the
20 Parties and that this Settlement Agreement is not to be construed in favor of or against any party by
21 reason of the extent to which any party or its counsel participated in the drafting of this Settlement
22 Agreement. If any of the dates in the Settlement Agreement fall on a weekend, bank or court holiday,
23 the time to act shall be extended to the next business day.

24 **G. Governing Law.** This Settlement Agreement is intended to and shall be governed by the
25 laws of the State of California, without regard to conflict of law principles, in all respects, including
26 execution, interpretation, performance, and enforcement.

27 **H. Notices.** Except for Settlement Class Member notices required to be made by the
28 Settlement Administrator, any and all notices or other communications required or permitted under this

1 Settlement Agreement shall be in writing and shall be sufficiently given if delivered in person to the party
2 or their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed
3 to the address of the party appearing in this Settlement Agreement.

4 **I. Captions and Interpretations.** Section titles or captions contained herein are inserted as
5 a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope
6 of this Settlement Agreement or any provision thereof.

7 **J. Modification.** This Settlement Agreement may not be changed, altered, or modified,
8 except in writing signed by the Parties and approved by the Court. This Settlement Agreement may not
9 be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

10 **K. Integration Clause.** This Settlement Agreement contains the entire agreement between
11 the Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, and
12 all prior or contemporaneous agreements, understandings, representations, and statements, whether oral
13 or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under
14 this Settlement Agreement may be waived except in writing as provided above.

15 **L. Successors and Assigns.** This Settlement Agreement shall be binding upon and inure to
16 the benefit of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out)
17 and their respective current, former and future parents, subsidiaries, dbas, divisions, related entities, joint
18 ventures and affiliated entities, and each of their respective current, former and future owners, officers,
19 directors, shareholders, stockholders, executives, partners, employees, co-employers, joint employers,
20 investors, members, principles, subsidiaries, affiliates, insurers, reinsurers, managers, agents, heirs,
21 spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors, company-
22 sponsored employee benefit plans of any nature, predecessors, successors, assigns, attorneys, and all
23 other legal entities affiliated with the foregoing.

24 **M. Corporate Signatories.** Any person executing this Settlement Agreement or any such
25 related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and
26 promises, for the benefit of all Parties hereto, that such person has been duly authorized by such
27 corporation or partnership to execute this Settlement Agreement or any such related document.

28 **N. Execution in Counterparts.** This Settlement Agreement shall become effective upon its

1 execution by all of the undersigned and may be executed electronically (such as via DocuSign). The
2 Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have
3 the same force and effect as if all Settling Parties had signed the same instrument.

4 **O. Code of Civ. Proc. Section 664.6.** This Settlement Agreement is enforceable pursuant to
5 California Code of Civil Procedure § 664.6.

6 **P. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this
7 Agreement, the prevailing party shall be entitled to recover his or her or its attorney fees and costs.

8 **Q. Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for
9 herein, each party shall bear his or her or its own attorney fees, costs, and expenses, taxable or otherwise,
10 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other
11 party to this Settlement Agreement.

12 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Settlement
13 Agreement on the date below their signatures or the signature of their representatives. The date of the
14 Settlement Agreement shall be the date of the latest signature.

15
16 Dated: July ___, 2022
17 08 / 03 / 2022



Maria Garcia as an Individual and Proposed Class
Representative

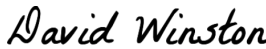
18
19 Dated: July ___, 2022

On behalf of Grower Direct Nut Company, Inc.
By: Aaron Martella
Its : President

20
21
22 **APPROVED AS TO FORM AND CONTENT:**

23
24 DATED: July ___, 2022
25 08 / 04 / 2022

WINSTON LAW GROUP, P.C.



By: DAVID S. WINSTON
Attorneys for Plaintiff and the Proposed
Settlement Class

1 execution by all of the undersigned and may be executed electronically (such as via Docusign). The
2 Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have
3 the same force and effect as if all Settling Parties had signed the same instrument.

4 **O. Code of Civ. Proc. Section 664.6.** This Settlement Agreement is enforceable pursuant to
5 California Code of Civil Procedure § 664.6.

6 **P. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this
7 Agreement, the prevailing party shall be entitled to recover his or her or its attorney fees and costs.

8 **Q. Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for
9 herein, each party shall bear his or her or its own attorney fees, costs, and expenses, taxable or otherwise,
10 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other
11 party to this Settlement Agreement.

12 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Settlement
13 Agreement on the date below their signatures or the signature of their representatives. The date of the
14 Settlement Agreement shall be the date of the latest signature.

15
16 Dated: July __, 2022

17 _____
18 Maria Garcia as an Individual and Proposed Class
Representative

19 Dated: July 27, 2022

20 _____
21 On behalf of Grower Direct Nut Company, Inc.
By: Aaron Martella
Its : President

22 **APPROVED AS TO FORM AND CONTENT:**

23
24 DATED: July __, 2022

WINSTON LAW GROUP, P.C.

25
26 By: _____
27 DAVID S. WINSTON
Attorneys for Plaintiff and the Proposed
Settlement Class

1 August 4,
2 DATED: July , 2022

HENDERSON HATFIELD
A Professional Corporation

By:



Stacy L. Henderson
Attorneys for Defendant Grower Direct Nut
Company, Inc.

Exhibit A

**PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

*This is **not** a solicitation from a lawyer. A court authorized this notice.*

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Maria Garcia vs. Grower Direct Nut Company, Inc.

Superior Court Of The State Of California, County Of Stanislaus Case No. CV-21-005425

If you were employed by Grower Direct Nut Company, Inc. (“Defendant”) in California as an employee and received an itemized wage statement at any point from April 5, 2020 to December 2, 2021, a proposed class action settlement related to the issuance of itemized wage statements may affect your rights and you may be entitled to money under the proposed Settlement.

You are **not** being sued. A court authorized this notice. This is **not** a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

- You are receiving this Notice because Defendant’s records show that you are in the proposed Settlement Class. Your estimated Net Settlement Award is [INSERT ESTIMATED NET SETTLEMENT AWARD]. Defendant’s records indicate that you worked [INSERT NUMBER OF PAY PERIODS WORKED DURING THE CLASS PERIOD PER DEFENDANT’S RECORDS] pay periods.
- Plaintiff alleges that Defendant issued itemized wage statements that did not include the start date of the pay period and that the wage statements issued to employees who received paper checks did not include the address of the legal entity that is the employer. Plaintiff also seeks related penalties under the Private Attorneys’ General Act of 2004 (“PAGA”).
- Defendant denies Plaintiff’s claims and asserts that it has complied with all of their legal obligations under the California Labor Code. The Settlement is not an admission of any wrongdoing, and the Court has not made any findings of liability.
- The Parties in this action disagree as to the probable outcome of the lawsuit with respect to liability and damages if it were not settled. Although Plaintiff believes her claims have merit, she recognizes that litigating is a risky proposition, and that she may not prevail on all or some of her claims. Likewise, while Defendant is confident that it has strong defenses to Plaintiff’s claims, it recognizes the risks, distractions, and costs involved with litigation. The Parties attended a mediation conference and, recognizing the risks and costs inherent in litigation, reached a proposed Settlement of the claims asserted in the lawsuit.
- On [INSERT PRELIMINARY APPROVAL DATE] the Court granted preliminary approval of the proposed Settlement. The Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.

- You have several options available to you:

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	<u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you <u>WILL</u> receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will give up any rights to sue Defendant separately regarding certain claims as described below in this Notice. Your estimated Settlement Award is [INSERT ESTIMATED NET SETTLEMENT AWARD] .
ASK TO BE EXCLUDED (OPT OUT)	If you timely request in writing to be excluded from the proposed Settlement, you <u>WILL NOT</u> receive a share of the Settlement proceeds, but you will keep any rights you may have to sue Defendant separately about the same legal claims in this lawsuit. Your written Request for Exclusion letter must be postmarked by [REDACTED], [REDACTED]. However, you will still be bound to the PAGA release of claims and still receive your portion of the aggrieved employees' \$5,000.00 in PAGA penalties as explained in more detail below.
OBJECT	You may object to the Settlement if you did not ask to be excluded from the Settlement. If you timely submit in writing an objection to the Settlement and the Settlement is nonetheless granted final approval, you <u>WILL</u> (i) receive a share of the Settlement proceeds and (ii) release legal claims against Defendant. Your written objection should be postmarked by [REDACTED], [REDACTED].

Your options are explained further in this Notice.

1. Why did I get this notice?

The Court has granted preliminary approval of the Settlement of the class action brought on behalf of all individuals who were employed by Grower Direct Nut Company, Inc. in California as an employee and who received an itemized wage statement at any point from April 5, 2020 to December 2, 2021. You have received this notice because Defendant's records indicate that you are a member of the Settlement Class ("Class Member").

2. What is this lawsuit about?

This action was filed on September 30, 2021. Plaintiff alleges that Defendant issued itemized wage statements that did not include the start date of the pay period and that the itemized wage statements issued to employees who received paper checks also did not include the address of the legal entity that is the employer. Defendant denies the allegations and contends that there is a good faith dispute as to

whether it violated the law and whether it intentionally or knowingly failed to comply with California law at all relevant times hereto.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties in this action disagree as to the probable outcome of the action with respect to liability and damages if it were not settled. Although Plaintiff believes her claims and that of the Settlement Class have merit, Plaintiff recognizes that litigating is a risky proposition, and that she may not have prevailed on all or some of his claims. Likewise, while Defendant is confident that it has strong defenses to Plaintiff's claims, it recognizes the risks, distractions, and costs involved with litigation. The Parties attended a mediation conference and, recognizing the risks and costs inherent in litigation, reached the proposed Settlement of the claims asserted in the lawsuit.

5. What are the terms of the proposed Settlement and how much will I receive?

The gross settlement amount is \$553,520.00. Under the proposed Settlement, the following amounts will be deducted before any payments are made to the Settlement Class, subject to final approval by the Court:

- Attorneys' Fees – up to \$184,506.67
- Reimbursement for Case Expenses – up to \$10,000.00
- Payments to the Labor & Workforce Development Agency for PAGA Penalties – \$20,000.00 (\$5,000 of the \$20,000.00 in PAGA Penalties will be distributed to the Settlement Class, as further explained below).
- Settlement Administration Expenses – up to \$15,000.00
- Service Payment to Class Representative: – up to \$7,500.00

After these deductions, approximately \$331,513.33 will be available for payment to the Settlement Class receiving this Notice as the Net Settlement Amount. Each Participating Class Member will share in the Net Settlement Amount on a pro rata basis based upon the number of pay periods worked relative to all Participating Class Members from April 5, 2020 to December 2, 2021. Class Counsel proposed this distribution to reflect the valuation of each of the potential claims at issue in this lawsuit.

6. What do I have to do to receive a share of the proposed Settlement?

Nothing. If you wish to receive a payment under the terms of this proposed Settlement, you do **NOT** have to do anything. However, it is important that if your address has changed, you give your current mailing address to the Settlement Administrator in order to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved. You will be covered by the release summarized in Section 7, below.

7. What rights am I giving up?

As part of the Settlement, Plaintiff and each Class Member (excluding those who elect to exclude themselves from the class settlement) will fully release and discharge Grower Direct Nut Company, Inc. and all of its current, former and future parents, subsidiaries, dbas, divisions, related entities, joint ventures and affiliated entities, and each of their respective current, former and future owners, officers, directors, shareholders, stockholders, executives, partners, employees, co-employers, joint employers, investors, members, principles, subsidiaries, affiliates, insurers, reinsurers, managers, agents, heirs, spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored employee benefit plans of any nature, predecessors, successors, assigns, attorneys, and all other legal entities affiliated with the foregoing, including, but not limited to, Aaron Martella and Lucio Salazar, individually and in their representative capacities, and each of them, from any and all causes of action or claims that were asserted in the September 30, 2021 Complaint or November 17, 2021 First Amended Complaint based upon Defendant's alleged failure to provide legally compliant wage statements in violation of California Labor Code sections 226, 226.3, and PAGA Penalties based on alleged underlying wage statement violations pursuant to Labor Code sections 2698 *et seq.*, as well as any other related claims that have been or could have been raised regarding or relating to the adequacy of wage statements issued by Defendant/Releasees in California during the Class Period. The Released claims do not include any claims for workers compensation, unemployment, or disability benefits or any other claims that cannot legally be waived.

8. What are PAGA Penalties?

PAGA Penalties: \$20,000.00 of the Gross Settlement Amount is allocated to alleged PAGA civil penalties ("PAGA Penalties"), subject to Court approval. By law, 75% of the PAGA Penalties (*i.e.*, \$15,000.00) will be paid to the California Labor & Workforce Development Agency and 25% of the PAGA Penalties (*i.e.*, \$5,000.00) will be distributed to the Class Members (regardless of whether they seek to be excluded from the class settlement or not). Under PAGA, the State of California deputizes private attorney generals, such as Plaintiff, to prosecute employers for alleged violations of the Labor Code and all employees are entitled to share in the 25% of the penalties that would otherwise be recoverable by the State if it directly prosecuted Defendant for the alleged Labor Code violations.

9. What if I do not wish to be part of the proposed Settlement?

Anyone not wishing to participate in the proposed Settlement may exclude himself or herself ("opt out") by completing, signing and mailing a Request for Exclusion letter by [INSERT RESPONSE DEADLINE] to the Settlement Administrator as follows.

<u>Settlement Administrator:</u>
INSERT
INSERT
INSERT
INSERT

If your Request for Exclusion is postmarked after [INSERT RESPONSE DEADLINE], it will be rejected, and you will be a Participating Class Member and be bound by the Settlement terms.

To be valid, any Request for Exclusion should state that the Class Member wishes to be excluded from the Settlement and contain the following additional information: (1) the Class Member's name and current address; (2) the Class Member's signature; and (3) be postmarked no later than [INSERT RESPONSE DEADLINE]. The Request for Exclusion should be mailed to the Settlement Administrator at the address specified above.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this proposed Settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit.

10. What if I have an objection?

Any objection to the proposed Settlement must be in writing and mailed to the Settlement Administrator (identified above) by [REDACTED]. To be valid, any objection must: (1) contain the objecting Class Member's full name and current address; (2) provide each specific reason in support of the objection; (3) be signed by the Class Member; and (4) be postmarked no later than [INSERT RESPONSE DEADLINE].

11. What if the number of pay periods listed in Defendant's records are not accurate?

Defendant's records indicate that you worked [INSERT NUMBER OF PAY PERIODS WORKED DURING THE CLASS PERIOD PER DEFENDANT'S RECORDS]. If you believe that the number of pay periods that Defendant's records indicate that you worked from April 5, 2020 to December 2, 2021 are inaccurate, you may file a dispute with the Settlement Administrator and provide any supporting information by [INSERT RESPONSE DEADLINE].

12. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer, because Class Counsel is working on your behalf. However, if you want your own lawyer, including to make any objections to the proposed Settlement, you are free to hire one at your own expense. The below are Class Counsel and Defendant's Counsel in this case:

<u>Class Counsel:</u>	<u>Defendant's Counsel:</u>
WINSTON LAW GROUP, P.C. David S. Winston david@employmentlitigators.com 1880 Century Park East Suite 511 Los Angeles, CA 90067 Phone: (424) 288-4568 Fax: (424) 532-4062	HENDERSON HATFIELD, APC Stacy L. Henderson stacy@hendersonhatfield.com 578 N Wilma Ave Ste A Ripon, CA 95366 Phone: (209) 599-5003 Fax: (209) 599-5008

13. What happens next in the case?

The proposed Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 23 of the Stanislaus County Superior Court, 801 10th Street, Modesto, CA 95354 on [REDACTED], 2022, at

XX Pacific Time, to consider any objections and determine whether the Settlement should be finally approved as fair, reasonable, and adequate.

The Court will also be asked to approve the settlement of the PAGA claim, Class Counsel's request for attorneys' fees and expense reimbursement, the costs of settlement administration, and the proposed service award. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

14. How can I receive more information?

This Notice is a summary of the basic terms of the proposed Settlement. For the precise terms and conditions of the proposed Settlement, you may review the detailed "Joint Stipulation of Settlement" on file with the Clerk of the Court as well as the pleadings and other records in this litigation using the Stanislaus County Superior Court's online system at <https://stanportal.stanct.org/> by searching using either the Parties' names and/or case number. You may also ask Class Counsel to send you a copy of the Joint Stipulation of Settlement.

Please do not telephone the Court, the Office of the Clerk, or Defendants for information regarding this proposed Settlement.

WINSTON LAW GROUP, P.C.

David S. Winston, Esq. No. del Colegio de Abogados de California 301667

david@employmentlitigators.com

1880 Century Park East, Suite 511

Los Angeles, California 90067

Teléfono: (424) 288-4568

Fax: (424) 532-4062

Abogados de la Demandante y de la Clase Propuesta

HENDERSON HATFIELD, APC

Stacy L. Henderson, Esq. No. del Colegio de Abogados de California 222216

stacy@hendersonhatfield.com

578 N Wilma Ave Ste A

Ripon, CA 95366

Teléfono: (209) 599-5003

Fax: (209) 599-5008

Abogados del Demandado Grower Direct Nut Company, Inc.

TRIBUNAL SUPERIOR DEL ESTADO DE CALIFORNIA

DEL CONDADO DE STANISLAUS

MARIA GARCIA, una persona, en su nombre y
en representación de otras personas en situación
similar,

DEMANDANTE,

vs.

GROWER DIRECT NUT COMPANY, INC.,
una Sociedad de California, y PERSONAS
DESCONOCIDAS 1 a 50, inclusive,

DEMANDADOS.

NO. DE CASO: CV-21-005425

[Asignado para todos los fines al Honorable
John D Freeland, Departamento 23]

**ACUERDO DE ARREGLO DE
DEMANDA COLECTIVA**

Este Arreglo de Demanda Colectiva es suscrito por la Demandante María García (la “Demandante”) en su nombre, como representante de la Clase del Arreglo, y como un Procurador General Privado en representación del Estado de California conforme a la PAGA (tal como se define a continuación) y el Demandado Grower Direct Nut Company, Inc. (el “Demandado”), (a la Demandante y al Demandado nos referiremos de forma colectiva de aquí en más como las “Partes”). El presente es un arreglo no reversible, en el que se envían por correo los cheques, y en el que el Demandado (tal como se define a continuación) debe pagar el 100% de Monto Bruto del Arreglo (tal como se define a continuación). Este Acuerdo de Arreglo está sujeto a la aprobación del Tribunal, de conformidad con las Normas 3.769(c), (d) y (e) de las Normas Procesales de California, y se celebra con el único objetivo de intentar consumir el arreglo de la Acción Legal que cubre a toda la clase sujeto a los siguientes términos y condiciones. Tal como se detalla a continuación, si el Tribunal no dicta una orden que otorga la aprobación definitiva del Arreglo de la Clase, tal como se define a continuación, o por algún motivo no se dan las condiciones anteriores, este Arreglo será nulo y no tendrá ninguna validez ni efecto de ningún tipo.

I. DEFINICIONES

Tal como se utilizan en este Acuerdo de Arreglo, los siguientes términos tendrán los significados que se especifican a continuación. En la medida en que los términos o frases que se utilizan en este Acuerdo de Arreglo no se definan de forma específica a continuación, pero estén definidos en alguna otra sección de este Acuerdo de Arreglo, los mismos quedan incorporados por referencia a la presente sección de definiciones.

A. Acción Legal. “Acción Legal” significará la acción legal que se indica más arriba denominada *MARIA GARCIA, an individual, on behalf of herself and others similarly situated, PLAINTIFF v. GROWER DIRECT NUT COMPANY, INC., a California Corporation, and DOES 1 thru 50, inclusive, Defendants*, No. de Caso del Tribunal Superior del Condado de Stanislaus CV-21-005425.

B. Gastos Administrativos. “Gastos Administrativos” incluirá todos los costos y gastos relacionados y pagados al Administrador del Arreglo externo, que se estima que no superarán los \$15,000.00.

1 **C. Empleado Agraviado.** “Empleado Agraviado” significará todas las personas que
2 trabajaban en Grower Direct Nut Company, Inc. en California como un empleado y que recibieron un
3 recibo de sueldo detallado en cualquier momento del 5 de abril de 2020 al 2 de diciembre de 2021.
4 Existen aproximadamente 571 Empleados Agraviados.

5
6 **D. Honorarios y Gastos de los Abogados de la Clase.** “Honorarios y Gastos de los
7 Abogados de la Clase” significará los honorarios y gastos de los abogados de la Clase tal como se
8 establece en la Sección IV.G.

9 **E. Abogados de la Clase.** “Abogados de la Clase” significará David S. Winston de
10 Winston Law Group, P.C.

11 **F. Clase, Clase del Arreglo, Miembro de la Clase o Miembro de la Clase del Arreglo.**
12 “Clase”, “Clase del Arreglo”, “Miembro de la Clase” o “Miembro de la Clase del Arreglo” significará
13 todas las personas que recibieron un recibo de sueldo detallado del Demandado Grower Direct Nut
14 Company, Inc. en California del 5 de abril de 2020 al 2 de diciembre de 2021. Existen
15 aproximadamente 571 Miembros de la Clase.

16 **G. Aviso de la Clase.** “Aviso de la Clase” significará el Aviso de Propuesta de Arreglo de
17 Demanda Colectiva y Fecha de Audiencia para Aprobación del Tribunal, tal como se establece en el
18 formulario del **Anexo A** que se adjunta al presente, o como lo apruebe de otra manera el Tribunal, que
19 se enviará por correo a los Miembros de la Clase.

20 **H. Participantes de la Clase.** “Participantes de la Clase” significará todos y cada uno de
21 los Miembros de la Clase que no se Excluyen del Arreglo de la Clase dentro de los plazos previstos.

22 **I. Período de la Clase o Período Cubierto.** “Período de la Clase” o “Período Cubierto”
23 significará el período del 5 de abril de 2020 al 2 de diciembre de 2021.

24 **J. Representante de la Clase.** “Representante de la Clase” significará la Demandante
25 María García.

26 **K. Arreglo de la Clase.** “Arreglo de la Clase” significará el arreglo que se representa en
27 este Acuerdo de Arreglo, que está sujeto a la aprobación del Tribunal.

28 **L. Tribunal.** “Tribunal” significará el Tribunal Superior del Condado de Stanislaus.

1 **M. Demandado o Partes Eximidas.** “Demandado” o “Partes Eximidas” significará y hará
2 referencia a Grower Direct Nut Company, Inc. y a todas sus compañías matrices, subsidiarias, razones
3 sociales, divisiones, entidades relacionadas, empresas conjuntas y entidades afiliadas actuales,
4 anteriores y futuras, y a cada uno de sus respectivos propietarios, funcionarios, directores, accionistas,
5 ejecutivos, socios, empleados, coempleadores, empleadores conjuntos, inversionistas, miembros,
6 principales, subsidiarias, compañías afiliadas, compañías de seguro, compañías de reaseguro, gerentes,
7 agentes, herederos, cónyuges, asociados, representantes, administradores, fiduciarios, fideicomisarios,
8 contadores, auditores, planes de beneficios patrocinados por la compañía de toda naturaleza,
9 antecesores, sucesores, cesionarios, abogados, y toda otra entidad legal actual, anterior o futura
10 asociada con las anteriores incluyendo, de forma enunciativa y no limitativa, a Aaron Martella y Lucio
11 Salazar, de forma individual y en sus capacidades de representación.

12 **N. Abogados Defensores.** “Abogados Defensores”, “Abogados del Demandado” o
13 “Abogados de las Partes Eximidas” significará Stacy L. Henderson de Henderson Hatfield, APC.

14 **O. Fecha de Vigencia.** “Fecha de Vigencia” significará el primer día hábil después del
15 último día de los siguientes acontecimientos: (i) si, de forma adecuada y dentro de los plazos previstos,
16 ningún Miembro de la Clase interviene, presenta dentro de los plazos previstos una moción para
17 revocar la sentencia u objeta el Arreglo, la fecha en la que el Tribunal dicta una orden otorgando la
18 Aprobación Definitiva del Arreglo; (ii) si, dentro de los plazos previstos, un Miembro de la Clase
19 interviene o presenta una moción para revocar la sentencia u objeta el Arreglo, sesenta y un (61) días
20 después de la fecha en la que el Tribunal dicta una orden que otorga la aprobación definitiva, si no se
21 presenta ninguna apelación; o (iii) si, dentro de los plazos previstos, un Miembro de la Clase interviene
22 o presenta una moción para revocar la sentencia u objeta el Arreglo y presenta una apelación dentro de
23 los plazos previstos, la fecha de la resolución definitiva de la apelación (lo que incluye toda solicitud de
24 una nueva audiencia y/o petición de revisión de sentencia), que dé lugar a la aprobación judicial
25 definitiva y completa del Arreglo en su totalidad, sin que sea posible ninguna recusación adicional del
26 mismo.

27 **P. Aprobación Definitiva y Audiencia de Justicia.** “Aprobación Definitiva y Audiencia
28 de Justicia” significará la audiencia definitiva celebrada para establecer la equidad, razonabilidad y

1 adecuación del Arreglo de la Clase.

2 **Q. Monto Bruto del Arreglo.** “Monto Bruto del Arreglo” o “GSA”, por sus siglas en
3 inglés, es el monto no reversible acordado del arreglo de un total de \$553,520.00, que representa el
4 monto no reversible que corresponde pagar conforme a este Arreglo por parte del Demandado e incluye
5 los horarios de abogados y costos, los costos de la administración del arreglo por parte del
6 Administrador del Arreglo, el Pago por Servicios a la Representante de la Clase de un máximo de
7 \$7,500.00, el pago del monto total de \$20,000 por las sanciones de la Ley del Procurador General
8 Privado (“PAGA”, por sus siglas en inglés), 75% o \$15,000.00 de los cuales serán pagados a la
9 Agencia de Desarrollo de Trabajo y Fuerza Laboral (“LWDA”, por sus siglas en inglés), y 25% o
10 \$5,000.00 que serán incluidos en el monto asignado a la Clase del Arreglo y en el Monto Neto del
11 Arreglo, y los montos que corresponde pagar a la Clase del Arreglo.

12 **R. Audiencia sobre la Aprobación Preliminar.** “Audiencia sobre la Aprobación
13 Preliminar” significará la audiencia celebrada sobre la moción de aprobación preliminar del Arreglo de
14 la Clase.

15 **S. Monto Individual del Arreglo.** “Monto Individual del Arreglo” significará el monto
16 que se distribuye en última instancia a cada Participante de la Clase.

17 **T. Demandante.** “Demandante” significará la Demandante identificada María García

18 **U. Reclamos Eximidos.** “Reclamos” o “Reclamos Eximidos” significará toda causa de
19 acción legal o reclamo que se hizo valer en la Demanda del 30 de septiembre de 2021 o en la Primera
20 Demanda Enmendada del 17 de noviembre de 2021 en base al presunto hecho de que el Demandado no
21 proporcionó recibos de sueldo que cumplieran con la ley en infracción de las secciones 226 y 226.3 del
22 Código de Trabajo de California y Sanciones PAGA en base a las presuntas infracciones de recibos de
23 sueldo subyacentes de conformidad con las secciones 2698 y subsiguientes del Código de Trabajo,
24 además de todo otro reclamo relacionado que se planteó o que se podría haber planteado relacionado
25 con la adecuación de los recibos de sueldo emitidos por el Demandado/las Partes Eximidas en
26 California durante el Período de la Clase. Los reclamos eximidos no incluyen ningún reclamo de
27 beneficios de compensación al trabajador, desempleo o discapacidad ni ningún otro reclamo al que no
28 se pueda renunciar legalmente.

1 **V. Pago por Servicios.** “Pago por Servicios” significará el monto aprobado por el Tribunal,
2 que no puede superar \$7,500.00, que se pagará a la Representante de la Clase en reconocimiento por su
3 dedicación y tiempo en representación de la Clase y como contraprestación por una exención de
4 responsabilidad plena, general e integral y renuncia conforme a la sección 1542 del Código Civil de los
5 Reclamos Eximidos de la Representante de la Clase.

6 **W. Monto Neto del Arreglo.** “Monto Neto del Arreglo” significará el Monto Bruto del
7 Arreglo menos los Gastos de Administración del Arreglo, los Honorarios y Gastos de los Abogados de
8 la Clase, 75% del Pago PAGA que corresponde pagar a la LWDA, y el Pago por Servicios.

9 **X. Exclusión/Exclusiones.** “Exclusión/Exclusiones” significará toda persona que solicita
10 dentro de los plazos previstos y de forma válida su exclusión del Arreglo de la Clase de conformidad
11 con los términos del Aviso de la Clase y no más allá de la Fecha Límite de Respuesta.

12 **Y. Pago PAGA.** “Pago PAGA” significa las sanciones de conformidad con las secciones
13 2698 y subsiguientes del Código de Trabajo de California, la PAGA, que las Partes han acordado que
14 es una suma razonable que se pagará para el arreglo de los reclamos PAGA incluidos en la Acción
15 Legal, que es el monto de \$20,000.00 para sanciones PAGA, 75% o \$15,000.00 de los cuales se
16 pagarán a la LWDA, y 25% o \$5,000.00 se incluirán en el monto asignado a la Clase del Arreglo. Los
17 Abogados de la Clase entregarán un aviso oportuno del Arreglo de la Clase a la LWDA conforme a la
18 sección 2699(1)(2) del Código de Trabajo. Debido a que la PAGA no permite que los empleados se
19 excluyan, los Miembros de la Clase que se excluyen recibirán de todas maneras su parte prorrateada de
20 las sanciones PAGA. *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014)
21 (explica que la PAGA “no incluye un requisito de aviso para los empleados agraviados no identificados
22 y que dichos empleados no pueden excluirse de una acción legal PAGA”.); *accord Arias v. Sup. Ct.* 46
23 Cal.4th 969, 986-987 (2009); *Williams v. Sup. Ct.*, 3 Cal.5th 531, 547, fn. 4 (2017) (explica que los
24 empleados agraviados “no son los propietarios de un reclamo personal por sanciones civiles PAGA...y
25 que no se encuentran en juego los reclamos personales por reparaciones que puedan tener los
26 empleados ausentes”).

27 **Z. Partes.** “Partes” significará la Demandante y el Demandado.

28 **AA. Fecha de Aprobación Preliminar.** “Fecha de Aprobación Preliminar” significará la

1 fecha en la que el Tribunal dicta una orden que aprueba de forma preliminar este Acuerdo de Arreglo.

2 **BB. Fecha Límite de Respuesta.** “Fecha Límite de Respuesta” significará la fecha cuarenta
3 y cinco (45) días después de la fecha en la cual el Administrador del Arreglo envía por correo por
4 primera vez el Aviso de la Clase a los Miembros de la Clase del Arreglo.

5 **CC. Arreglo.** “Arreglo” significará el arreglo entre las Partes, que se formaliza en este
6 Acuerdo de Arreglo y que está sujeto a la aprobación del Tribunal.

7 **DD. Administrador del Arreglo.** “Administrador del Arreglo” significará ILYM Group,
8 Inc. (u otro administrador según lo acordado por las partes) que será responsable de la administración
9 del Arreglo y temas relacionados.

10 **II. ANTECEDENTES DE HECHO Y PROCESALES DE LA ACCIÓN LEGAL**

11 **A. Reclamos de la Demandante e historial procesal.** La Demandante alega que el
12 Demandado no proporcionó recibos de sueldo detallados correctos a la Demandante, la Clase y a los
13 Empleados Agraviados que incluyen la fecha de inicio del período de pago además del nombre y la
14 dirección del empleador en infracción de § 226 del Código de Trabajo. El 30 de septiembre de 2020, la
15 Demandante presentó un Aviso PAGA ante la LWDA y también presentó una Demanda Colectiva ante
16 el Tribunal Superior del Condado de Stanislaus alegando infracciones de § 226 del Código de Trabajo.
17 Las Partes sometieron a mediación el tema con el respetado mediador neutral John Harris, Esq. el 14 de
18 abril de 2022 con considerable asistencia del mismo. Las negociaciones del arreglo entre las Partes
19 fueron en todo momento sin colusión, contenciosas y en condiciones de igualdad.

20 **B. Presentación de pruebas e investigación.** Antes de la Mediación y la presentación de
21 los Documentos de Aprobación Preliminar, los Abogados de la Clase llevaron a cabo una investigación
22 detallada de los presuntos reclamos de la Clase del Arreglo. Esta presentación de pruebas e
23 investigación incluyó, entre otras cosas, información sobre lo siguiente: (a) la cantidad de Miembros de
24 la Clase/Empleados Agraviados (571), la cantidad de períodos de pago en cuestión (10,064); (b) la
25 investigación de la viabilidad del tratamiento como clase de los reclamos que se hacen valer en la
26 Acción Legal; (c) el análisis de daños potenciales a toda la clase, incluyendo información suficiente
27 para comprender las defensas potenciales del Demandado a los reclamos de la Demandante y de los
28 Miembros de la Clase del Arreglo; (d) la investigación de la ley aplicable en relación con los reclamos

1 hechos valer en la Demanda y las defensas potenciales a los mismos; (e) la revisión y el análisis de la
2 información proporcionada por el Demandado sobre sus prácticas relevantes; y (f) la evaluación de una
3 muestra representativa de 10 recibos de sueldo de Miembros de la Clase después del cambio de
4 política.

5 Las Partes están de acuerdo en que la investigación y evaluación que se describe más arriba,
6 además de la presentación de pruebas y la información intercambiada durante las negociaciones del
7 arreglo, son más que suficientes para evaluar los meritos de las respectivas posturas de las Partes y
8 llegar a un acuerdo sobre los temas de una manera justa y equitativa. Las Partes participaron en una
9 investigación y presentación de pruebas que resulta suficiente para evaluar los méritos relativos de los
10 reclamos de la Representante de la Clase y de las defensas del Demandado a los mismos.

11 **C. Beneficios de un Arreglo de la Clase.** La amplia presentación de pruebas informal que
12 se llevó a cabo en este tema resultó adecuada para brindar a la Representante de la Clase y a los
13 Abogados de la Clase una comprensión sólida de los méritos de sus posturas y para evaluar el valor de
14 los reclamos de la Clase del Arreglo. La presentación de pruebas informal llevada a cabo en esta
15 Acción Legal y la información intercambiada por las Partes a través de la presentación de pruebas y los
16 intercambios sobre el arreglo son suficientes para evaluar de forma fiable los méritos de las posturas
17 respectivas de las Partes y llegar a un arreglo sobre los temas de una manera justa y equitativa.

18 La Demandante y los Abogados de la Clase consideran que los reclamos, causas de acción
19 legal, alegaciones y argumentos que se hicieron valer en la Acción Legal tienen mérito. Los Abogados
20 de la Clase llevaron a cabo de forma diligente una investigación de los reclamos de la Demandante
21 contra el Demandado y las Partes Eximidas. En base a su propia investigación y evaluación
22 independiente, la opinión de los Abogados de la Clase es que el arreglo con el Demandado y las Partes
23 Eximidas por la contraprestación y según los términos que se establecen en este Arreglo es justo,
24 razonable y adecuado, y que favorece los intereses de la Clase del Arreglo teniendo en cuenta todos los
25 hechos y circunstancias conocidos y las diversas defensas basadas en hechos y legales hechas valer por
26 el Demandado.

27 La Demandante y los Abogados de la Clase reconocen además el gasto y la demora de los
28 procedimientos sostenidos prolongados necesarios para litigar la Acción Legal contra el Demandado

1 mediante un juicio y mediante apelaciones. Los Abogados de la Clase tomaron en cuenta el resultado
2 incierto del proceso judicial, el riesgo de un proceso judicial prolongado en acciones legales complejas
3 tales como las que nos ocupa, además de las dificultades y demoras inherentes en los procesos
4 judiciales de este tipo. La Demandante es consciente de los desafíos potenciales y las posibles defensas
5 a los reclamos alegados en la Acción Legal.

6 La Demandante y los Abogados de la Clase consideran que el Arreglo que se establece en este
7 Acuerdo de Arreglo otorga beneficios sustanciales a la Demandante y a los Miembros de la Clase del
8 Arreglo y que una revisión independiente de este Acuerdo de Arreglo por parte del Tribunal en el
9 proceso de aprobación confirmará dicha conclusión. En base a su propia investigación y evaluación
10 independiente, los Abogados de la Clase determinaron que el Arreglo que se establece en el Acuerdo de
11 Arreglo es lo más conveniente para los intereses de la Demandante y los Miembros de la Clase del
12 Arreglo.

13 **D. Rechazos de actos indebidos y responsabilidad del Demandado.** El Demandado
14 rechaza y sigue rechazando todas y cada una de las alegaciones, reclamos y argumentos alegados por la
15 Demandante en la Acción Legal. El Demandado rechaza y sigue rechazando expresamente todas las
16 acusaciones de actos indebidos intencionales o a sabiendas o de responsabilidad que surgen de toda
17 conducta, declaración, acción u omisión que se alega en la Acción Legal. El Demandado sostiene que
18 existe una controversia de buena fe sobre si incumplió o no de forma intencional o a sabiendas de
19 buena fe con le lay de California relacionada con la emisión de recibos de sueldo detallados, que no se
20 perjudicó a ningún Miembro de la Clase o Empleado Agraviado, y que trató de forma legal y justa a la
21 Demandada y a los Miembros de la Clase del Arreglo. El Demandado sostiene además que, para todo
22 fin que no sea llegar a un arreglo en esta Acción Legal, dichos reclamos son inadecuados para un
23 tratamiento como clase o de representación. No obstante, el Demandado llegó a la conclusión de que
24 procedimientos adicionales en la Acción Legal resultarían prolongados y dispendiosos y que su deseo
25 es que la Acción Legal llegue a un arreglo pleno y definitivo de la manera y conforme a los términos y
26 condiciones que se establecen en este Acuerdo de Arreglo, con el objeto de poner punto final a un
27 proceso judicial oneroso y prolongado, permitir el desempeño de la actividad comercial del Demandado
28 sin un proceso judicial adicional costoso y la distracción de su personal en lo que se refiere a los temas

en cuestión en la Acción Legal. El Demandado tuvo en cuenta además la incertidumbre y los riesgos inherentes en todo proceso judicial, en particular en casos complejos como el de la Acción Legal. Por lo tanto, el Demandado determinó que es deseable y beneficioso llegar a un arreglo en la Acción Legal de la manera y conforme a los términos y condiciones que se establecen en este Acuerdo de Arreglo.

E. Intención del Arreglo de la Clase. El Arreglo de la Clase que se establece en el presente tiene por objeto lograr lo siguiente: (1) el dictado de una orden que apruebe el Arreglo de la Clase; (2) el dictado de una sentencia de la Acción Legal; (3) la exención de responsabilidad del Demandado y las Partes Eximidas por responsabilidad y todos y cada uno de los Reclamos Eximidos y por todo reclamo que surja de la Acción Legal.

III. CERTIFICACIÓN CONDICIONAL DE CLASE Y DESIGNACIÓN DE LOS ABOGADOS DE LA CLASE

A. La Clase del Arreglo. Para los fines de este Acuerdo de Arreglo, las Partes acuerdan la certificación condicional de clase de la Clase del Arreglo. Los abogados del Demandado consideran que dicha certificación condicional es adecuada debido a que se llega a un arreglo por los Reclamos Eximidos sin necesidad de establecer los elementos de dichos reclamos en los que se basa la responsabilidad.

B. Designación de los Abogados de la Clase. Para los fines de este Acuerdo de Arreglo y sujeto a la aprobación del Tribunal, por el presente las Partes acuerdan la designación de los Abogados de la Clase como los abogados para la Clase y la efectuación del Arreglo de la Clase de conformidad con este Acuerdo de Arreglo.

IV. CONTRAPRESTACIÓN POR EL ARREGLO DE LA CLASE

A. Monto del Arreglo. Las Partes acuerdan llegar a un arreglo en esta Acción Legal por el Monto Bruto del Arreglo de \$553,520.00. No tendrán lugar reversiones al Demandado ni a las Partes Eximidas. El Monto Bruto del Arreglo y otros actos y concesiones otorgadas por el Demandado y las Partes Eximidas constituirán una contraprestación adecuada por el Arreglo de la Clase y tendrán lugar para llegar a un arreglo pleno y definitivo en lo siguiente: (a) los Reclamos Eximidos, (b) los Honorarios y Gastos de los Abogados de la Clase, (c) los Gastos Administrativos del Arreglo, (d) el Pago por Servicios, (e) el Pago PAGA a la LWDA, y (f) toda otra obligación del Demandado y las

Partes Eximidas conforme a este Acuerdo de Arreglo. Después de que el Tribunal dicte una orden que apruebe de forma preliminar este Arreglo de la Clase, el Administrador del Arreglo distribuirá el Aviso de la Clase a los Miembros de la Clase del Arreglo, que describe los términos del Arreglo de la Clase y los procedimientos para excluirse, objetar o participar en el mismo.

B. Reparación no monetaria y fomento de cambio de política. A pesar de que el Demandado rechaza toda responsabilidad de todo tipo relacionada con los reclamos que se alegan en la demanda y rechaza toda responsabilidad o acto indebido intencional en lo que se refiere al presunto hecho de no proporcionar recibos de sueldo detallados que cumplen con la sección 226 del Código de Trabajo, el Demandado certifica y declara que debido al inicio de esta demanda y/o presentación del Aviso PAGA de la Demandada, el mismo: 1) actualizó sus recibos de sueldo de depósito directo y de papel para que incluyan la fecha de inicio de cada período de pago; y 2) actualizó sus recibos de sueldo detallados de papel para que incluyan la entidad legal que es el empleador.

C. Pago por Servicios a la Representante de la Clase. La Representante de la Clase puede solicitar al Tribunal que apruebe un Pago por Servicios de un monto de \$7,500.00 por su dedicación en nombre de la Clase del Arreglo en la presente Acción Legal, lo que incluye brindar asistencia en la investigación y consultas de los Abogados de la Clase y proporcionar documentos de importancia crucial a los Abogados de la Clase. El Demandado y las Partes Eximidas no se opondrán a ninguna solicitud de la Representante de la Clase de un Pago por Servicios de ese monto. Todo Pago por Servicios aprobado por el Tribunal se pagará a la Representante de la Clase del Monto Bruto del Arreglo y será adicional a toda distribución a la que la misma tenga derecho de otra manera como una Miembro de la Clase del Arreglo y Empleada Agraviada. El Pago por Servicios no se considerará un salario, y el Administrador del Arreglo entregará a la Representante de la Clase un Formulario 1099 del IRS que refleje dicho pago. La Representante de la Clase será responsable del pago de todos los impuestos en lo que se refiere a su Pago por Servicios y eximirá y exonerará al Demandado y a las Partes Eximidas por toda responsabilidad relacionada con el mismo.

D. Pago a los Participantes de la Clase. Cada Participante de la Clase calificará para recibir un pago del Monto Individual del Arreglo y recibirá una parte del Monto Neto del Arreglo de forma prorrateada que se calculará dividiendo la cantidad total de períodos de pago trabajados por un

1 Participante de la Clase individual durante el Período de la Clase por la cantidad total de períodos de
2 pago trabajados por todos los Participantes de la Clase durante el Período de la Clase. En el caso de los
3 Miembros de la Clase que deciden excluirse del Arreglo enviando una Solicitud de Exclusión válida
4 (tal como se define a continuación) y/o cuyo Aviso de Arreglo se determina que no se puede entregar
5 después de que el Administrador del Arreglo lo vuelva a enviar de forma razonable, no se pagará el
6 Pago del Arreglo Total de los Miembros de la Clase al Miembro de la Clase y el mismo se sumará al
7 Monto Neto del Arreglo y se volverá a distribuir entre los Miembros de la Clase Participantes de forma
8 prorrateada.

9 **E. Tratamiento fiscal y pago.** Debido a que el presente es un arreglo solo por sanciones,
10 las Partes acuerdan que el 100% de cada monto del arreglo constituirá sanciones que se deben informar
11 en un formulario 1099 del IRS. Las Partes comprenden que la Demandante y los Participantes de la
12 Clase que reciben todo pago conforme a este Acuerdo de Arreglo serán responsables exclusivamente
13 por toda obligación de impuestos individual relacionada con el presente Arreglo de la Clase y que el
14 Demandante no tendrá ninguna responsabilidad por pagos de impuestos a la renta del estado o federales
15 sobre los Pagos Individuales del Arreglo.

16 **F. Sin efecto sobre los planes de beneficios de los empleados.** Ni el Arreglo de la Clase
17 ni ninguno de los montos pagados conforme al Arreglo de la Clase modificará ninguna hora, día o
18 semana de servicio acreditada previamente conforme a todo plan de beneficios de los empleados,
19 política o programa de bonificaciones patrocinado por el Demandado o las Partes Eximidas. Dichos
20 montos no se utilizarán para justificar contribuciones adicionales, beneficios ni ningún otro derecho
21 monetario conforme a planes de beneficios, políticas o programas de bonificaciones patrocinados por el
22 Demandado o las Partes Eximidas. Los pagos realizados conforme a los términos de este Acuerdo de
23 Arreglo no se aplicarán de forma retroactiva, simultánea o a futuro como salarios, ingresos ni ninguna
24 otra forma de remuneración para los fines de todo plan de beneficios, política o programa de
25 bonificaciones del Demandado o las Partes Eximidas. El Demandado y las Partes Eximidas conservan
26 el derecho de modificar la redacción de sus planes de beneficios, políticas y programas de
27 bonificaciones para hacer cumplir dicha intención y dejar en claro que todo monto pagado conforme a
28 este Acuerdo de Arreglo no es por “períodos de pago” ni ningún término de medición similar tal como

se define en los planes, políticas y programas de bonificaciones aplicables para fines de elegibilidad, adquisición de derechos, acumulación de beneficios ni ningún otro fin, y que este Acuerdo de Arreglo no exige ninguna contribución ni beneficio adicional. El Demandado y las Partes Eximidas no consideran que los pagos del Arreglo de la Clase sean una “remuneración” para los fines de determinar la elegibilidad o la acumulación de beneficios en todo plan de beneficios, política o programas de bonificaciones, o todo otro plan patrocinado por el Demandado o las Partes Eximidas.

G. Honorarios de Abogados y Gastos de los Abogados de la Clase. Como parte de la moción de aprobación definitiva del Arreglo de la Clase, los Abogados de la Clase pueden presentar una solicitud de un otorgamiento de Honorarios y Gastos de los Abogados de la Clase cuya parte correspondiente a honorarios no puede superar un tercio del Monto Bruto del Arreglo (es decir, \$184,506.67) y el otorgamiento de costos y gastos de un máximo de \$10,000.00 adicionales. El Demandado y las Partes Eximidas aceptan no objetar ninguna de dichas solicitudes de honorarios, costos ni gastos por dichos montos. Como una condición para este Arreglo de la Clase, los Abogados de la Clase aceptaron hacer valer honorarios únicamente de la manera que se describe en esta Sección. Todos los Honorarios y Gastos de los Abogados de la Clase otorgados por el Tribunal se pagaran del Monto Bruto del Arreglo para llegar al Monto Neto del Arreglo y no constituirán el pago a ninguno de los Miembros de la Clase del Arreglo. Si los Abogados de la Clase reducen de forma voluntaria la solicitud de Honorarios y Gastos de los Abogados de la Clase o si el Tribunal otorga Honorarios y Gastos de los Abogados de la Clase que son menores que los que se indican más arriba, se volverá a calcular el Monto Neto del Arreglo para reflejar los Honorarios y Gastos de los Abogados de la Clase que se otorgaron concretamente y dichos montos serán distribuidos a la Clase.

Los Honorarios y Gastos de los Abogados de la Clase aprobados por el Tribunal incluirán lo siguiente: (a) todo el trabajo realizado y los costos y gastos incurridos por todo abogado o a indicación de un abogado que represente a la Clase del Arreglo hasta la fecha de este Acuerdo de Arreglo; (b) todo el trabajo que se realizará y los costos que se incurrirán en relación con toda aprobación del Tribunal del Arreglo de la Clase; (c) todo el trabajo que se realizará y los costos y gastos, si existen, incurridos en relación con la administración del Arreglo de la Clase hasta la Fecha de Vigencia y la desestimación de la Acción Legal sin derecho a nuevo juicio; y (d) pueden basarse en la Teoría de Catalizador, Teoría

de Fondo Común y/u otros fundamentos.

V. GASTOS Y FONDOS DEL ADMINISTRADOR DEL ARREGLO

A. Los costos y gastos del Administrador del Arreglo. Todos los costos y gastos que se deben pagar al Administrador del Arreglo en relación con su administración del Arreglo de la Clase incluyendo, de forma enunciativa y no limitativa, entregar el Aviso de la Clase, encontrar a los Miembros de la Clase del Arreglo, procesar las solicitudes de Exclusión y las objeciones, y calcular, administrar y distribuir los Montos Individuales del Arreglo a los Participantes de la Clase y formularios de impuestos relacionados, se pagarán del Monto Bruto del Arreglo y no superaran los \$15,000.00.

B. Pago por parte del Demandado. El Demandado hará los pagos que incluirán el Monto Bruto del Arreglo de conformidad con el siguiente programa de pagos: \$20,000.00 en lo que tenga lugar antes del 1.° de septiembre de 2022 o 10 días después de la aprobación preliminar, \$20,000.00 el 1.° de octubre de 2022 , \$20,000.00 el 1.° de noviembre de 2022, \$20,000.00 el 1.° de diciembre de 2022, \$20,000.00 el 1.° de enero de 2023, \$20,000.00 el 1.° de febrero de 2023, \$20,000.00 el 1.° de marzo de 2023, \$20,000.00 el 1.° de abril de 2023, y los restantes \$393,520.00 el 1.° de mayo de 2023.

VI. AVISO A LOS MIEMBROS DE LA CLASE Y PROCESO DE ADMINISTRACIÓN DE RECLAMOS

A. El Administrador del Arreglo. El Administrador del Arreglo será responsable de enviar por correo el Aviso de la Clase (**Anexo A**) a los Miembros de la Clase del Arreglo, ocuparse de las consultas de los Miembros de la Clase del Arreglo sobre el Aviso de la Clase, determinar los Montos Individuales del Arreglo, mantener los fondos del arreglo en una cuenta adecuada, preparar, administrar y distribuir los Montos Individuales del Arreglo a los Participantes de la Clase, enviar un informe final y realizar todas las demás tareas que le puedan indicar las Partes.

El Administrador del Arreglo entregará informes semanalmente a los Abogados de la Clase y a los Abogados Defensores con un resumen de la información pertinente y brindándoles actualizaciones sobre la cantidad de objeciones y Solicitudes de Exclusión validadas y presentadas dentro de los plazos previstos. El Administrador del Arreglo enviará por correo electrónico a los Abogados de la Clase y a los Abogados Defensores copias con indicación de la hora y fecha de las Exclusiones y objeciones

originales a más tardar cinco (5) días después de su recepción. El Administrador del Arreglo entregará a los Abogados de la Clase una constancia de envío por correo del Aviso de la Clase, sin indicar los nombres de los Miembros Individuales de la Clase, que el Administrador del Arreglo presentará ante el Tribunal cuando los Abogados de la Clase presenten su moción en apoyo de la Aprobación Definitiva y la Audiencia de Justicia del Tribunal.

A más tardar catorce (14) días antes de la Aprobación Definitiva y de la Audiencia de Justicia, el Administrador del Arreglo recopilará y entregará a los Abogados de la Clase y a los Abogados Defensores un informe con información resumida sobre (a) el monto total de los Montos Individuales del Arreglo definitivos de cada Participante de la Clase, (b) la cantidad de Participantes de la Clase que recibirán dichos pagos, y (c) la cantidad definitiva de Exclusiones y objeciones.

Se estima que los gastos administrativos no superarán los \$15,000.00. Con anterioridad al cálculo y la distribución de los Montos Individuales del Arreglo, el Administrador del Arreglo calculará los Gastos Administrativos totales hasta la conclusión de sus servicios y dicho monto se deducirá del Monto Bruto del Arreglo antes del cálculo definitivo de los Montos Individuales del Arreglo. Si el costo de la administración resulta superior a \$15,000.00, el costo adicional saldrá del Monto Bruto del Arreglo.

B. Aviso a los Miembros de la Clase del Arreglo. El Aviso se entregará a los Miembros de la Clase del Arreglo de la siguiente manera: En un plazo de 30 días de la Fecha de Aprobación Preliminar, el Demandado entregará al Administrador del Arreglo una lista de los Miembros de la Clase que incluye los nombres, números del seguro social, últimas direcciones conocidas y números de teléfono, y la cantidad total de períodos de pago trabajados por cada Miembro de la Clase durante el Período de la Clase (la “Base de Datos”). La Base de Datos estará identificada como “Confidencial: Para el Administrador del Arreglo Exclusivamente”. Los Abogados de la Clase no recibirán una copia de esta lista.

En un plazo de 45 días de la Fecha de Aprobación Preliminar, el Administrador del Arreglo determinará la cantidad de períodos de pago para cada Miembro de la Clase del Arreglo y realizará una búsqueda nacional de cambio de dirección de la dirección de cada Miembro de la Clase, actualizará los resultados en base a los resultados de la búsqueda, completará los datos de Monto Individual del

Arreglo para cada Miembro de la Clase del Arreglo, y enviará un Aviso a cada Miembro de la Clase del Arreglo por el correo de primera clase de los Estados Unidos. El Aviso de la Clase también incluirá una declaración fácilmente comprensible advirtiéndolo a los Miembros de la Clase que, a menos que decidan Excluirse del Arreglo de la Clase, el Miembro de la Clase del Arreglo exime de responsabilidad y renuncia a todos los Reclamos Eximidos contra las Partes Eximidas.

El Aviso de la Clase informará a los Miembros de la Clase del Arreglo sobre su parte individual estimada del Monto Individual del Arreglo. Los Miembros de la Clase pueden objetar los registros del Demandado sobre la cantidad de períodos de pago trabajados durante el Periodo de la Clase mediante el envío de información al Administrador del Arreglo a más tardar 45 días después del envío por correo del Aviso de la Clase por parte del Administrador del Arreglo, que es la “Fecha Límite de Respuesta” definida. El Administrador del Arreglo trabajará en conjunto con la Demandante y el Demandado para resolver los litigios de buena fe. Si la Demandante y el Demandado no pueden llegar a un acuerdo sobre los períodos de pago que se deben acreditar, el Administrador del Arreglo tomará la decisión definitiva en base a la información presentada por el Miembro de la Clase del Arreglo y el Demandado.

C. Procedimiento de Exclusión. Se considerará que los Miembros de la Clase del Arreglo que no se Excluyen dentro de los plazos previstos del Arreglo de la Clase participan en el Arreglo de la Clase y se convertirán en un Participante de la Clase sin necesidad de presentar un formulario de reclamo ni tomar ninguna otra medida. Para Excluirse del Arreglo de la Clase, los Miembros de la Clase del Arreglo deben enviar una carta o tarjeta postal al Administrador del Arreglo a más tardar en la Fecha Límite de Respuesta. La solicitud de Exclusión debe incluir el nombre y la dirección para fines de correspondencia y verificación de identidad, la firma del Miembro de la Clase del Arreglo, y debe incluir una frase que indique lo siguiente: “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN GARCIA VS. GROWER DIRECT NUT COMPANY, INC.” (DESEO SER EXCLUIDO DE LA CLASE DEL ARREGLO DE GARCIA VS. GROWER DIRECT NUT COMPANY, INC.). A menos que el Tribunal determine que existe un motivo justificado, toda solicitud de Exclusión que no incluya una fecha de matasellos a más tardar de la Fecha Límite de Respuesta será inválida. Si con anterioridad a la Fecha Límite de Respuesta tiene lugar la devolución de algún Aviso de la Clase enviado por correo a un Miembro de la Clase del Arreglo debido a que el Servicio de Correo de los

Estados Unidos no lo pudo entregar, el Administrador del Arreglo llevará a cabo una búsqueda del paradero para obtener una corrección de la dirección para dicho Miembro o Miembros de la Clase del Arreglo y enviará un segundo Aviso de la Clase a la dirección nueva o diferente que obtuvo. Dicho Miembro o Miembros de la Clase del Arreglo contarán con 14 días adicionales para Excluirse.

Si el Administrador del Arreglo determina que una solicitud de Exclusión enviada por un Miembro de la Clase del Arreglo antes de la Fecha Límite de Respuesta es deficiente, el Administrador del Arreglo enviará por correo una carta de deficiencias a dicho Miembro de la Clase del Arreglo identificando el problema. Si un Miembro de la Clase del Arreglo envía tanto una objeción como una solicitud de Exclusión, el Administrador del Arreglo intentará de forma razonable obtener una aclaración de la misma manera que si la solicitud de Exclusión hubiera sido deficiente. Si el Miembro de la Clase no rectifica la deficiencia, se desestimarán la solicitud de Exclusión y se pagará el reclamo y el Miembro de la Clase quedará obligado por la sentencia. Los Miembros de la Clase del Arreglo que no se Excluyen de forma válida y dentro de los plazos previstos quedarán obligados por la Exención de Responsabilidad de los Reclamos Eximidos que se establece en este Acuerdo de Arreglo.

D. Objeciones. El Aviso de la Clase informará a los Miembros de la Clase del Arreglo sobre su derecho a objetar el Arreglo de la Clase. Todo Miembro de la Clase del Arreglo que desea objetar el Arreglo de la Clase debe enviar una objeción por escrito al Administrador del Arreglo no más allá de la Fecha Límite de Respuesta. Todas las objeciones de los Miembros de la Clase deben incluir el nombre y la dirección actual del Miembro de la Clase para fines de correspondencia y verificación de identidad, proporcionar cada motivo específico en apoyo de la objeción, estar firmadas por el Miembro de la Clase, e incluir una fecha de matasellos no posterior a la Fecha Límite de Respuesta. Los Miembros de la Clase no tienen necesidad de incluir argumentos legales para que se tomen en cuenta sus objeciones por escrito. Si una persona que objeta también desea comparecer durante la Audiencia de Aprobación Definitiva y de Justicia en persona o a través de un abogado, la misma no tiene necesidad de presentar un aviso de intención de comparecer al mismo tiempo que presenta la objeción. No es necesaria la presentación de un aviso de intención de comparecer para conservar el derecho de comparecer durante la Audiencia de Aprobación Definitiva y de Justicia. Los Miembros de la Clase ausentes no tienen necesidad de presentar nada ante el Tribunal. El Administrador del Arreglo entregará

oportunamente copias de toda objeción o aviso de intención de comparecer a los Abogados de la Clase y a los Abogados Defensores. Los Miembros de la Clase del Arreglo pueden comparecer durante la Audiencia de Aprobación Definitiva, ya sea en persona (en la medida en que esté permitido durante la pandemia de COVID-19), a través de un método remoto autorizado por el Tribunal, o representados por un abogado corriendo con los gastos. Si un Miembro de la Clase presenta tanto una Solicitud de Exclusión como una objeción por escrito, el Administrador del Arreglo intentará comunicarse con el Miembro de la Clase y determinar si el mismo desea retirar ya sea la Solicitud de Exclusión o la objeción. Si el Miembro de la Clase no retira la Solicitud de Exclusión o la objeción o si el Administrador del Arreglo no puede comunicarse con un Miembro de la Clase que envía tanto una Solicitud de Exclusión como una objeción, será válida la Solicitud de Exclusión, y se supondrá que el Miembro de la Clase no desea participar en el Arreglo.

E. Declaración del Administrador del Arreglo. Por lo menos 30 días antes de la Aprobación Definitiva y de la Audiencia de Justicia, el Administrador del Arreglo entregará a los Abogados de la Clase y a los Abogados Defensores una Declaración de Diligencia Debida y Prueba de Envío por Correo en lo que se refiere al envío por correo del Aviso de la Clase y sus intentos para encontrar a los Miembros de la Clase. La declaración especificará la cantidad de Miembros de la Clase del Arreglo a los que se les envió por correo Avisos de la Clase y la cantidad de Miembros de la Clase del Arreglo a quienes no se les entregaron los Avisos de la Clase, además de información relacionada con la cantidad de Exclusiones y objeciones. Los Abogados de la Clase presentarán dicha declaración ante el Tribunal.

VII. FONDOS Y DISTRIBUCIÓN DEL ARREGLO DE LA CLASE

A. Asignación del Monto Bruto del Arreglo. Se llega a un arreglo por los reclamos de todos los Miembros de la Clase del Arreglo a cambio del Monto Bruto del Arreglo de \$553,520.00, que se asignará de la siguiente manera:

1. Los Gastos Administrativos, que se estima que no superarán los \$15,000.00;
2. Los Honorarios y Gastos de los Abogados de la Clase, que no superarán los \$184,506.67 de honorarios, y gastos que no superarán los \$10,000.00;
3. El Pago PAGA de \$20,000.00, de los cuales \$15,000.00 se pagarán a la LWDA;

4. El Pago por Servicios, que no superará los \$7,500.00; y
5. El Monto Neto del Arreglo, que se estima que será de \$331,513.33.

Para los fines del cálculo de los Montos Individuales del Arreglo estimados, el Administrador del Arreglo calculará el Monto Neto del Arreglo estimado en base a los valores estimados en la Sección VII.A.1. - 4 antes de enviar el Aviso a los Miembros de la Clase del Arreglo. Antes de la distribución definitiva, el Administrador del Arreglo calculará el Monto Neto del Arreglo definitivo en base a los valores concretos en la Sección VII.A.1. - 4.

B. Cálculo de los Montos Individuales del Arreglo. Los Montos Individuales del Arreglo que se pagarán a los Participantes de la Clase se pagarán del Monto Neto del Arreglo. La parte del Monto Neto del Arreglo que corresponde pagar a cada Participante de la Clase se calculará de la siguiente manera: el Administrador del Arreglo dividirá el Monto Neto del Arreglo por la cantidad total de recibos de sueldo emitidos a los Miembros de la Clase durante el Período de la Clase con el objeto de determinar el monto al que tiene derecho cada Miembro de la Clase por cada período de pago en el que fue un empleado del Demandado durante el Período de la Clase (el “Monto del Período de Pago”). El Administrador del Arreglo multiplicará el Monto del Período de Pago por la cantidad total de períodos de pago trabajados por cada Miembro de la Clase durante el Período de la Clase para obtener el Monto Individual del Arreglo de cada Miembro de la Clase. En el caso de los Miembros de la Clase que deciden excluirse del Arreglo enviando una Solicitud de Exclusión válida (tal como se define a continuación) y/o cuyo Aviso de Arreglo se determina que no se puede entregar después de que el Administrador del Arreglo lo vuelva a enviar de forma razonable, no se pagará el Pago Individual del Arreglo de los Miembros de la Clase al Miembro de la Clase y el mismo se sumará al Monto Neto del Arreglo y se volverá a distribuir entre los Miembros de la Clase Participantes de forma prorrateada.

El Demandado y las Partes Eximidas no tendrán ninguna responsabilidad para decidir la validez de los Montos Individuales del Arreglo ni ningún otro pago que tenga lugar de conformidad con el Acuerdo del Arreglo y no tendrán ninguna participación ni responsabilidad para determinar o pagar los Impuestos del Empleado, y no tendrán ninguna responsabilidad por todo error cometido en relación con dichos Impuestos del Empleado. La Demandante y los Participantes de la Clase serán los únicos responsables por toda obligación de impuestos relacionada con sus respectivos Montos Individuales del

Arreglo.

C. **Oportunidad del pago de Honorarios y Gastos a los Abogados de la Clase.** El Administrador del Arreglo pagará a los Abogados de la Clase los honorarios y gastos de abogados aprobados por el Tribunal a los Abogados de la Clase no más allá de 15 días después de que el Demandado deposite el total del Monto Bruto del Arreglo al Administrador del Arreglo.

D. **Oportunidad del pago del Pago por Servicios a la Representante de la Clase.** El Administrador del Arreglo pagará a la Representante de la Clase el Pago por Servicios aprobado por el Tribunal no más allá de 15 días después de que el Demandado deposite el total del Monto Bruto del Arreglo al Administrador del Arreglo.

E. **Oportunidad del pago del Pago PAGA a la LWDA.** El Administrador del Arreglo pagará a la LWDA la parte del Pago PAGA que se le debe aprobado por el Tribunal no más allá de 15 días después de que el Demandado deposite el total del Monto Bruto del Arreglo al Administrador del Arreglo.

F. **Oportunidad del pago de los Montos Individuales del Arreglo.** El Administrador del Arreglo enviará por correo, por el correo de primera clase de los Estados Unidos, el Monto Individual del Arreglo a cada Participante de la Clase a la última dirección conocida no más allá de 15 días después de que el Demandado deposite el total del Monto Bruto del Arreglo al Administrador del Arreglo. El Administrador del Arreglo en ningún caso distribuirá cheques a los Participantes de la Clase hasta que se hayan tomado en cuenta, calculado y contabilizado todos los Montos Individuales del Arreglo y se hayan calculado y contabilizado todas las obligaciones monetarias restantes. En un plazo de 200 días de la distribución de los Montos Individuales del Arreglo a los Participantes de la Clase, el Administrador del Arreglo entregará una declaración de pago a los Abogados de la Clase. En el caso del fallecimiento de algún Participante de la Clase, el pago corresponderá a la sucesión de dicho Miembro de la Clase del Arreglo y será entregado al albacea o administrador de dicha sucesión, a menos que el Administrador del Arreglo haya recibido una declaración jurada o declaración de conformidad con § 13101 del Código Sucesorio de California, en cuyo caso el pago se hará al/a los deponente(s) o declarante(s).

G. **Cheques del Arreglo no cobrados.** Todo fondo relacionado con cheques que no fueron

1 cobrados en un plazo de 180 días se convertirá en nulo, y el Monto Individual del Arreglo relacionado
2 con el cheque no cobrado será pagado de conformidad con la sección 384 del Código Civil a un
3 receptor “*cy pres*” acordado por las Partes, tal como lo exige la sección 384 del Código de
4 Procedimientos Civiles o mediante todo otro método de distribución consistente con la sección 384 del
5 Código de Procedimientos Civiles. El receptor *cy pres* será CASA of Stanislaus County u otro receptor
6 *cy pres* acordado mutuamente si el Tribunal no aprueba el beneficiario propuesto de las Partes y/o tal
7 como resulte consistente de otra manera con la sección 384 del Código de Procedimientos Civiles.

8 **VIII. ANULACIÓN DE ESTE ACUERDO DE ARREGLO**

9 **A. No aprobación de este Acuerdo de Arreglo.** Si el Tribunal no aprueba el Arreglo
10 conforme a los términos acordados por las Partes, el tribunal de apelaciones adecuado no ratifica el
11 Arreglo, o se da por terminado al Acuerdo del Arreglo de otra manera: (1) el Acuerdo de Arreglo no
12 tendrá ninguna validez ni efecto y las Partes regresarán a sus respectivas posturas anteriores a su
13 suscripción del mismo, y ninguna Parte quedará vinculada por ninguno de los términos del Acuerdo de
14 Arreglo; (2) el Demandado y las Partes Eximidas no tendrán ninguna obligación de hacer ninguno de
15 los pagos a los Miembros de la Clase del Arreglo, la Demandante o los Abogados de la Demandante;
16 (3) todo monto depositado por el Demandado ante el Administrador del Arreglo será devuelto
17 inmediatamente al Demandado; (4) toda orden de aprobación preliminar, orden de aprobación
18 definitiva o sentencia quedará sin efecto; y (5) el Acuerdo de Arreglo y todas las negociaciones,
19 declaraciones, procedimientos y datos relacionados con el mismo se considerarán comunicaciones
20 confidenciales del arreglo de mediación y no estarán sujetos a divulgación por ningún motivo en
21 ningún procedimiento. Sin embargo, las Partes primero harán todo lo posible de buena fe para resolver
22 todo tema planteado por el Tribunal durante el proceso de aprobación.

23 **B. Derechos de las Partes a anular el Arreglo de la Clase.** Si más del 5% de los
24 Miembros de la Clase envían decisiones de excluirse del arreglo, el Demandado tendrá derecho a
25 rescindir y dar por terminado el Arreglo sin perjuicio de sus posturas previas al arreglo y defensas en el
26 proceso judicial. Si se supera el límite de exclusiones, el Administrador del Arreglo notificará
27 inmediatamente al abogado principal de todas las partes por correo electrónico. Si solo una parte decide
28 anular el Arreglo de la Clase conforme al presente párrafo, dicha parte será responsable de todos los

1 honorarios y costos del Administrador del Arreglo incurridos concretamente. Si las partes acuerdan
2 anular el Arreglo de la Clase conforme a este párrafo, las Partes serán responsables en partes iguales de
3 pagar todos los honorarios y costos del Administrador del Arreglo incurridos concretamente.

4 **C. Invalidación.** La invalidación de toda parte sustancial del Arreglo de la Clase invalidará
5 el Arreglo de la Clase en su totalidad, a menos que las Partes acuerden por escrito posteriormente que
6 las disposiciones restantes del Arreglo de la Clase seguirán en plena vigencia y efecto.

7 **D. Suspensión ante una apelación.** Si tiene lugar una apelación dentro de los plazos
8 previstos de la aprobación del Arreglo de la Clase y sentencia, la sentencia quedará suspendida, y el
9 Demandado no tendrá la obligación de seguir aportando fondos para el Monto Bruto del Arreglo ni de
10 tomar ninguna de las demás medidas exigidas por este Acuerdo de Arreglo hasta que se hayan agotado
11 todos los derechos de apelación conforme a derecho. Todo pago pendiente que debe pagar el
12 Demandado conforme a los términos del plan de pagos deben tener lugar en un plazo de 60 días de la
13 resolución de toda apelación del Arreglo o la Sentencia.

14 **IX. MOCIÓN PARA APROBACIÓN DEL TRIBUNAL**

15 **A. Aprobación Preliminar.** Los Abogados de la Clase presentarán este Acuerdo de
16 Arreglo ante el Tribunal junto con una Moción de Aprobación Preliminar del Arreglo de la Clase.

17 **B. Aprobación Definitiva.** La Audiencia de Aprobación Definitiva y de Justicia tendrá
18 lugar ante el Tribunal, a menos que el Tribunal ordene lo contrario. Durante la Audiencia de
19 Aprobación Definitiva y de Justicia, la Demandante solicitará al Tribunal el dictado de una orden
20 definitiva que certifique la Clase para fines del arreglo únicamente y que apruebe el Arreglo de la Clase
21 como justo, razonable y adecuado para los Participantes de la Clase según el significado de la Norma
22 3.769(c), (d) y (e) de las Normas Procesales de California y para el dictado de una sentencia definitiva
23 de la Acción Legal consistente con los términos del Arreglo de la Clase y de la Norma Procesal de
24 California 3.769(h). Los Abogados de la Clase y los Abogados Defensores presentarán ante el Tribunal
25 los alegatos y/o pruebas que sean necesarios para la determinación del Tribunal. Las Partes cumplirán
26 con las Pautas Procesales del Tribunal para la Aprobación Definitiva de Arreglos de Demanda
27 Colectiva y con §384 del Código de Procedimientos Civiles de que las Partes deben participar en una
28 audiencia de cumplimiento concerniente con la distribución de los fondos, a menos que el Tribunal deje

sin efecto dicha audiencia después de evaluar la declaración de cumplimiento del Administrador del Arreglo o de conformidad con otra orden del Tribunal.

X. EXENCIONES DE RESPONSABILIDAD Y RENUNCIAS

A. Exención de responsabilidad por los Reclamos por parte de la Clase del Arreglo. Al momento de la Fecha de Vigencia, cada Miembro de la Clase del Arreglo que no envió una solicitud de Excusión dentro de los plazos previstos y la Demandante eximen de responsabilidad al Demandado y a las Partes Eximidas, y a cada una de ellas, por todos y cada uno de los Reclamos Eximidos durante el Período de la Clase.

El deseo de las Partes y de los Miembros de la Clase del Arreglo es llegar a un arreglo, transigir y exonerar de forma plena, definitiva y para siempre los Reclamos Eximidos.

Cada Miembro de la Clase del Arreglo, a excepción de los que se Excluyen dentro de los plazos previstos, quedará obligado por la exención de responsabilidad de los Reclamos Eximidos debido al Arreglo de la Clase y a los términos de la sentencia definitiva y el cumplimiento de dicha sentencia.

B. Exención de responsabilidad por los Reclamos por parte de la Demandante.

La Demandante, en su nombre y en representación de sus herederos, albaceas, administradores y representantes, por el presente exime de responsabilidad, exonera y acepta relevar para siempre a las Partes Eximidas por toda acusación, demanda, reclamo, responsabilidad, obligación, promesa, acuerdo, controversia, daño, sanción, acción legal, causa de acción legal, juicio, derecho, costo, pérdida, deuda y gasto (incluyendo honorarios de abogados y costos), conocido o desconocido, por derecho o equidad, que pueda tener en la actualidad o pueda tener después de la firma de este Acuerdo de Arreglo, que surja o se relacione de alguna manera con su empleo en el Demandado y las Partes Eximidas, incluyendo los Reclamos Eximidos, reclamos que se hicieron valer o que se podrían haber hecho valer en la Demanda y toda transacción, incidente o tema entre las Partes que tuvo lugar antes de la fecha en la que se suscribe plenamente este Acuerdo de Arreglo. Sin limitar el carácter general de lo anterior, esta exención de responsabilidad incluirá, de forma enunciativa y no limitativa, todo reclamo conforme a (a) la Ley de Norteamericanos con Discapacidades, tal como fue enmendada; (b) el Título VII de la Ley de Derechos Civiles de 1964, tal como fue enmendada; (c) la Ley de Derechos Civiles de 1991; (d) U.S.C. § 1981, tal como fue enmendado; (e) la Ley de Contra la Discriminación en el Empleo por

1 Motivos de Edad, tal como fue enmendada; (f) la Ley de Normas Justas de Trabajo, tal como fue
2 enmendada; (g) la Ley de Igualdad Salarial; (h) la Ley de Seguridad de Ingresos de Retiro de
3 Empleados, tal como fue enmendada; (i) la Ley Ómnibus Consolidada de Reconciliación
4 Presupuestaria, tal como fue enmendada; (j) la Ley de Rehabilitación de 1973; (k) la Ley de Licencia
5 Familiar y Médica; (l) la Ley de Derechos Civiles de 1966; (m) la Ley de Empleo y Vivienda Justa de
6 California; (n) la Constitución de California; (o) el Código de Trabajo de California; (p) el Código de
7 Gobierno de California; (q) el Código Civil de California; (r) las Órdenes de Salario de California, y (s)
8 todo otro estatuto, ordenanza, regulación, norma y otras leyes federales, estatales y locales, y todo
9 reclamo en base a fundamentos constitucionales, estatutarios, de derecho consuetudinario o
10 regulatorios, además de todo otro reclamo en base a teorías de despido indebido o constructivo,
11 incumplimiento de contrato o contrato implícito, fraude, tergiversación, impedimento promisorio o
12 causar de forma intencional y/o negligente angustia emocional, o daños conforme a todo otro estatuto,
13 ordenanza, regulación, norma o ley federal, estatal o local. Esta exención de responsabilidad es por toda
14 reparación, sin importar su denominación incluyendo, de forma enunciativa y no limitativa, pagos
15 atrasados, pagos por anticipado, pagos de vacaciones, bonificaciones, daños compensatorios, daños por
16 responsabilidad extracontractual, daños liquidados, daños punitivos, daños por dolor y sufrimiento,
17 sanciones y honorarios de abogados y costos, y por el presente la Demandante exime de
18 responsabilidad y exonera para siempre al Demandado y a las Partes Eximidas por todo reclamo de
19 honorarios de abogados y costos que surjan de los temas eximidos en este Acuerdo de Arreglo.

20 La Demandante reconoce específicamente que conoce la existencia y está familiarizada con las
21 disposiciones de la Sección 1542, que determina lo siguiente:

22 **Una exención de responsabilidad general no cubre reclamos que el acreedor o**
23 **la parte que exime no sabe o no sospecha que existan a su favor al momento de**
24 **suscribir la exención de responsabilidad, y que, de ser conocidos por el mismo,**
hubieran afectado sustancialmente su arreglo con el deudor o parte eximida.

25 La Demandante es consciente de la Sección 1542 y, por el presente, renuncia expresamente a
26 todos los derechos y beneficios que pueda tener conforme a la Sección 1542, además de todo otro
27 estatuto o principio de derecho consuetudinario de efecto similar. Es posible que la Demandante de
28 aquí en más descubra hechos adicionales o diferentes a los que conoce en la actualidad o que considera
verdaderos en la actualidad en relación con el tema de todos los reclamos a los que se hace referencia

en el presente, pero estipula y acuerda que, al momento de la Fecha de Vigencia, la Demandante por el presente exime de responsabilidad de forma plena, definitiva y para siempre sobre todo reclamo contra el Demandado y las Partes Eximidas, conocido o desconocido, sospechado o insospechado, contingente o no contingente, que se hizo valer o que se podría haber hecho valer conforme a cualquier teoría de derecho o equidad sin tener en cuenta el descubrimiento posterior de la existencia de dichos hechos diferentes o adicionales.

Para fines de transparencia, las Partes también desean divulgar al Tribunal que la Demandante recibirá un arreglo de \$32,000.00 relacionados con sus reclamos de clasificación errónea individual alegados por separado que se encuentran pendientes ante este Tribunal. Las Partes declaran y garantizan que los Abogados de la Clase no reciben honorarios de abogados ni el reembolso de costos relacionados con el arreglo individual de la Demandante.

XI. OBLIGACIONES DE LAS PARTES

A. Cooperación mutua plena. Las Partes acuerdan cooperar plenamente con la otra para lograr e implementar los términos de este Acuerdo de Arreglo. Dicha cooperación incluirá, de forma enunciativa y no limitativa, suscribir todo documento adicional y tomar toda medida adicional que sea necesaria de forma razonable para cumplir con los términos de este Arreglo de la Clase, a menos que el Tribunal rechace la Propuesta de Arreglo sin derecho a nueva revisión. Las Partes harán todo lo posible, incluyendo todo lo que se contempla en este Acuerdo de Arreglo y todo lo que pueda convertirse en necesario debido a una orden del Tribunal o de otra manera, para poner en práctica este Acuerdo de Arreglo y los términos que se establecen en el mismo. Tan pronto como sea posible después de la suscripción de este Acuerdo de Arreglo, los Abogados de la Clase, con la cooperación del Demandado y los Abogados Defensores, tomarán todas las medidas necesarias y razonables para obtener la aprobación definitiva del Tribunal de este Acuerdo de Arreglo. Las Partes trabajarán en conjunto para llevar a cabo todas las modificaciones no sustanciales del Arreglo solicitadas por el Tribunal para obtener la aprobación del Arreglo Propuesto de las Partes.

B. Obligación de apoyar y defender el Arreglo de la Clase. Las Partes acuerdan cumplir con todos los términos del Arreglo de la Clase de buena fe y apoyar plenamente el Arreglo de la Clase y hacer todo lo posible para defender este Arreglo de la Clase de toda impugnación legal, ya sea

1 durante una apelación o ataque indirecto; sin embargo, el Demandado no tendrá la obligación de
2 comparecer formalmente en la Acción Legal a menos que el Tribunal lo exija de otra manera, ni
3 presentar ninguna moción o apelación.

4 **C. Obligaciones anteriores a la aprobación del Tribunal.** Los Abogados de la Clase
5 presentarán oportunamente este Acuerdo de Arreglo ante el Tribunal para su aprobación preliminar y
6 determinación por parte del Tribunal de su justicia, adecuación y razonabilidad. Inmediatamente
7 después de la suscripción de este Acuerdo de Arreglo, los Abogados de la Clase llevarán a cabo una
8 presentación ante el Tribunal para obtener el dictado de una orden preliminar, que programe una
9 audiencia sobre el tema de si el Arreglo de la Clase propuesto debe ser aprobado por ser justo,
10 razonable y adecuado para los Miembros de la Clase del Arreglo, aprobando la forma y el contenido del
11 Aviso de la Clase propuesto que se adjunta al presente como **Anexo A**, respectivamente, e instruyendo
12 el envío por correo del Aviso de la Clase a los Miembros de la Clase del Arreglo.

13 **XII. DISPOSICIONES VARIAS**

14 **A. Hechos diferentes.** Las Partes del presente, y cada una de ellas, reconocen que, a
15 excepción de los temas que se declaran expresamente en el presente, los hechos en relación con el
16 litigio y todos los reclamos eximidos por los términos de este Acuerdo de Arreglo pueden resultar
17 distintos o diferentes de los hechos que conocen en la actualidad cada una de las Partes y/o sus
18 abogados, o que dicha Parte o abogados consideran que son verdaderos, y, por lo tanto, cada Parte
19 asume expresamente el riesgo de la existencia de hechos diferentes o desconocidos en la actualidad y
20 acuerda que este Acuerdo de Arreglo será efectivo y vinculante en todos los aspectos a pesar de dicha
21 diferencia.

22 **B. Sin cesiones anteriores.** Las Partes declaran, prometen y garantizan que no cedieron,
23 transfirieron, gravaron ni pretendieron asignar, transferir o gravar directa o indirectamente a ninguna
24 persona o entidad ninguna parte de ninguna responsabilidad, reclamo, demanda, acción legal, causa de
25 acción legal, o derecho que se exime y exonera en el presente a excepción de lo que se establece en el
26 presente.

27 **C. No admisión.** Ninguna de las secciones de este Acuerdo de Arreglo será interpretada o
28 considerada como una admisión de ninguna responsabilidad, culpabilidad, negligencia o acto indebido

1 hacia ninguna otra Parte, o ninguna otra persona, y las Partes específicamente rechazan toda
2 responsabilidad, culpabilidad, negligencia o acto indebido hacia la otra Parte o cualquier otra persona.
3 Cada una de las Partes suscribió este Acuerdo de Arreglo con la intención de evitar litigios y procesos
4 judiciales adicionales con los consecuentes inconvenientes, gastos y contingencias. Ninguna de las
5 secciones del presente constituirá una admisión por parte del Demandado o las Partes Eximidas de
6 actos indebidos o responsabilidad, o de la veracidad de ninguna de las alegaciones basadas en hechos
7 en la Acción Legal. Ninguna de las secciones del presente constituirá una admisión por parte del
8 Demandado sobre los méritos de los reclamos en esta Acción Legal. Ninguna de las secciones del
9 presente constituirá una admisión por parte del Demandado de que la Acción Legal fue presentada de
10 forma adecuada como una demanda colectiva o representativa más allá de los fines de un arreglo. Al
11 contrario, el Demandado rechaza y sigue rechazando todas y cada una de las alegaciones sustanciales y
12 todos los Reclamos. A tal fin, el Arreglo de la Clase de la Acción Legal, la negociación y la suscripción
13 de este Acuerdo de Arreglo, y todos los actos que se llevaron a cabo o los documentos que se
14 suscribieron de conformidad o en fomento de este Acuerdo de Arreglo o del Arreglo de la Clase no
15 constituyen, no se considerarán y no se pueden utilizar como una admisión o evidencia de ningún acto
16 indebido o responsabilidad de parte del Demandado o de las Partes Eximidas o de la veracidad de
17 alguna de las alegaciones basadas en hechos en la Demanda en la Acción Legal; y no constituyen, no se
18 considerarán y no se pueden utilizar como una admisión o evidencia de ninguna culpa u omisión de la
19 parte del Demandado o las Partes Eximidas en ningún proceso civil, penal, administrativo ante ningún
20 tribunal, agencia administrativa u otro tribunal.

21 **D. Confidencialidad, medios o consultas de la prensa.** Más allá de la información
22 necesaria para obtener la aprobación del Tribunal de este arreglo, la Demandante y los Abogados de la
23 Clase acuerdan mantener la confidencialidad de todos los temas relacionados con este Arreglo
24 incluyendo los términos del mismo y los hechos y circunstancias que dieron lugar al mismo. Si reciben
25 consultas sobre los litigios entre las Partes, la Demandante y los Abogados de la Clase no harán
26 ninguna declaración más allá de “el tema fue resuelto” o “se llegó a un arreglo por el tema”. Sin
27 embargo, la Demandante y los Abogados de la Clase pueden cubrir los términos de este Arreglo con
28 sus cónyuges, abogados, asesores financieros, asesores de impuestos y contadores, o ante una orden

válida de un tribunal, y, en ese caso, a la persona que recibe la información sobre los términos de este Arreglo se le informará que los términos de este Arreglo son confidenciales, y que la persona no puede revelar ni divulgar los términos de este Arreglo a ningún tercero. Ninguna de las secciones de este Acuerdo prohibirá a los Abogados de la Clase comunicarse con los Miembros de la Clase o prohibirá a los Abogados de la Clase divulgar este Arreglo en declaraciones y/u otra evidencia presentada ante tribunales sobre sus calificaciones para actuar como Abogados de Clase.

E. Sin represalias. El Demandado comprende y reconoce que tiene la obligación legal de no tomar represalias contra ningún Miembro de la Clase del Arreglo que decide participar en el Arreglo de la Clase o decide Excluirse del Arreglo de la Clase. El Demandado derivará toda consulta relacionada con este Arreglo de la Clase al Administrador del Arreglo o a los Abogados de la Clase, y no desalentará directa o indirectamente a los Miembros de la Clase del Arreglo que son empleados de participar en el Arreglo ni alentará ni recomendará a los Miembros de la Clase del Arreglo excluirse u objetar el Arreglo de la Clase.

F. Interpretación. Las Partes del presente acuerdan que los términos y condiciones de este Acuerdo de Arreglo son resultado de negociaciones prolongadas, intensivas, en condiciones de igualdad y sin colusión entre las Partes, y que este Acuerdo de Arreglo no se debe interpretar a favor ni en contra de ninguna parte debido a la medida en la que alguna de las partes o sus abogados participaron en la redacción de este Acuerdo de Arreglo. Si alguna de las fechas del Acuerdo de Arreglo cae en un fin de semana, un feriado bancario o de tribunales, el momento para actuar será prorrogado hasta el siguiente día hábil.

G. Derecho aplicable. La intención de este Acuerdo de Arreglo es que se rija, y de hecho se registrá, por las leyes del Estado de California, sin aplicación de sus principios de conflicto de derecho, en todos los aspectos, incluyendo la ejecución, interpretación, desempeño y aplicación.

H. Avisos. A excepción de los avisos a los Miembros de la Clase del Arreglo que debe realizar el Administrador del Arreglo, todo aviso u otra comunicación exigida o permitida conforme a este Acuerdo de Arreglo será por escrito y se considerará válida si es entregada en persona a la parte o sus abogados mediante correo certificado de los Estados Unidos, con franqueo pagado, correo electrónico, facsímil, o entrega de 24 horas a la dirección de la parte incluida en este Acuerdo de

Arreglo.

I. Títulos e interpretaciones. Los títulos o encabezados de secciones incluidos en el presente se insertan por un motivo de conveniencia y para referencia exclusivamente y de ninguna manera definen, limitan, amplían o describen el alcance de este Acuerdo de Arreglo ni ninguna de sus disposiciones.

J. Modificación. Este Acuerdo de Arreglo puede ser cambiado, alterado o modificado exclusivamente por escrito con la firma de las Partes y aprobado por el Tribunal. Este Acuerdo de Arreglo se extinguirá únicamente debido a su cumplimiento de conformidad con sus términos o mediante un escrito firmado por las Partes.

K. Cláusula de integración. Este Acuerdo de Arreglo incluye el acuerdo completo entre las Partes en lo que se refiere al Arreglo de la Clase de la Acción Legal y las transacciones contempladas por el mismo, y todos los acuerdos, entendimientos y declaraciones anteriores o actuales, ya sean verbales o escritos, y ya sea de una parte o de los abogados de dicha parte, quedan reemplazados por el presente. La única manera de renunciar a alguno de los derechos conforme a este Acuerdo de Arreglo es por escrito tal como se describe más arriba.

L. Sucesores y cesionarios. Este Acuerdo de Arreglo será vinculante y para beneficio de las Partes y los Miembros de la Clase del Arreglo (excluyendo únicamente a las personas que se Excluyen dentro de los plazos previstos) y de sus compañías matrices, subsidiarias, razones sociales, divisiones, entidades relacionadas, empresas conjuntas y entidades afiliadas actuales, anteriores y futuras, y de cada uno de sus respectivos propietarios, funcionarios, directores, accionistas, ejecutivos, socios, empleados, coempleadores, empleadores conjuntos, inversionistas, miembros, principales, subsidiarias, compañías afiliadas, compañías de seguro, compañías de reaseguro, gerentes, agentes, herederos, cónyuges, asociados, representantes, administradores, fiduciarios, fideicomisarios, contadores, auditores, planes de beneficios patrocinados por la compañía de toda naturaleza, antecesores, sucesores, cesionarios, abogados, y toda otra entidad legal actual, anterior o futura asociada con las anteriores.

M. Signatarios corporativos. Toda persona que firma este Acuerdo de Arreglo o todo documento relacionado en nombre de un signatario corporativo o en nombre de una sociedad por el

presente garantiza y promete, para beneficio de todas las Partes del presente, que dicha persona fue debidamente autorizada por dicha corporación o sociedad para suscribir este Acuerdo de Arreglo o todo documento relacionado.

N. Suscripción en ejemplares. Este Acuerdo de Arreglo entrará en vigencia al momento de su suscripción por parte de todos los abajo firmantes y puede ser suscrito de forma electrónica (tal como a través de DocuSign). Las Partes pueden suscribir este Acuerdo de Arreglo en ejemplares, y la suscripción de ejemplares tendrá la misma validez y efecto que si las Partes del Arreglo hubieran firmado el mismo instrumento.

O. Sección 664.6 del Código de Procedimientos Civiles. Este Acuerdo de Arreglo se puede hacer cumplir de conformidad con el Procedimiento § 664.6 del Código de Procedimientos Civiles de California.

P. Acción legal para hacer cumplir el Acuerdo. En todo juicio o acción legal ante un tribunal para hacer cumplir los términos de este Acuerdo, la parte vencedora tendrá derecho a recibir sus honorarios de abogados y costos.

Q. Honorarios de abogados, costos y gastos. A excepción de lo que se estipula específicamente en contrario en el presente, cada una de las partes correrá con sus propios honorarios de abogados, costos y gastos, ya sea sujetos a impuestos o no, incurridos por las mismas o que se surjan de la Acción Legal y no solicitarán el reembolso de los mismos de ninguna otra parte en este Acuerdo de Arreglo.

EN FE DE LO CUAL las Partes y sus abogados firman este Acuerdo de Arreglo en la fecha que se indica debajo de sus firmas o la firma de sus representantes. La fecha del Acuerdo de Arreglo será la fecha de la última firma.

Fecha: ____ de julio de 2022

08 / 03 / 2022

María García como una persona y Representante de la Clase Propuesta

Fecha: ____ de julio de 2022

En nombre de Grower Direct Nut Company, Inc.
Por: Aaron Martella
Su: Presidente

1 **APROBADO EN CUANTO A FORMA Y CONTENIDO:**

2
3 FECHA: ____ de julio de 2022
4 08 / 04 / 2022

WINSTON LAW GROUP, P.C.

David Winston

5 Por: DAVID S. WINSTON
6 Abogados de la Demandante y de la Clase de
7 Arreglo Propuesta

8
9 FECHA: ____ de julio de 2022

10 **HENDERSON HATFIELD**
11 **Una Sociedad profesional**

12 By: _____
13 Stacy L. Henderson
14 Abogados del Demandado Grower Direct Nut
15 Company, Inc.

Anexo A

**LE PEDIMOS QUE LEA DETENIDAMENTE ESTE AVISO.
EL MISMO INCLUYE INFORMACIÓN IMPORTANTE SOBRE SUS
DERECHOS.**

No se trata de una oferta de servicios de un abogado. Este aviso fue autorizado por un tribunal.

AVISO DE PROPUESTA DE ARREGLO DE DEMANDA COLECTIVA

Maria Garcia vs. Grower Direct Nut Company, Inc.

Tribunal Superior del Estado de California, Condado de Stanislaus, No. de Caso CV-21-005425

Si usted trabajó en Grower Direct Nut Company, Inc. (el “Demandado”) en California como un empleado y recibió un recibo de sueldo detallado en algún momento del 5 de abril de 2020 al 2 de diciembre de 2021, es posible que una propuesta de arreglo de demanda colectiva relacionada con la emisión de recibos de sueldo detallados afecte sus derechos y que tenga derecho a dinero conforme a la propuesta de Arreglo.

Usted **no** está siendo demandado. Este aviso fue autorizado por un tribunal. **No** se trata de una oferta de servicios de un abogado.

**LE PEDIMOS QUE LEA DETENIDAMENTE ESTE AVISO.
EL MISMO INCLUYE INFORMACIÓN IMPORTANTE SOBRE SUS DERECHOS.**

- Usted recibió este Aviso debido a que los registros del Demandado indican que usted se encuentra en la Clase del Arreglo propuesto. Su Pago Neto del Arreglo estimado es de [INSERT ESTIMATED NET SETTLEMENT AWARD]. Los registros del Demandado indican que usted trabajó [INSERT NUMBER OF PAY PERIODS WORKED DURING THE CLASS PERIOD PER DEFENDANT’S RECORDS].
- La Demandante alega que el Demandado emitió recibos de sueldo detallados que no incluían la fecha de inicio del período de pago y que los recibos de sueldo emitidos a los empleados que recibían cheques en papel no incluían la dirección de la entidad legal que es el empleador. La Demandante solicita además sanciones relacionadas conforme a la Ley de Procurador General Privado de 2004 (“PAGA”, por sus siglas en inglés).
- El Demandado rechaza los reclamos de la Demandante y sostiene que cumplió con todas sus obligaciones legales conforme al Código de Trabajo de California. El Arreglo no es una admisión de ningún acto indebido, y el Tribunal no hizo ninguna determinación de responsabilidad.
- Las Partes de esta acción legal no están de acuerdo sobre el resultado probable de la demanda en lo que se refiere a la responsabilidad y daños si no se llega a un arreglo. A pesar de que la Demandante considera que sus reclamos tienen mérito, reconoce que la litigación es una propuesta riesgosa y que tal vez no tenga éxito en la totalidad o en algunos de sus reclamos. De la misma manera, a pesar de que el Demandado confía en que cuenta con sólidas defensas ante los reclamos de la Demandante, el mismo reconoce los riesgos, distracciones y costos relacionados con la litigación. Las Partes asistieron a una conferencia de mediación y,

reconociendo los riesgos y costos inherentes a un proceso judicial, llegaron a una propuesta de Arreglo de los reclamos que se hacen valer en la demanda.

- El [INSERT PRELIMINARY APPROVAL DATE], el Tribunal otorgó aprobación preliminar a la propuesta de Arreglo. El Tribunal no expresó ninguna opinión sobre los méritos de los reclamos de la Demandante ni las defensas del Demandado.
- Usted dispone de diversas opciones:

PARTICIPAR EN EL ARREGLO Y RECIBIR UN PAGO DEL ARREGLO	<u>NO TIENE NECESIDAD DE HACER NADA PARA PARTICIPAR EN EL ARREGLO Y RECIBIR UN PAGO DEL ARREGLO.</u> Si no hace nada, <u>RECIBIRÁ</u> una parte de los fondos del Arreglo si la propuesta de Arreglo recibe aprobación definitiva y renunciará a todo derecho a demandar por separado al Demandado sobre ciertos reclamos, tal como se describen a continuación en este Aviso. Su Pago del Arreglo estimado es de [INSERT ESTIMATED NET SETTLEMENT AWARD].
SOLICITAR SER EXCLUIDO	Si solicita por escrito, dentro de los plazos previstos, ser excluido de la propuesta de Arreglo, <u>NO</u> recibirá una parte de los fondos del Arreglo pero conservará todo derecho que pueda tener a demandar por separado al Demandado por los mismos reclamos legales en esta demanda. Su Solicitud de Exclusión por escrito debe incluir una fecha de matasellos no posterior al [REDACTED] de [REDACTED]. Sin embargo, usted de todas maneras quedará obligado por la exención de responsabilidad por reclamos PAGA y recibirá su parte de los \$5,000.00 de sanciones PAGA para los empleados perjudicados, tal como se explica en mayor detalle a continuación.
OBJETAR	Usted puede objetar el Arreglo si no solicitó ser excluido del mismo. Si presenta una objeción por escrito, dentro de los plazos previstos, al Arreglo y el Arreglo de todas maneras recibe aprobación definitiva, usted <u>HARÁ LO SIGUIENTE</u> : (i) recibirá una parte de los fondos del Arreglo y (ii) eximirá de responsabilidad por los reclamos legales contra el Demandado. Su objeción por escrito debe incluir una fecha de matasellos no posterior al [REDACTED] de [REDACTED].

Sus opciones se explican en mayor detalle en este Aviso.

1. ¿Por qué recibí este aviso?

El Tribunal otorgó aprobación preliminar al Arreglo de la demanda colectiva presentada en representación de todas las personas que trabajaban en Grower Direct Nut Company, Inc. en California

como un empleado y que recibieron un recibo de sueldo detallado en cualquier momento del 5 de abril de 2020 al 2 de diciembre de 2021. Usted recibió este aviso debido a que los registros del Demandado indican que usted es un miembro de la Clase del Arreglo (“Miembro de la Clase”).

2. ¿Sobre qué es esta demanda?

Esta acción legal fue presentada el 30 de septiembre de 2021. La Demandante alega que el Demandado emitió recibos de sueldo detallados que no incluían la fecha de inicio del período de pago y que los recibos de sueldo detallados emitidos a los empleados que recibían cheques en papel no incluían la dirección de la entidad legal que es el empleador. El Demandado rechaza las alegaciones y sostiene que existe una controversia de buena fe sobre si infringió la ley y si incumplió de forma intencional o a sabiendas la ley de California en todos los momentos pertinentes del presente.

3. ¿El Tribunal decidió quién tiene razón?

No. El Tribunal no tomó ninguna decisión en relación con los méritos de las alegaciones de la Demandante ni las defensas del Demandado.

4. ¿Por qué se llegó a un arreglo en este caso?

Las Partes de esta acción legal no están de acuerdo sobre el resultado probable de la misma en lo que se refiere a la responsabilidad y los daños si no se llega a un arreglo. A pesar de que la Demandante considera que sus reclamos y los de la Clase del Arreglo tienen mérito, la misma reconoce que la litigación es una propuesta riesgosa y que tal vez no tenga éxito en la totalidad o algunos de sus reclamos. De la misma manera, a pesar de que el Demandado confía en que cuenta con sólidas defensas ante los reclamos de la Demandante, el mismo reconoce los riesgos, distracciones y costos relacionados con la litigación. Las Partes asistieron a una conferencia de mediación y, reconociendo los riesgos y costos inherentes a un proceso judicial, llegaron a una propuesta de Arreglo de los reclamos que se hacen valer en la demanda.

5. ¿Cuáles son los términos de la propuesta de Arreglo y cuánto recibiré?

El monto bruto del arreglo es de \$553,520.00. Conforme a la propuesta de Arreglo, se deducirían los siguientes montos antes de que se hagan los pagos a la Clase del Arreglo, sujeto a la aprobación definitiva del Tribunal:

- Honorarios de Abogados: un máximo de \$184,506.67
- Reembolso de Gastos del Caso: un máximo de \$10,000.00
- Pagos a la Agencia de Desarrollo de Trabajo y Fuerza Laboral por las Sanciones PAGA: \$20,000.00 (\$5,000 de los \$20,000.00 de las Sanciones PAGA se distribuirán a la Clase del Arreglo, tal como se explica en mayor detalle a continuación)
- Gastos de Administración del Arreglo: un máximo de \$15,000.00
- Pago por Servicios a la Representante de la Clase: un máximo de \$7,500.00

Después de dichas deducciones, aproximadamente \$331,513.33 estarán disponibles para el pago a la Clase del Arreglo que recibe este Aviso como el Monto Neto del Arreglo. Cada Miembro de la Clase Participante compartirá el Monto Neto del Arreglo de forma prorrateada en base a la cantidad de períodos de pago trabajados en relación con todos los Miembros de la Clase Participantes del 5 de abril

de 2020 al 2 de diciembre de 2021. Los Abogados de la Clase propusieron dicha distribución para reflejar el valor de cada reclamo potencial en cuestión en esta demanda.

6. ¿Qué debo hacer para recibir una parte de la propuesta de Arreglo?

Nada. Si desea recibir un pago conforme a los términos de esta propuesta de Arreglo, **NO** tiene necesidad de hacer nada. Sin embargo, si su dirección cambió, es importante que envíe su dirección postal actual al Administrador del Arreglo para estar seguros de que usted recibe su parte de los fondos del Arreglo si la propuesta de Arreglo recibe aprobación definitiva. Usted quedará cubierto por la exención de responsabilidad que se resume en la Sección 7 a continuación.

7. ¿A qué derechos renuncio?

Como parte del Arreglo, la Demandante y cada Miembro de la Clase (excluyendo a los que deciden excluirse del arreglo de la demanda colectiva), eximirán de responsabilidad y exonerarán plenamente a Grower Direct Nut Company, Inc. y a todas sus compañías matrices, subsidiarias, razones sociales, divisiones, entidades relacionadas, empresas conjuntas y entidades afiliadas actuales, anteriores y futuras, y a cada uno de sus respectivos propietarios, funcionarios, directores, accionistas, ejecutivos, socios, empleados, coempleadores, empleadores conjuntos, inversionistas, miembros, principales, subsidiarias, compañías afiliadas, compañías de seguro, compañías de reaseguro, gerentes, agentes, herederos, cónyuges, asociados, representantes, administradores, fiduciarios, fideicomisarios, contadores, auditores, planes de beneficios patrocinados por la compañía de toda naturaleza, antecesores, sucesores, cesionarios, abogados, y toda otra entidad legal actual, anterior o futura asociada con las anteriores incluyendo, de forma enunciativa y no limitativa, a Aaron Martella y Lucio Salazar, de forma individual y en sus capacidades de representación, y cada una de ellas, por toda causa de acción legal o reclamo que se hicieron valer en la Demanda del 30 de septiembre de 2021 o la Primera Demanda Enmendada del 17 de noviembre de 2021 en base al presunto hecho de que el Demandado no proporcionó recibos de sueldo que cumplieran con la ley en infracción de las secciones 226 y 226.3 del Código de Trabajo de California y Sanciones PAGA en base a las presuntas infracciones de recibos de sueldo subyacentes de conformidad con las secciones 2698 y subsiguientes del Código de Trabajo, además de todo otro reclamo relacionado que se planteó o que se podría haber planteado relacionado con la adecuación de los recibos de sueldo emitidos por el Demandado/las Partes Eximidas en California durante el Período de la Clase. Los reclamos eximidos no incluyen ningún reclamo de beneficios de compensación al trabajador, desempleo o discapacidad ni ningún otro reclamo al que no se pueda renunciar legalmente.

8. ¿Qué son las Sanciones PAGA?

Sanciones PAGA: \$20,000.00 del Monto Bruto del Arreglo se asigna para las presuntas sanciones civiles PAGA (las “Sanciones PAGA”), sujeto a la aprobación del Tribunal. La ley exige que el 75% de las Sanciones PAGA (es decir, \$15,000.00) se paguen a la Agencia de Desarrollo de Trabajo y Fuerza Laboral de California y el 25% de las Sanciones PAGA (es decir, \$5,000.00) se distribuyan a los Miembros de la Clase (independientemente de si solicitan o no ser excluidos del arreglo de la clase). Conforme a la PAGA, el Estado de California designa a procuradores generales privados, tales como la Demandante, para que demanden a empleadores por presuntas infracciones del Código de Trabajo, y todos los empleados tienen derecho a una parte del 25% de las sanciones que el Estado podrían recuperar de otra manera si demandara directamente al Demandado por las presuntas infracciones del Código de Trabajo.

9. ¿Qué debo hacer si no deseo ser parte de la propuesta de Arreglo?

Las personas que no desean participar en la propuesta de Arreglo pueden excluirse completando, firmando y enviando por correo una carta de Solicitud de Exclusión a más tardar el [INSERT RESPONSE DEADLINE] al Administrador del Arreglo de la siguiente manera.

<u>Administrador del Arreglo:</u>
INSERT
INSERT
INSERT
INSERT

Si su Solicitud de Exclusión incluye una fecha de matasellos posterior al [INSERT RESPONSE DEADLINE], la misma será rechazada y usted será un Miembro de la Clase Participante y quedará vinculado por los términos del Arreglo.

Para ser válida, la Solicitud de Exclusión debe indicar que el Miembro de la Clase desea ser excluido del Arreglo e incluir la siguiente información adicional: (1) el nombre y la dirección actual del Miembro de la Clase; (2) la firma del Miembro de la Clase; y (3) incluir una fecha de matasellos no posterior al [INSERT RESPONSE DEADLINE]. La Solicitud de Exclusión debe ser enviada al Administrador del Arreglo a la dirección que se especifica más arriba.

Se considerará que las personas que presentan una Solicitud de Exclusión válida dentro de los plazos previstos no son un Miembro de la Clase Participante y no recibirán un pago de esta propuesta de Arreglo. Dichas personas conservarán sus derechos a demandar al Demandado por separado por los reclamos que se plantean en esta demanda.

10. ¿Qué debo hacer si tengo una objeción?

Las objeciones a la propuesta de Arreglo deben ser por escrito y enviadas por correo al Administrador del Arreglo (que se indica más arriba) a más tardar el [REDACTED]. Para ser válidas, las objeciones deben: (1) incluir el nombre completo y la dirección actual del Miembro de la Clase que objeta; (2) proporcionar cada motivo específico en apoyo de la objeción; (3) estar firmadas por el Miembro de la Clase; e (4) incluir una fecha de matasellos no posterior al [INSERT RESPONSE DEADLINE].

11. ¿Qué debo hacer si la cantidad de períodos de pago que se indica en los registros del Demandado no es exacta?

Los registros del Demandado indican que usted trabajó [INSERT NUMBER OF PAY PERIODS WORKED DURING THE CLASS PERIOD PER DEFENDANT'S RECORDS]. Si considera que la cantidad de períodos de pago que los registros del Demandado indican que usted trabajó del 5 de abril de 2020 al 2 de diciembre de 2021 son inexactos, puede presentar una impugnación ante el Administrador del Arreglo y proporcionar toda información de apoyo a más tardar el [INSERT RESPONSE DEADLINE].

12. ¿Necesito un abogado? ¿Quiénes son los abogados en este caso?

No tiene necesidad de contratar su propio abogado, ya que los Abogados de la Clase trabajan en su representación. Sin embargo, si desea su propio abogado lo que incluye para presentar una objeción a la propuesta de Arreglo, tiene libertad para contratar uno corriendo con los gastos. Los siguientes son los Abogados de la Clase y los Abogados del Demandado en este caso:

<u>Abogados de la Clase:</u>	<u>Abogados del Demandado:</u>
WINSTON LAW GROUP, P.C. David S. Winston david@employmentlitigators.com 1880 Century Park East Suite 511 Los Angeles, CA 90067 Teléfono: (424) 288-4568 Fax: (424) 532-4062	HENDERSON HATFIELD, APC Stacy L. Henderson stacy@hendersonhatfield.com 578 N Wilma Ave Ste A Ripon, CA 95366 Teléfono: (209) 599-5003 Fax: (209) 599-5008

13. ¿Cuáles son los próximos pasos en el caso?

La propuesta de Arreglo solo recibió aprobación preliminar. El Tribunal celebrará una audiencia en el Departamento 23 del Tribunal Superior del Condado de Stanislaus, 801 10th Street, Modesto, CA 95354 el , 2022, at XX, hora del Pacífico, para evaluar las objeciones y determinar si el Arreglo debe recibir aprobación definitiva como justo, razonable y adecuado.

También se solicitará al Tribunal que apruebe el arreglo del reclamo PAGA, la solicitud de los Abogados de la Clase de honorarios de abogados y el reembolso de gastos, los costos de administración del arreglo, y el pago por servicios propuesto. La audiencia puede ser postergada sin aviso previo. Usted no tiene necesidad de asistir a esta audiencia.

14. ¿Cómo puedo recibir información adicional?

Este Aviso es un resumen de los términos básicos de la propuesta de Arreglo. Para acceder a los términos y condiciones exactos de la propuesta de Arreglo, puede consultar la “Estipulación Conjunta de Arreglo” que se encuentra en los registros del Secretario del Tribunal además de los alegatos y otros registros de este proceso judicial utilizando el sistema en línea del Tribunal Superior del Condado de Stanislaus en <https://stanportal.stanct.org/> buscando los nombres de las Partes y/o el número de caso. También puede solicitar a los Abogados de la Clase que le envíen una copia de la Estipulación Conjunta de Arreglo.

Le pedimos que no llame por teléfono al Tribunal, a la Oficina del Secretario ni a los Demandados para acceder a información sobre esta propuesta de Arreglo.



CERTIFIED TRANSLATION

A copy of the translated version is attached to this statement of certification.

Documents Translated For:

LAST NAME: Winston	FIRST NAME: David	MIDDLE NAME: N/A
COMPANY: Winston Law Group, P.C.	DIVISION: N/A	

List of Materials Translated:

Garcia vs. Grower Direct Nut Company, Inc. – Class Action Settlement Agreement

Source Language:	English
Target Languages:	Spanish

Dallas, Texas

WITH REFERENCE TO THE ABOVE-MENTIONED MATERIALS/DOCUMENTS, we at ASTA-USA Translation Services, Inc., a professional document translation company, confirm that we are accredited and competent to translate the above referenced document(s) and attest that the language translation completed by ASTA-USA's certified professional translators, represents an accurate and correct interpretation of the terminology/content of the source document(s). **This is to certify the correctness of the translation only.** We do not guarantee that the original is a genuine document or that the statements contained in the original document(s) are true.

IN WITNESS WHEREOF, ASTA-USA Translation Services, Incorporated has caused the Certificate to be signed by its duly authorized officer(s).

By:

Alain J Roy, President

Date: August 3, 2022



The National Association of Judiciary Interpreters & Translators
Member in Good Standing #7031



The American Translators Association
Member in Good Standing #243198



International Operations: Dallas, Texas
Administrative Offices: P.O. Box 22259 - Cheyenne, Wyoming 82003
Tel. 1.866.446.1860 □ ASTA-USA.com □ LegalTranslationSolutions.com

Exhibit 2

How America's Farmers Got Cut Out of the Supply Chain

As shipping companies concentrate on the most lucrative routes from China to California, almond growers are struggling to transport their wares.



By Peter S. Goodman

Peter S. Goodman has covered the supply chain chaos for the past two years. He reported this story from Manteca and Fresno, in California's Central Valley, as well as Washington, D.C., and the ports of Los Angeles and Long Beach.

April 20, 2022

During a normal spring, the sight of orchards bursting with clusters of almonds is a boon throughout California's Central Valley. Here is money growing on trees.

Not this year.

As Scott Phippen looks out on his orchard on a recent afternoon, he feels a sense of foreboding tinged with rage. His warehouse is stuffed with the leftovers of last year's harvest — 30 million pounds of almonds stored in wooden and plastic bins stacked to the rafters, and overflowing into his yard. Orders assembled for customers sit in giant white plastic bags and cardboard cartons arrayed across pallets, awaiting ships that can carry them across the water to Asia, the Middle East and Europe.

The almonds are here, the customers are over there, and the global shipping industry is failing to span the divide.

Every week, Mr. Phippen, 67, a compulsively organized overseer of his family business, Travaille & Phippen, peers hopefully at a calendar showing confirmed bookings on container vessels sailing to points worldwide from the port of Oakland, 65 miles to the west on San Francisco Bay. Every week, he absorbs all manner of disheartening news: No shipping containers available, no vessel arriving, no space on board.

"My warehouses are already bulging at the seams," Mr. Phippen says. "It scares the crap out of me, because in five months I'm going to get a new crop in the door. There's no timeout in farming."

Beyond a logistical torment, the crisis assailing almond producers is inflicting deep financial consequences, from diminished revenues to higher costs for storage. The same can be said for a broad array of other American agricultural exporters — from wheat growers in North Dakota to soybean producers in Nebraska — as shipping crops to customers has become maddening to the point of futility.

Most of the almonds stuck in Mr. Phippen's warehouses have already been purchased by buyers across the water, but he cannot collect payment until they make it onto a ship.

"Those almonds aren't worth squat in the warehouse," he says. "They are worth a lot of money in Dubai."



Machines and their operators at Travaile & Phippen sort the almonds, separating out the valuable bits from the debris. Rozette Rago for The New York Times



Almond farmers have very few options right now for shipping their valuable products. Rozette Rago for The New York Times

The exasperation of agricultural exporters amounts to the latest chapter of the Great Supply Chain Disruption, the tumultuous reordering of international trade and transportation amid the worst pandemic in a century. At the center of the story is the shipping container — the steel box that revolutionized commerce, allowing unfathomable quantities of goods to be carried around the planet.

Shipping companies — which last year collectively secured profits reaching \$190 billion — harvested especially enormous returns on their routes from Chinese ports to the West Coast of the United States.

Traditionally, carriers unload containers arriving from China at the twin ports of Los Angeles and Long Beach, and then ship empties up to Oakland, where they are reloaded with almonds and other agricultural crops.

But in recent months, the carriers have put growing numbers of empty containers back on ships immediately. The companies can make more money sending the valuable containers directly back to Asia, where they are refilled with goods destined for American consumers.

Almond growers like Mr. Phippen have been left with sharply limited options to deliver their wares to customers abroad. Throughout California, more than 1.1 billion pounds of almonds from last year's harvest are sitting in warehouses, a volume roughly one-third larger than this time last year, according to the Almond Alliance of California, an industry trade group.

"Foreign carriers are being allowed to disrespect us, and we can't do anything about it," says Aubrey Bettencourt, the association's president. "We have no recourse."

As the Biden administration contends with public anger over inflation, the president has seized on the shipping industry as a central part of the explanation. President Biden used his State of the Union address to excoriate carriers for mistreatment of "American businesses and consumers," while vowing a "crackdown."

Daniel B. Maffei, chairman of the Federal Maritime Commission, which regulates the shipping industry, promises to hold the carriers to account.

“Government should stand on the side of those facing an unfair advantage when they have a legitimate grievance against big powerful companies,” says Mr. Maffei, who has served on the commission since 2016 and was named chairman last month by Mr. Biden. The commission is “actively looking to investigate cases where exporters are being pushed around by carriers or, worse, ignored by them,” he added.

Recently passed bills in the House and Senate would bolster the commission’s authority to investigate complaints and take action.

“The market is dysfunctional from the standpoint of American exporters,” says Representative John Garamendi, a California Democrat, who sponsored the legislation in the House.

But the shipping industry counters that it is being scapegoated for the broad turmoil unleashed by the pandemic amid booming demand for goods produced in Chinese factories, from exercise bikes to kitchenware. Despite floating traffic jams at major ports, a supposed shortage of truck drivers and a dearth of warehouse space, the carriers have managed to move record volumes of cargo.

“There’s a frustration that really complex problems are getting sound-bited to the point where policymakers aren’t dealing with the structural challenges,” says John Butler, president of the World Shipping Council, a trade association in Washington.

He blamed changes in supply and demand for rising shipping costs, while warning that federal intervention could worsen troubles.

“Do people really believe that having the federal government on the dock with a clipboard saying, ‘That box goes on the ship, that one doesn’t,’ is more efficient and fair than letting the market sort it out?” Mr. Butler says.

Crossing the Water



James Blocker’s company, Valley Pride, is one of the biggest exporters of almonds in California. Rozette Rago for The New York Times

Most of the time, James Blocker would be cheering on an argument like the one the shipping industry is making — let the markets decide. But his predisposition against bureaucratic intervention has been tested by his predicament. As an exporter, his job is to move Mr. Phippen's almonds across the ocean. Right now, booking passage on ships is bordering on impossible.

"I feel helpless," he says.

Mr. Blocker's company, Valley Pride, is among the largest exporters of almonds in California, the most bountiful agricultural economy in the United States.

Every year, California farmers produce more than three billion pounds of almonds, or about 80 percent of the world's supply. Nearly all those nuts are harvested on more than 6,000 farms in the Central Valley — a flat, arid zone characterized by relentless sunshine, furnace-like summer heat and some of the most prodigious soils on earth.

Mr. Blocker grew up in the Valley, on the same land that his great-grandfather purchased after arriving nearly a century ago, in the aftermath of the Dust Bowl that ravaged his native Oklahoma. He spent his childhood roaming the rural fringes of what is today greater Fresno, one of the fastest-growing metropolitan areas in the country, and a community centered on the business of growing food.

Fresh from college at Fresno State, Mr. Blocker worked as a commodity trader for Cargill, the agribusiness conglomerate. In 2013, he started Valley Pride.

The business includes an orchard and a packing plant, but its heart is an enormous sales and distribution operation that buys almonds from growers throughout California and exports them around the world.

Last year, Valley Pride sold 140 million pounds of nuts while securing revenues reaching \$350 million.



Valley Pride has tapped \$8 million in credit as it waits for delayed payments. Rozette Rago for The New York Times



Last year, Valley Pride sold 140 million pounds of nuts, but its backlog is growing. Rozette Rago for The New York Times

Though Valley Pride is generally compelled to pay its growers no later than a month after an outbound shipment arrives at a port, the company does not itself get paid until the almonds make it to their final destination.

The chaos roiling shipping has widened the time between those two events. That has forced the company to tap its credit line, expanding what it has borrowed to about \$8 million from less than \$2 million, Mr. Blocker says.

Tall and sinewy, Mr. Blocker, 41, is a study in the contrasts of modern agribusiness. He drives a pickup truck, has a thick beard and wears cowboy boots, while holding up his faded jeans with a giant silver rodeo-style belt buckle. He crouches in the dirt at his orchard, tending to a leak in the irrigation system. Yet he spends most of his days inside a glassed-in office in a compound in North Fresno, across the street from a state office building. Trophies from his hunting trips — deer skulls with antlers — are mounted over his desk, above photos of his wife and three children.

“I’m pretty redneck,” he says. “The big city, the glitz and glamour doesn’t really do much for me.”

Mr. Blocker’s partner, Sunny Toor, was born in the Indian state of Punjab, worked as a banker in Canada and travels the world finding new markets for California almonds. Valley Pride’s senior vice president for sales, Sorbon Sharifov, grew up in Tajikistan and speaks five languages — Persian, Russian, Arabic, Tajik and English — which is useful as the company pushes into Central Asia.

But lately, the shipping industry has impeded that expansion.

Last July, a major buyer in Dubai signed a contract to purchase two 40-foot containers’ worth of almonds that were supposed to be shipped in October. Valley Pride booked passage on a vessel operated by Mediterranean Shipping Company — the world’s largest container carrier — for a journey from Oakland to Malta via the Panama Canal, and then on another ship bound for Dubai through the Suez Canal.

But the containers did not make it onto a carrier until Feb. 14. By the time the almonds reached Dubai in March, their value had dropped by \$50,000. The buyer claimed that the initial contract had expired and demanded a discount.

Mr. Toor and Mr. Sharifov spent most of February in Dubai, dining with customers to mollify their anger over delays and fend off demands for price breaks.



At the Port of Oakland, almond exporters struggle to book space on containers as their customers across the world wait for delivery. Jim Wilson/The New York Times

In a typical week, Valley Pride dispatches 50 containers full of almonds, the vast majority out of Oakland. In recent weeks, the company has struggled to confirm just five bookings. Even those have tended to be “rolled over” in shipping parlance — bumped to a later date — when loading day arrived and no containers could be found.

“That’s happening week after week,” Mr. Blocker says. “They tell us, ‘We don’t have equipment.’ What I hear is, ‘We do have equipment, but we’re not going to give it to you.’”

Before the pandemic, about 40 percent of all containers leaving the ports of Los Angeles and Long Beach were loaded with goods and the rest were empty, according to Sea-Intelligence, a shipping consultancy based in Copenhagen. But over the past year, carriers have shipped more empties back to Asia, with the share of outbound loaded containers dropping to 30 percent at Long Beach and 21 percent at the port of Los Angeles.

Carriers have also bypassed Oakland with increasing regularity — something that occurred only about 1 percent of the time two years ago, according to Sea-Intelligence, yet was happening nearly 25 percent of the time by late last year.

Meanwhile, carriers have raised shipping rates. In June, Mediterranean Shipping was charging \$1,400 to move a 40-foot container from Oakland to Dubai. This month, the carrier raised the fare to \$7,700, while refusing to honor previous rates on bookings that had been repeatedly rolled.

Last year, Valley Pride had logged about \$100 million in revenue by the end of March. This year, it has tallied half that.

“I’m pulling my hair out,” Mr. Blocker says. “We’re in a panic situation.”

A Different Route



Almonds packaged and ready for shipment at Travaille & Phippen, where the warehouses are bulging. Rozette Rago for The New York Times

Just after 8 on a recent morning, Mr. Blocker and Mr. Toor hold a conference call with Peter Friedmann, a former Capitol Hill staffer who runs the Agriculture Transportation Coalition, a Washington advocacy and lobbying group representing exporters.

With the studied patience of a professional wise man, Mr. Friedmann listens to their laments and assures them, by way of consolation, that their problems are a nearly universal affliction.

Hay farmers, who send bales across the Pacific to feed livestock in Asia, are not even bothering to cut their crops this year, given the near-impossibility of finding room on ships.

Valley Pride has looked into hauling almonds east to the port of Savannah, Ga. But the train passage across the country alone could take two weeks.

Mr. Blocker has just returned from a reconnaissance trip to Houston, where containers are more abundant. He has lined up warehouse space and is looking into trucking his cargo there, then shipping out of the Gulf of Mexico.

Trucking to Houston will add \$2,800 to the cost of sending a container. And his logistics team has discovered that there are no bookings available from Houston to Dubai until the middle of June. Plus, they entail “premium” charges of \$5,200, more than double the going rate of \$2,400.

Still, this seems worth pursuing. The alternative is staring at bags of almonds stuck in warehouses.

Mr. Friedmann says he has pressed Biden administration officials to force the carriers to pick up exports in Oakland. He suggests the White House could implore the heads of shipping carriers to make this problem go away, or prepare for executive branch intervention. Some carriers are already expanding export capacity.

Still, he notes that agricultural exporters are competing for space on ships with enormous importers like Amazon and Walmart. They traditionally incur much higher rates than exporters, and can afford to pay the premiums carriers are demanding.

That spread has been widening. Before the pandemic, importers shipping goods from China to the West Coast of the United States paid two to three times as much as American agricultural exporters shipping goods in the opposite direction, according to Freightos, a cargo booking platform. Now, importers are paying 10 times as much.

Mr. Blocker grimaces.

"I like free enterprise," he says. "I hesitate to get the government and bureaucracy involved. But we are at that point where we are desperate, and we've run out of options."

One of his logistics people pops into the office. She has managed to book five containers from Oakland to Dubai for a couple of weeks forward.

"It's a piss in a big ocean," Mr. Blocker says. "I just feel like we're in the land of the forgotten."

A Sick Feeling



Mr. Blocker of Valley Pride at his farm in Madera, Calif. Throughout the state, more than 1.1 billion pounds of almonds remain from last year's harvest. Rozette Rago for The New York Times

The next day, Mr. Blocker drives 110 miles north to Manteca to visit his most important customer, Mr. Phippen.

Low gray clouds hover over the Valley as his truck threads a vast expanse of orchards — newly planted almond trees giving way to brushy orange trees, and then a grid of pistachio trees whose branches weave mischievously skyward, like a garden fit for a haunted house.

The towns along the route display the centrality of farming in the Central Valley. He passes a well and pump company, a tractor showroom, a seed distributor.

Mr. Phippen greets him in a conference room tucked in a utilitarian building on the outskirts of town.

A third-generation Central Valley farmer, Mr. Phippen has sunburned cheeks that attest to the hours he spends outside, even well into his seventh decade.

“There isn’t anything in this business that I haven’t done personally,” he says.

He presides over a 2,500-acre orchard, a shelling plant that squeezes almonds out of their armored enclosures, a processing plant that pounds nuts into powdered form, a pair of warehouses and a mountain of discarded shells that he sells as feed to surrounding dairy farms.

Much of almond processing amounts to shaking trees, using heavy equipment to scoop up the resulting rain of material and then feeding the harvest into a diabolical assortment of machines that separate out the valuable bits from the detritus — pebbles, glass shards, twigs.

Mr. Phippen, meticulous about seemingly everything, stops and frowns as he wanders around his warehouse, noticing one bag of almonds that is sagging ever so slightly to the left.

“I want them standing up straight,” he says.

“I’m a control freak,” he adds — not by way of apology, but as a point of pride. “When I have to count on other people to do things for me, I just don’t trust it will get done right.”

His attention to detail has allowed him to cater to the most lucrative markets like Japan and Dubai, where buyers are famously discerning, and where the appearance of his almonds — free of scuffs, no broken pieces — has allowed him to charge a premium.



A mountain of discarded shells that Mr. Phippen sells as feed to surrounding dairy farms. Rozette Rago for The New York Times

Mr. Phippen delights in the process and disdains transactions with customers, which he finds stressful and distracting, leaving that part to Mr. Blocker. The two men talk every day, sometimes more than once.

What they talk about lately is how to get containers onto ships. Mr. Phippen's warehouse is now full of enough almonds to fill 678 containers.

In the busiest months of the year, he needs about 100 containers to handle his usual flow of exports. In January, he shipped 66. In February, 55, and in March fewer than 50.

He flashes a look of incomprehension, of indignation.

"You get to the point where you're defeated before you even get to work," he says. "It's a sick feeling."

He has shelled out \$820,000 to buy 3,000 more storage bins for his warehouses. He is spending another \$700,000 to build an additional warehouse.

But he cannot shake the suspicion that he has become a rube in a global economy run for the benefit of others.

"There's a lot of people taking advantage of the situation," he says. "Somebody's screwing with us. We're getting jacked around here."

Exhibit 3