

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement is entered into by and between
3 Plaintiff John Sanford, individually and on behalf of all others similarly situated, and Defendant
4 Orchard Machinery Corporation, and is approved by their respective counsel of record, subject to
5 the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Sanford v. Orchard*
8 *Machinery Corporation.*, Case No. CVCS21-0001614, filed in Sutter County Superior Court.

9 2. "Aggrieved Employees" include all persons who are or were previously employed
10 by Defendant in California classified as a non-exempt or hourly employee at any time from
11 September 9, 2020 through September 26, 2022 (subject to the provisions of section 48(b)).

12 3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean
13 this Class Action and PAGA Settlement Agreement and Release of Claims, including any
14 attached Exhibits.

15 4. "Class Claims" or "Released Class Claims" will include all claims that were pled
16 in the operative First Amended Complaint based on the facts alleged therein, including claims for
17 failure to pay minimum and overtime wages and/or failure to pay such wages at the correct rate(s)
18 of pay, meal and rest break violations, failure to provide accurate itemized wage statements,
19 failure to timely pay all wages upon separation of employment, and unfair and unlawful business
20 practices.

21 5. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
22 Joshua Falakassa of Falakassa Law, P.C.

23 6. "Class Data" means a complete list that Defendant will diligently and in good faith
24 compile from its records and provide to the Settlement Administrator on one spreadsheet and
25 shall include the Settlement Class Members' full names; last known addresses; telephone
26 numbers; Social Security Numbers; and dates of employment and/or number of Workweeks
27 Worked as non-exempt or hourly employees of Defendant during the Class Period and the PAGA
28 Period for each Settlement Class Member.

1 7. “Class Period” and “Class Release Period” shall mean September 13, 2017
2 through September 26, 2022 (subject to the provisions of section 48(b)).

3 8. “Class Representative” or “Plaintiff” means and refers to John Sanford.

4 9. “Complaint” refers to the First Amended Complaint filed in the Sutter County
5 Superior Court action entitled *Sanford v. Orchard Machinery Corporation.*, Case No. CVCS21-
6 0001614.

7 10. “Court” means the California Superior Court, County of Sutter or any Court of
8 competent jurisdiction.

9 11. “Defendant” means and refers to Orchard Machinery Corporation.

10 12. “Defendant’s Counsel” or “Defense Counsel” mean and refer to Alexander M
11 Medina and Kyle W. Owen of Medina McKelvey, LLP.

12 13. “Effective Date” means ten (10) calendar days following the date the Court enters
13 an order granting final approval of the Settlement, assuming no appeal is filed; or if a timely
14 appeal is filed, then ten (10) calendar days after the date of final resolution of that appeal
15 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
16 approval of the Settlement.

17 14. “Final” means that the Settlement has been granted “Final Approval” by the Court
18 and the “Effective Date” has occurred.

19 15. “Final Approval” refers to the order of the Court granting final approval of this
20 Settlement Agreement and entering a judgment approving this Settlement on substantially the
21 same terms provided herein or as may be modified by subsequent agreement of the Parties or
22 order of the Court.

23 16. “Final Settlement Class” means, collectively, all Participating Class Members and
24 all Aggrieved Employees.

25 17. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
26 48(d) below.

27 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(c)
28 below.

1 19. “Notice” means the notice of settlement of class action and PAGA Settlement that
2 will be sent to the Settlement Class Members.

3 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed
4 to the Settlement Class Members.

5 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
6 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
7 respect to the Class Claims pursuant to Paragraph 70(a) below.

8 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
9 of 2004, California Labor Code Sections 2698–2699.5.

10 23. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for
11 civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that
12 were pled in the operative First Amended Complaint based on the facts alleged therein, including
13 claims for failure to pay minimum and overtime wages and/or failure to pay such wages at the
14 correct rate(s) of pay, meal and rest break violations, failure to provide accurate itemized wage
15 statements, failure to timely pay all wages upon separation of employment, and unfair and
16 unlawful business practices.

17 24. “PAGA Notice” shall refer to the notice sent by Plaintiff, by and through counsel,
18 on or about September 9, 2021, to the LWDA and to Defendant, alleging that Defendant engaged
19 in violations of the California Labor Code and California Wage Order(s).

20 25. “PAGA Period” and “PAGA Release Period” shall mean September 9, 2020
21 through September 26, 2022 (subject to the provisions of section 48(b)).

22 26. “Participating Class Member” means any and all Settlement Class Members who
23 are deemed to participate and receive an Individual Settlement Amount for the Class Claims and
24 who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests for
25 Exclusion.

26 27. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
27 Aggrieved Employees, and Defendant, collectively.

28 28. “Preliminary Approval Date” means the date the Court preliminarily approves the

1 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

2 29. "Preliminary Approval Order" means the judicial Order to be entered by the Court,
3 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and
4 providing for the issuance of the Notice to the Settlement Class Members, an opportunity to opt
5 out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of
6 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
7 Settlement, including approval of attorneys' fees and costs.

8 30. "QSF" means the Qualified Settlement Fund set up by the Settlement
9 Administrator for the benefit of the Final Settlement Class, and from which the settlement
10 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
11 Code Section 468.

12 31. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
13 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
14 Plaintiff and all of the Aggrieved Employees.

15 32. "Released Parties" shall refer to Defendant, together with their current and former
16 officers, directors, members, managers, shareholders, agents, insurers, charitable organizations,
17 parents, subsidiaries, affiliates, operators, partners, attorneys, successors, and assignees.

18 33. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 70(a)
19 below.

20 34. "Service Payment" or "Service Award" means the amount approved by the Court
21 to be paid to Class Representative in addition to his Individual Settlement Amount as a
22 Participating Class Member.

23 35. "Settlement Administration Costs" means the costs payable from the Settlement
24 Amount to the Settlement Administrator for administering this Settlement, including, but not
25 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due
26 diligence, reporting and remittance obligations, distributing the Settlement Amount, and
27 providing necessary reports and declarations, as requested by the Parties. The Settlement
28 Administration Costs shall be paid from the Settlement Amount.

1 36. “Settlement Administrator” means and refers to a settlement administrator
2 mutually agreed to by the Parties, that will provide the Notice to the Class Members and distribute
3 the settlement amounts as described in this Agreement.

4 37. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
5 ascribed to it in Paragraph 48(a) below.

6 38. “Settlement Class Member” or “Class Member” refers to individual members of
7 the Settlement Class.

8 39. “Settlement Class” and “Settlement Class Members” refers to all persons who are
9 or were previously employed by Defendant in California classified as a non-exempt employee
10 during the Class Period.

11 40. “Workweeks Worked” for each Settlement Class Member and Aggrieved
12 Employee means any workweek during the Class Period and/or the PAGA Period, as applicable,
13 in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendant
14 as a non-exempt employee in California and worked at least one shift during the workweek for or
15 on behalf of Defendant for which a prior release of claims has not been signed. Workweeks
16 Worked shall not include weeks where a Settlement Class Member and/or Aggrieved Employee
17 only had sick time, vacation time, was on leave, or otherwise did not record any actual work time
18 in Defendant’s timekeeping system. Workweeks Worked will be calculated based on Defendant’s
19 business records.

20 **B. General Terms**

21 41. On or about September 13, 2021, Plaintiff filed a class action complaint in the
22 Court against Defendant, including allegations of: (1) failure to pay minimum wages, (2) failure
23 to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time
24 penalties, (6) wage statement violations, and (7) unfair competition. On or about January 4, 2022,
25 Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties based on
26 the foregoing Labor Code violations.

27 42. Defendant denies Plaintiff’s claims and allegations and contends that the Action
28 is not suitable for class certification and/or representative treatment.

1 43. Class Representative believes he can proceed with his class and representative
2 claims, that the Action is meritorious, and that class certification is appropriate.

3 44. The Parties have conducted a thorough investigation into the facts of the Action.
4 This includes conducting extensive exchange of informal discovery, including Defendant's
5 written policies and practices and the production of payroll and timekeeping records for
6 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
7 about and has done extensive research with respect to the applicable law and potential defenses
8 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
9 diligently pursued an investigation of the Class Members' claims against Defendant. Based on
10 the foregoing data and on their own independent investigation and evaluation, Class Counsel is
11 of the opinion that the settlement with Defendant for the consideration and on the terms set forth
12 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
13 Settlement Class Members and Aggrieved Employees in light of all known facts and
14 circumstances, including the risk of significant delay and uncertainty associated with litigation,
15 various defenses asserted by Defendant , and numerous potential appellate issues.

16 45. On June 29, 2022, the Parties participated in mediation before Tripper Ortman,
17 Esq., a highly experienced class action mediator. After a full-day mediation consisting of
18 extensive and at times contentious arms-length negotiations, and concluding with the issuance of
19 a mediator's proposal, the Parties reached a settlement.

20 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
21 to be performed or judgments to be entered pursuant to the terms of the Settlement and
22 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
23 any statute or law or liability on the claims or allegations in the Action.

24 47. Stipulation for Class Certification and Representative Treatment. For settlement
25 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
26 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
27 class and that the Aggrieved Employees are appropriate for representative treatment for purposes
28 of settlement. This stipulation to certification and representative treatment is in no way an

admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and representative treatment and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

48. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Six Hundred Fifty Thousand Dollars (\$650,000) ("the Settlement Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and includes Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to Class Representative, all Settlement Administration Costs, and payment to the Labor Workforce Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay the employers' share of applicable payroll taxes.

(b) The Settlement is based on Defendant's representation that there are approximately 34,006 workweeks through June 29, 2022. In the event that the actual number of Workweeks Worked by all Settlement Class Members during this period increases by 10% or more (*i.e.*, if there are approximately 37,407 or more workweeks worked by the Settlement Class Members), then Defendant has the option to either: (1) agree to increase the Gross Settlement Amount on a proportional basis in excess of 10 percent (*i.e.*, if there were an eleven percent (11%) increase in the number of Workweeks Worked, then Defendant will increase the Gross Settlement Amount by one percent (1%)); or (2) in the event that this provision is triggered, then Defendant

1 may elect to end the Class Period at an earlier date than described above, so as to have an earlier
2 end to the class period at the Defendant's discretion in order to limit the covered workweeks to
3 37,407 (or less) in lieu of paying an increase to the Gross Settlement Amount.

4 (c) Net Settlement Amount: The "Net Settlement Amount" is defined as the
5 Settlement Amount less attorneys' fees and litigation costs as approved and awarded by the Court,
6 the Service Payment to Class Representative as approved and awarded by the Court, the
7 Settlement Administration Costs, as approved and awarded by the Court, and the Twenty
8 Thousand Dollars (\$20,000.00) allocated to payment for PAGA penalties as described in
9 paragraph 48(d) below. In the event that the Court reduces the attorneys' fees and litigation costs
10 or Service Awards, Settlement Administration Costs, or either increases or decreases the amount
11 allocated to PAGA penalties, the Net Settlement Sum shall be increased or decreased accordingly.

12 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
13 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
14 Member's and Aggrieved Employee's Individual Settlement Amounts based on the following
15 formula:

16 i. PAGA Amount: \$20,000 of the Gross Settlement Amount has been
17 designated to the PAGA claims. Twenty-five percent (25%) of the \$20,000, or \$5,000, shall be
18 paid out to Aggrieved Employees, while seventy-five percent (75%), or \$15,000, will be paid to
19 the LWDA. Each Aggrieved Employee shall receive a portion of the \$5,000 proportionate to the
20 number of Workweeks Worked by the Aggrieved Employees during the PAGA Period compared
21 to the total number of Workweeks Worked by all Aggrieved Employees during the PAGA Period.
22 Aggrieved Employees shall have their settlement amount for the Released PAGA claims paid one
23 hundred percent (100%) as civil penalties for which no taxes will be withheld and for which a
24 Form 1099 will be issued by the Settlement Administrator.

25 ii. Class Amount: The Net Settlement Amount shall be allocated to each
26 Participating Class Member based on his/her/their proportionate Workweeks Worked during the
27 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
28 numerator of which is the Participating Class Member's total Workweeks Worked during the

1 Class Period, and the denominator of which is the total Workweeks Worked by all Participating
2 Class Members during the Class Period. If there are any timely submitted Requests for Exclusion,
3 the Settlement Administrator shall proportionately increase the Individual Settlement Amounts
4 for each Participating Class Member so that the amount actually distributed to Participating Class
5 Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

6 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
7 will be allocated for tax purposes based on the allegations in the Action as follows: twenty five
8 percent (25%) will be paid as wages subject to withholding of all applicable local, state, and
9 federal taxes; and seventy five percent (75%) will be paid as interest and as civil penalties
10 (pursuant to, *e.g.*, California Labor Code sections 203, 226) from which no taxes will be withheld.
11 The Settlement Administrator will issue to each Participating Class Member an Internal Revenue
12 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
13 1099 with respect to the civil penalties and interest allocations.

14 (f) Service Payment to Class Representative: The amount awarded to Class
15 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
16 \$10,000. Defendant agrees not to oppose this request. The Service Payment to Class
17 Representative will be paid out of the Gross Settlement Amount. Class Representative will be
18 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
19 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
20 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
21 be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser
22 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
23 be distributed to the Participating Class Members. In the event of any appeal of the amount of the
24 service awards (if any) approved by the Court, if, after the exhaustion of any such appellate
25 review, additional amounts not awarded to Class Representative shall be added to the Net
26 Settlement Amount to be distributed to the Participating Class Members.

27 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
28 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement

1 Amount (approximately \$216,666.66), plus reasonable litigation costs not to exceed \$15,000
2 (“Attorneys’ Fees and Cost Award”). For purposes of this Settlement, Defendant agrees not to
3 oppose any contention by Class Counsel that attorneys’ fees should be based on the common fund
4 theory. The Attorneys’ Fee and Cost Award shall be paid from the Gross Settlement Amount, and
5 except for this award, Defendant shall have no further obligation to pay any attorneys’ fees, costs,
6 or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by
7 Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
8 the Participating Class Members. Any Court order awarding less than the amount sought by Class
9 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the
10 Settlement. In the event of any appeal of the amount of the awards of attorneys’ fees and costs (if
11 any) approved by the Court, final funding and administration of the portion of the attorneys’ fees
12 and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate
13 review. If, after the exhaustion of any such appellate review, additional amounts not awarded to
14 as attorneys’ fees and costs shall be added to the Net Settlement Amount to be distributed to the
15 Participating Class Members and/or Aggrieved Employees. The Settlement Administrator shall
16 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys’ fees and costs
17 awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class
18 Counsel and any other attorney representing or claiming to represent the Class Members shall be
19 the sole responsibility of Class Counsel.

20 (h) Settlement Administration Costs: The fees and other charges of the Settlement
21 Administrator will be paid from the Gross Settlement Amount, not to exceed \$10,000 subject to
22 Court approval, unless approved by all Parties and the Court.

23 (i) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA Penalties
24 and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount,
25 \$15,000 (75%) shall be paid to the LWDA in satisfaction of Plaintiff’s claims for civil penalties
26 under the PAGA and \$5,000 (25%) will be included in the Individual Settlement Amounts,
27 payable to the Aggrieved Employees as set forth in Paragraph 48(d).

28 (j) Tax Liability: Class Counsel, Defendant, and Defendant’s Counsel make no

1 representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder,
2 and Plaintiff and the Settlement Class Members are not relying on any statement or representation
3 by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Final Settlement
4 Class Members understand and agree that they will be solely responsible for the payment of any
5 taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax
6 withholding will also be made pursuant to applicable federal, state, and/or local withholding codes
7 or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner
8 required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement.
9 If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after
10 the date of this Agreement, the processes set forth in this Section may be modified in a manner to
11 bring Defendant into compliance with any such changes.

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

1 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
2 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
3 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
4 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
5 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
6 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
7 AGREEMENT.

8 49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
9 no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement
10 Class Members will not have to make a claim to receive an Individual Settlement Amount.
11 Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final
12 Settlement Class Member. The Settlement Administrator shall be responsible for accurately and
13 timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final
14 Settlement Class Member not cashing an Individual Settlement Amount by the check cashing
15 deadline, as set forth herein.

16 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
17 adequate, and will so represent same to the Court.

18 **D. Release by Plaintiff and the Final Settlement Class**

19 51. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
20 Member, for themselves and for their respective spouses, domestic partners, marital community,
21 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
22 administrators, trustees, conservators, guardians, assigns, and representatives, will forever
23 completely release and discharge the Released Parties from the Released Class Claims for the
24 Class Release Period.

25 52. Each Participating Class Member will be deemed to have made the foregoing
26 Release as if by manually signing it.

27 53. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each
28 Aggrieved Employee, for themselves and for their respective spouses, domestic partners, marital

community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Release Period.

54. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

55. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opt out of the Settlement for purposes of Class Claims.

56. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The Aggrieved Employees and the LWDA shall be so notified in the Notice.

57. Class Representative, on behalf of himself and the Participating Settlement Class Members, acknowledges and agrees that the claims for (1) unpaid minimum and overtime wages; (2) meal and rest break violations; (3) wage statement violations; (4) waiting time penalties; (5) unfair competition; and (6) PAGA penalties are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to him. Class Representative, on behalf of himself and the Participating Settlement Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

An employer shall not require the execution of any release of any claim or right on

1 account of wages due, or to become due, or made as an advance on wages to be
2 earned, unless payment of those wages has been made.

3 **E. Release by Class Representative**

4 58. As a material inducement to Defendant to enter into this Settlement Agreement, in
5 addition to Class Representative's release of the Released Class Claims and Released PAGA
6 Claims, as discussed in Paragraphs 51 and 53 above, Class Representative does hereby, for
7 himself and for his respective spouses, domestic partners, marital community, children, estates,
8 trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
9 trustees, conservators, guardians, assigns, and representatives, forever completely release and
10 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
11 obligations, promises, agreements, contracts, controversies, damages, actions, causes of action,
12 suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory
13 penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and
14 costs) of any nature whatsoever, from the beginning of time through the execution of this
15 Stipulation, whether known or unknown, suspected or unsuspected, concealed or hidden,
16 including but not limited to all claims arising out of, based upon, or relating to Class
17 Representative's employment with Defendant or the remuneration for or termination of such
18 employment (collectively, the "Class Representative's Claims").

19 59. Without limiting the generality of the foregoing, Class Representative also
20 expressly release all claims or rights against Released Parties arising out of or relating to alleged
21 violations of any contracts, express or implied (including but not limited to any contract of
22 employment); any contract or covenant of good faith and fair dealing (express or implied); any
23 tort, including but not limited to, negligence, fraud, misrepresentation and violation of California
24 Labor Code section 970, negligent infliction of emotional distress, intentional infliction of
25 emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any
26 claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid
27 wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and
28 alleged "off the clock" work under federal and state law, including, but not limited to, California

1 Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section
2 203, damages, or penalties pursuant to California Labor Code Section 226, meal period and rest
3 break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure
4 to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or
5 civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business
6 expenses pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant
7 to California Labor Code Sections 551 and 552, unfair competition and unfair business practices
8 pursuant to Business and Professions Code Section 17200 *et seq.*, interest and costs pursuant to
9 California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or
10 common law rights to attorneys' fees and costs, including those pursuant to California Labor
11 Code Section 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code
12 section 2699 *et seq.*, and the alleged violation or breach of any other state or federal statute, rule,
13 and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all
14 similar causes of action, including but not limited to, any claim for restitution, equitable relief,
15 interest, penalties, costs, or attorneys' fees in connection with any of the foregoing, negligent
16 infliction of emotional distress, intentional infliction of emotional distress, and defamation; any
17 "wrongful discharge," "constructive discharge," and "retaliation" claims; any claims relating to
18 any breach of public policy; any legal restrictions on Defendant's right to discharge employees;
19 and any federal, state, or other governmental statute, regulation, or ordinance, including, without
20 limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national
21 origin discrimination or harassment, including retaliation for reporting discrimination or
22 harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and
23 California Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100
24 *et seq.* (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 *et*
25 *seq.* (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
26 Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing, including
27 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
28 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting

discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; and (18) any other federal, state, or local statute or legislation.

60. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representative, and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representatives knew of, as well as all claims that they do not know or suspect to exist in their favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representative's claims.

F. Interim Stay of Proceedings

61. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action

except such as are necessary to effectuate the Settlement, including amending the operative complaint.

G. Notice Process

62. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Final Settlement Class Members, issuing Forms W-2 and 1099, reporting to taxing authorities, due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

63. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Final Settlement Class Members, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

64. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement

Administrator will not be provided to Class Counsel and it will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within seven (7) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

66. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if an envelope has not been returned within thirty (30) days of the mailing that the Settlement Class Member received the Notice.

68. Disputes Regarding Class Data. Settlement Class Members are deemed to participate in the Settlement unless they opt-out. The Notice will inform Settlement Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period and during the PAGA Period. Settlement Class Members may dispute their Workweeks Worked if they feel they were employed more workweeks in the Class Period in California than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable

evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Settlement Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, object, or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Workweeks Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.

69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

70. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Class Claims, and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state in words to this effect:

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
THE SANFORD V. ORCHARD MACHINERY LAWSUIT. I
UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the Class Claims.

(b) Binding Effect on Final Settlement Class Members. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by

counsel, the name and address of his/her/their counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his/her/their counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure section 663. Settlement Class Members and Aggrieved Employees may not object to or opt out of the Settlement with respect to the PAGA Claims.

(d) Failure to Object. Any Settlement Class Member who desires to object with respect to the Class Claims but fails to timely submit a written objection waives any right to object will be foreclosed from making any objection to this Settlement. Any Settlement Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Settlement Class Members at least five (5) court days before the date of the Final Approval Hearing.

71. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement

1 Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or
2 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
3 Counsel or Defense Counsel.

4 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
5 the QSF of the Settlement Amount, as described in Paragraph 48(a) that is necessary to make all
6 payments required under this Settlement, within twenty-one (21) days after the Effective Date,
7 plus Defendant shall separately pay its share of employer payroll taxes as calculated and directed
8 by the Settlement Administrator.

9 73. Distribution of Funds. No later than seven (7) calendar days after deposit of the
10 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
11 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
12 Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will
13 pay itself the Settlement Administration Costs.

14 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
15 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
16 checks. If any Final Settlement Class Member's check is not cashed within that period, the check
17 will be void and a stop-payment will be issued. All unclaimed funds shall be sent to the California
18 Unclaimed Property Fund in the name of the class member. The release will be binding upon all
19 Final Settlement Class Members who do not cash their checks within the 180-day period. In the
20 event that any settlement check is returned to the Settlement Administrator within 180 days of
21 mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned
22 settlement check, perform a skip trace to locate the individual. If a new address is located by these
23 means, the Administrator will have ten (10) business days to re-issue the check and will notify
24 Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant,
25 Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any
26 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
27 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final
28 Settlement Class Member notifies the Settlement Administrator that he/she/they believe that a

1 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
2 payment on such check. If the check in question has not been negotiated prior to the stop payment
3 order, the Settlement Administrator will issue a replacement check.

4 75. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
5 Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or
6 reports made in accordance with or pursuant to this Agreement. This provision does not, however,
7 prevent a Party from seeking enforcement of this Agreement.

8 76. Without prejudice to any other remedies, the Settlement Administrator shall agree
9 to be responsible for any breach of its obligations (whether committed by the Settlement
10 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from
11 and against all liabilities, claims, causes of action, costs and expenses (including legal fees and
12 expenses) arising out of any breach committed by the Settlement Administrator or its agents.

13 **H. Duties of the Parties Prior to the Court's Approval**

14 77. Upon completion of confirmatory discovery, Plaintiff will move the Court for
15 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
16 accomplishing the following:

17 (a) Scheduling the Final Approval Hearing on the issue of whether this
18 Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members
19 and a hearing on fees, costs, and the Service Payment;

20 (b) Approving as to form and content the proposed Notice;

21 (c) Directing the mailing of the Notice by first class mail to the Settlement
22 Class Members;

23 (d) Preliminarily approving this Settlement; and

24 (e) Preliminarily certifying the class for purposes of this Settlement.

25 78. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
26 hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate,
27 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
28 this Agreement, to try to achieve Final Approval of the Agreement upon any subsequent Court

1 hearings.

2 **I. Duties of the Parties Following Court's Final Approval**

3 79. In connection with the Final Approval Hearing provided for in this Settlement
4 Agreement, Class Counsel shall submit a proposed Final Approval Order:

5 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
6 adequate, and directing consummation of its terms and provisions;

7 (b) Approving Class Counsel's application for an award of attorneys' fees and
8 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
9 and the payment to the Settlement Administrator for costs of administering the settlement; and

10 (c) Entering judgment approving settlement, thereby permanently barring all
11 Participating Class Members from prosecuting any Released Class Claims against any of the
12 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
13 prosecuting any Released PAGA Claims against any of the Released Parties.

14 **J. Voiding the Agreement**

15 80. If the Court fails or refuses to issue the Final Approval Order or fails to approve
16 any material condition of this Settlement Agreement which effects a fundamental change of the
17 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
18 all Parties herein at the option of either Party.

19 81. If ten percent (10%) or more of the Settlement Class Members timely submit a
20 Request for Exclusion, Defendant shall have the option of terminating or modifying this
21 Agreement without prejudice to its pre-settlement positions and defenses in the Action. If
22 Defendant exercise such option under this paragraph, it shall be relieved of any obligation to pay
23 the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's
24 Counsel and the Settlement Administrator within ten (10) days of the Notice Response Deadline.
25 If Defendant exercise its option under this paragraph, Defendant shall be solely responsible for
26 all Settlement Administration Costs incurred.

27 82. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
28 have no further obligations under the Settlement, including any obligation by Defendant to pay

1 the Settlement Amount, or any amounts that otherwise would have been owed under this
2 Settlement.

3 83. If the Settlement is voided or fails for any reason, any costs incurred by the
4 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
5 specified in this Agreement.

6 **K. Other Terms**

7 84. Full and Complete Defense. This Agreement may be pleaded by any Released
8 Party as a full and complete defense to and may be used as the basis for an injunction against, any
9 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
10 asserting any Released Claim.

11 85. Waiver. The waiver by one Party of any breach of this Agreement by another Party
12 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

13 86. Parties' Authority. The signatories hereto represent that they are fully authorized
14 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
15 hereof.

16 87. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
17 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
18 such documents and to take such other action as may reasonably be necessary to implement the
19 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
20 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
21 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
22 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
23 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
24 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
25 of the settlement and the final entry of judgment.

26 88. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
27 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
28 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,

1 cause of action, or rights released and discharged by this Settlement Agreement.

2 89. No Admission. Defendant denies any and all liability to Plaintiff and/or any
3 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
4 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
5 compromise to avoid further substantial expense and the inconvenience and distraction of
6 protracted litigation. Defendant also has taken into account the uncertainty and risks inherent in
7 litigation, and without conceding any infirmity in the defenses that they have asserted or could
8 assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims
9 be settled in the manner and upon the terms and conditions set forth in this Agreement.

10 90. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
11 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
12 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
13 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
14 Settlement Agreement with the intention of avoiding further disputes and litigation with the
15 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
16 it, along with all related documents such as the notices, and motions for preliminary and final
17 approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
18 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
19 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for
20 class certification as part of this Settlement Agreement is for settlement purposes only and if, for
21 any reason the settlement is not approved, the stipulation will be of no force or effect.

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

26 To the Settlement Class Members and Aggrieved Employees:
27
28

Mehrdad Bokhour
mehrdad@bokhourlaw.com
 1901 Avenue of the Stars, Suite 450
 Los Angeles, California 90067
 Tel: (310) 975-1493; Fax: (310) 675-0861

Joshua Falakassa
josh@falakassalaw.com
 1901 Avenue of the Stars, Suite 450
 Los Angeles, California 90067
 Tel: (818) 456-6168; Fax: (888) 505-0868

To Defendant:

Alexander M. Medina
alex@medinamckelvey.com
 Kyle W. Owen
kyle@medinamckelvey.com
 925 Highland Pointe Drive, Suite 000
 Roseville, California 95678
 Tel: (916) 960-2211; Fax: (916) 742-5488

92. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

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

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

95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of

1 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
2 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
3 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
4 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
5 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
6 proceeding instituted by any person or entity other than Plaintiff or Defendant.

7 96. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
8 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
9 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
10 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
11 of this Agreement.

12 97. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
13 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in
14 a court of law.

15 98. Choice of Law. This Settlement Agreement shall be governed by and construed,
16 enforced, and administered in accordance with the laws of the State of California, without regard
17 to its conflicts-of-law rules.

18 99. Integration Clause. This Settlement Agreement contains the entire agreement
19 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
20 or contemporaneous agreements, understandings, representations, and statements, whether oral
21 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
22 hereunder may be waived except in writing.

23 100. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
24 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
25 successors, and assigns.

26 101. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
27 because the members of the Settlement Class are numerous, it is impossible or impractical to have
28 each Final Class Member execute this Settlement Agreement. The Notice will advise all

1 Settlement Class Members of the binding nature of the releases provided herein and such shall
2 have the same force and effect as if this Settlement Agreement were executed by each Final
3 Settlement Class Member.

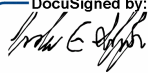
4 102. Counterparts. This Settlement Agreement may be executed in counterparts, and
5 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
6 deemed an original, and, when taken together with other signed counterparts, shall constitute one
7 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
8 Electronic signatures shall have the same force and effect as an original.

9
10 **APPROVAL AND EXECUTION BY PARTIES:**

11 Dated: August __, 2022

12 8/4/2022

CLASS REPRESENTATIVE:

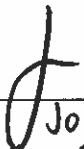
DocuSigned by:

B0B576C19EA5425...

14 John Sanford

15
16 Dated: August 3, 2022

DEFENDANT:

17 ORCHARD MACHINERY CORPORATION

18
19 By 
20 Its JOSEPH M. WELLS
21 EUP/CORP SECRETARY

1 **APPROVED AS TO FORM:**

2 8/4/2022

CLASS COUNSEL

3 Dated: August ___, 2022

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

15A628B2C5A149C...

Joshua Falakassa
Attorneys for Plaintiff

7 8/4/2022

8 Dated: August ___, 2022

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

D8D3643F271940F...

Mehrdad Bokhour
Attorneys for Plaintiff

13 Dated: August 4, 2022

DEFENDANT'S COUNSEL:

MEDINA MCKELVEY, LLP



Alexander M. Medina
Kyle W. Owen
Attorneys for Defendant,
Orchard Machinery Corporation