

PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

Alberto Magana Salas v. Bowles Farming Company, Inc.

This Settlement Agreement (“Agreement”) is made between Plaintiff Alberto Magana Salas (“Plaintiff”), on behalf of himself and other aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), on the one hand, and Defendant Bowles Farming Company, Inc. (“Defendant”) on the other. Plaintiff and Defendant will at times be referred to collectively as the “Parties” and may individually be referred to as a “Party.”

RECITALS

WHEREAS, Plaintiff was employed by Defendant during the alleged “PAGA Period,” defined as between May 8, 2020 and the date the Court in the Action grants Approval of this settlement;

WHEREAS, on January 5, 2022, Plaintiff filed a PAGA-only complaint in Merced County Superior Court entitled *Alberto Magana Salas v. Bowles Farming Company, Inc.*, Case No. 22CV-00064 (the “Action”), asserting the following predicate violations pursuant to Labor Code §§ 2698 *et seq.*: (1) Failure to Provide Compliant Meal Periods (Labor Code §§ 226.7, 512; IWC Wage Order No. 14, § 11), (2) Failure to Provide Compliant Rest Periods (Labor Code §§ 226.7; IWC Wage Order No. 14, § 12), (3) Failure to Pay Overtime Wages (Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 14, § 3), (4) Failure to Timely Pay Wages During Employment (Labor Code § 204), (5) Failure to Pay All Wages Due Upon Separation of Employment (Labor Code §§ 201, 202, 203), (6) Failure to Furnish Accurate Itemized Wage Statements (Labor Code § 226(a); IWC Wage Order No. 14, § 7), (7) Failure to Maintain Accurate Records (Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 14, § 7), (8) Failure to Pay Reporting Time Wages (IWC Wage Order No. 14, § 5), (9) Failure to Reimburse Business Expenses (Labor Code § 2802).

WHEREAS, Defendant denies the validity of Plaintiff’s claims in the Action and further denies that the Action is appropriate for representative action treatment for any purpose other than this settlement;

WHEREAS, a settlement has been reached in the Action in the total gross amount of ninety four thousand nine hundred and ninety five Dollars and Zero Cents (\$94,995.00) (the “Settlement Sum”);

NOW, THEREFORE, in consideration of the promises in this Agreement, the Parties agree as follows:

AGREEMENT

1. **No Admission of Liability.** It is understood and agreed by Plaintiff that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability by Released Parties, as described in Paragraph 3.a below. Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to seek approval of this Agreement, enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims and deny any liability, obligation, or responsibility to Plaintiff whatsoever.

2. Gross Settlement Payment. In consideration for the releases as described in Paragraphs 3 and 4, and subject to Court approval of this Agreement, Defendant agrees to pay a gross amount of ninety-four thousand nine hundred and ninety-five Dollars and Zero Cents (\$94,995.00) (the “Gross Settlement Sum”). The Gross Settlement Amount will be allocated as follows:

a. The Parties agree that of the Gross Settlement Sum, seven thousand and five hundred Dollars and Zero Cents (\$7,500.00) will be designated to the named Plaintiff, without deductions, as an enhancement award to Plaintiff in addition to any amount he may be entitled to under the distribution formula as identified in Paragraph 6 for his time, effort, expense, and risks associated with being the named representative, a broader, general waiver of his rights, and participating in the Action as PAGA representative. This payment will be reported as 1099 income. Defendant will not oppose any such application for an enhancement award described herein so long as it is consistent with the amount herein. This amount shall come from, and shall not be in addition to, the Gross Settlement Sum. Plaintiff acknowledges his responsibility for any and all taxes for these sums pursuant to Paragraph 2.d;

b. The Parties agree that up to ten thousand dollars and Zero Cents (\$10,000.00) of the Gross Settlement Sum will be for the payment of settlement administration fees of a third-party administrator. The Parties agree to use ILYM Group, Inc. as the claims administrator for this settlement. The costs of the Administrator shall be paid from, and shall not be in addition to, the Gross Settlement Sum. If less than \$ 10,000.00 is spent on administration of the Settlement, any unused funds will become part of the Net Settlement Amount;

c. The Parties agree that one third (1/3) of the Gross Settlement Sum (*i.e.* \$31,665.00) will be allocated to the payment of Plaintiff’s attorneys’ fees incurred in the Action. Defendant will not oppose any request for attorneys’ fees so long as it does not exceed this threshold. Plaintiff will also be entitled to the actual litigation costs from the Settlement Sum as approved by the Court in an amount not to exceed fifteen thousand Dollars and Zero Cents (\$15,000.00). These amounts shall come from, and shall not be in addition to, the Gross Settlement Sum;

d. The Parties agree that Plaintiff and the PAGA Aggrieved Employees shall be responsible for any and all tax obligations associated with any payments they receive as part of the Settlement Sum;

e. There shall be a Net Settlement Sum that is distributed to PAGA Aggrieved Employees and the LWDA in accordance with the allocations set forth in Paragraph 6 below. The Net Settlement Sum shall consist of the Gross Settlement Sum less the amounts identified in Paragraph 2.a. through 2.d., above (attorneys’ fees and costs, costs of administration, and representative enhancement award). All PAGA Aggrieved Employees will receive a portion of the Net Settlement Sum on a pro rata basis based on the number of pay periods they worked. Specifically, the final settlement payments will be determined by the Administrator by taking the number of pay periods each individual PAGA Collective Member worked during the PAGA Period and dividing that by the total number of pay periods all PAGA Aggrieved Employees worked during the PAGA Period and multiplying that fraction by the Net Settlement Sum;

f. The Parties agree that the entire Net Settlement Sum will be allocated to Plaintiff’s claims under the Private Attorneys General Act (“PAGA”) and will be distributed in accordance with the

percentages identified within the Act, (i.e. twenty-five percent (25%) will be distributed to the PAGA Aggrieved Employees and seventy-five percent (75%) will be distributed to the California Labor and Workforce Development Agency ("LWDA"). These amounts shall come from, and shall not be in addition to, the Gross Settlement Sum; and

g. Within thirty (30) calendar days after the Court grants Approval of this Agreement, Defendant shall deposit the Gross Settlement Sum (\$94,995.00) in a Qualified Settlement Fund ("QSF") account established by the Administrator. For purposes of counting the thirty (30) day deadline established by this section, court approval may be by way of minute order, order from the bench, or by signing a submitted approval order, whichever is earlier. The Administrator is to provide Defendant advanced notice within seven (7) calendar days after the Court grants approval of this Agreement regarding the total monies Defendant must deposit.

3. Release. In exchange for the mutual promises and consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, a release of liability is understood and agreed to as follows:

a. "Released Parties" as referenced herein and as released in the Agreement shall collectively mean Defendant and each of Defendant's respective past, present and future parent companies, subsidiaries, affiliates, principals and any other person, corporation, association or partnership responsible or potentially responsible for any claims made or that could have been made in the Action, and the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, and successors and assigns of any of the foregoing.

b. Plaintiff Alberto Magana Salas, on behalf of himself and his heirs, successors, assigns, attorneys and agents, hereby releases and forever discharges the Released Parties from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens acts, costs, expenses, sums of money, suits, dues, actions or causes of action, both in law and in equity, whether known or unknown, matured or unmatured, suspected or unsuspected, which they ever had, now have, or may have in the future including, but not limited to, any claims for failure to pay wages, failure to pay straight time wages, failure to pay minimum wages, failure to pay overtime wages, failure to pay meal period wages, failure to pay rest break wages, failure to provide meal periods, failure to provide rest breaks, failure to provide accurate wage statements, failure to pay wages upon separation, failure to reimburse business expenses, violations of the California Private Attorneys General Act, violations of California Labor Code §§202-203, 204, 226, 226.3, 226.7, 210, 512, 558, 1174, 1174.5, 1197, 2698, *et seq.*, 2699, 2800, 2802, 2810.5, California Business and Professions Code §§ 17200, *et seq.*, and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto.

c. As a condition of participating in this settlement, all PAGA Aggrieved Employees and the LWDA hereby release and forever discharge the Released Parties from any and all claims for civil penalties made, or which could have been made, in the Action under PAGA based on the factual allegations in the operative complaint, including, but not limited to, claims for penalties based on the following (1) Failure to Provide Compliant Meal Periods (Labor Code §§ 226.7, 512; IWC Wage Order No. 14, § 11), (2) Failure to Provide Compliant Rest Periods (Labor Code §§ 226.7; IWC Wage Order No. 14, § 12), (3) Failure to Pay Overtime Wages (Labor Code §§ 510, 1194, 1198; IWC Wage Order No.

14, §3), (4) Failure to Timely Pay Wages During Employment (Labor Code § 204), (5) Failure to Pay All Wages Due Upon Separation of Employment (Labor Code §§ 201, 202, 203), (6) Failure to Furnish Accurate Itemized Wage Statements (Labor Code § 226(a); IWC Wage Order No. 14, § 7), (7) Failure to Maintain Accurate Records (Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 14, § 7), (8) Failure to Pay Reporting Time Wages (IWC Wage Order No. 14, § 5), (9) Failure to Reimburse Business Expenses (Labor Code § 2802) (the “Released Claims”). The release shall not extend to any claims outside of the PAGA Period.

4. California Civil Code Section 1542. Plaintiff agrees that all rights under section 1542 of the Civil Code of the State of California are hereby waived as to other claims he may have against Defendant. Section 1542 has been explained to Plaintiff by his counsel and provides as follows:

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

5. Motion for Approval of PAGA Settlement. Plaintiff and Plaintiff’s counsel shall make their best efforts to file a joint or unopposed motion seeking Approval of this Agreement as soon as reasonably possible after this Agreement is executed by the Parties. Defendant will not oppose the motion and agrees to cooperate with Plaintiff in these efforts so that the motion seeking Approval is filed in a timely manner. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.

6. Administrator and Distribution Method. Subject to Court approval, timelines, and methods related to the administration of this Agreement shall be as follows:

a. For purposes of this Agreement, PAGA Aggrieved Employees are defined as all current and former non-exempt employees of Defendant in the State of California between May 8, 2020, and the date the Court in the Action grants Approval of this settlement.

b. Each PAGA Aggrieved Employee will receive a portion of the Net Settlement Sum on a pro rata basis based on a reasonable estimate of the total number of pay periods worked by all PAGA Aggrieved Employees during the applicable period. The Administrator shall mail and distribute to all PAGA Aggrieved Employees a notice of this settlement, in a form agreed to by the Parties informing them of the basic information regarding its terms.

c. One Hundred percent (100%) of the payment of the Net Settlement Sum to eligible PAGA Aggrieved Employees will consist of miscellaneous income representing payment for civil penalties for which a 1099 will be issued by the Settlement Administrator if required by law.

d. Within seven (7) calendar days after the date that the Court grants Approval of this Agreement, Defendant shall provide a list of all PAGA Aggrieved Employees and all necessary information to the Administrator to locate PAGA Aggrieved Employees, process payments, and process

claims for payments, including, but not limited to, PAGA Collective Member workweeks or dates of employment, last known addresses, social security numbers, and any other information required to effectuate the Agreement.

e. The PAGA Aggrieved Employee list, and any other data provided by Defendant to the Administrator, shall be treated as confidential and not subject to disclosure by the Administrator except (a) relevant information may be provided to PAGA Counsel to the extent necessary to address a disputed claim or to respond to a specific inquiry from a PAGA Collective Member, or to any third party; (b) to allow Defendant and Plaintiff's counsel to review and confirm the calculation of PAGA Aggrieved Employees' estimated share of the settlement is accurate and based on the correct information; and (c) as is otherwise necessary for the Administrator to perform its obligations described in this Agreement. Further, the Administrator and Plaintiff's counsel shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Agreement, and shall destroy the data (and all copies of it) in a complete and secure manner when such data is no longer required for purposes of this Agreement. The Administrator shall ensure that the Notice and any other communications to PAGA Aggrieved Employees shall not include the PAGA Aggrieved Employees' Social Security Number, except for the last four digits.

f. Within fourteen (14) calendar days from the date the Court approves this Agreement, the Administrator will provide the Parties the spreadsheet showing the Administrator's calculations for anticipated payments to PAGA Aggrieved Employees and the allocation of workweeks to PAGA Aggrieved Employees. The Administrator may redact any identifying information and instead use an employee number to differentiate (except as to the named Plaintiff to the Action) in order to protect PAGA Aggrieved Employees' confidential information. This will allow Plaintiff and Defendant the opportunity to review the Administrator's calculations, and the Administrator will confirm receipt and approval of the spreadsheet by the Parties prior to disbursing the class notices, as noted below.

g. Within twenty-one (21) calendar days from the date the Court approves this Agreement, the Administrator will perform a National Change of Address ("NCOA") verification for PAGA Aggrieved Employees' most current addresses based on the information provided by Defendant and will mail the Court approved notices and disbursement checks to the PAGA Aggrieved Employees. For any notices returned as undeliverable or notifying the Administrator that the PAGA Aggrieved Employee is no longer at the address, the Administrator shall perform a skip-trace on that individual and re-mail the notice and claim form within three (3) business days of receiving information that the mailing was undeliverable or the PAGA Aggrieved Employee was no longer at the address to the new address found in under the skip-trace.

h. Within one hundred eighty (180) calendar days after the Administrator mails PAGA Aggrieved Employees their pro-rata share of the Net Settlement Sum, any unclaimed funds, including funds from uncashed settlement checks will be paid out in accordance with California Code of Civil Procedure section 384(b) to the LWDA as the *cy pres* beneficiary. No amount of the Settlement Sum will revert to Defendant for any reason.

i. Within ten (10) calendar days after the Administrator distributes the unclaimed funds in accordance with Paragraph 6.k., the Administrator shall provide the Parties a declaration outlining the settlement administration process and completion of payments to those specified in Paragraph 6.h.

j. The Parties agree the PAGA Aggrieved Employees' contact information and social security numbers will be used only by the Administrator for the sole purpose of effectuating the Agreement.

7. PAGA Counsel. The Parties agree to the designation of Proxy Law Firm LLP as PAGA Counsel for purposes of this Settlement.

8. PAGA Representative. The Parties agree to the designation of Plaintiff Alberto Magana Salas as the PAGA representative for purposes of this Settlement.

9. Scope of the PAGA Aggrieved Employees. It was represented to Plaintiff by Defendant at the time of the execution of this Agreement that there were 91 putative PAGA Aggrieved Employees as of May 31, 2022. To the extent the number of PAGA Aggrieved Employees increases beyond this number by more than 20%, Plaintiff shall have the option to increase the total settlement amount by a proportionate amount. (If the number of employees increases by 11%, the total increase to the settlement will be 1%.) Plaintiff shall have five (5) calendar days from the date the Administrator indicates an overage to inform Defendant's counsel in writing of his election of this option.

10. Attorneys' Fees and Costs. Except as otherwise set forth in this Agreement, the Parties agree that each shall bear their own respective attorneys' fees and costs incurred in this Action, with the exception of any dispute regarding the payment of the Settlement Sum. In the case of a dispute regarding the payment of the Settlement Sum, the prevailing party shall be entitled to recover their attorneys' fees and costs.

11. Enforcement. This Agreement is made and is enforceable in accordance with the provisions of Code of Civil Procedure § 664.6 and that Parties agree that the Court shall retain jurisdiction for that purpose to effectuate the terms of this Agreement and the entry of judgment in this Action. This Agreement shall be incorporated by reference into any Court order granting Approval thereof such that the Court shall thereafter retain the jurisdiction to enforce its terms.

12. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart, when executed, shall have the efficacy of an original. Photographic, DocuSign or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

13. Confidentiality. Plaintiff represents and agrees that he has not and will not issue any press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiff further agrees not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties. Nothing herein shall restrict PAGA Counsel from complying with filing and notice requirements to the LWDA relating to PAGA settlements or otherwise including publicly available information regarding this Settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

14. Attorney Liens. Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff in relation to the Action are Plaintiff's responsibility to pay, and that any liens based on any legal expenses, bills, costs

or contingency fee agreements incurred as a result of the Action will be satisfied by the incurring party. Plaintiff will indemnify, defend and hold Released Parties harmless from any such claims.

15. No Additional Recovery. It is the intent of this Agreement that Plaintiffs, lienholders, and any other individual or entity with an interest in Plaintiff's claims with respect to payment of the Settlement Sum shall not recover, directly or indirectly, any sums from the Released Parties other than the funds received pursuant to this Agreement and set forth in Paragraph 1. If, despite the provisions of this Paragraph, any Released Party receives any claims, including a claim for contribution, any indemnity arising out of a claim with respect to payment of the Settlement brought against another person in an interest in the claims of Plaintiff, such party shall indemnify, provide a full defense for and hold harmless the Released Parties for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Released Party is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Released Party but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Released Parties with respect to any liability that person, firm, or corporation may have to Plaintiff.

16. Entire Agreement. This Agreement sets forth the entire understanding between the Parties and supersedes any and all prior agreements, oral or written, pertaining to the Action. This Agreement may not be modified or amended except in writing, signed by all Parties. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

17. Conditional Nature. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because Plaintiff's claims in the Action include representative claims under PAGA, this Agreement must receive approval by the Court. If the Court does not ultimately enter an order granting approval of the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Settlement Agreement which can be given effect without the invalid provisions or application and, to this end, the provisions of this Settlement Agreement are declared to be severable.

18. No Right of Appeal. Provided that the Court's order approving the parties' settlement of the Action and accompanying Judgment is consistent with the terms and conditions of this Agreement, the parties hereby waive any and all rights to appeal in connection with any issue in the Order Approving Settlement including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any extraordinary writ, and the Order Approving Settlement will become final and non-appealable at the time it is entered.

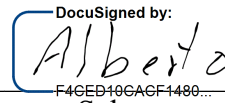
19. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel before Hon. John Bates, an experienced employment and wage and hour mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

7/8/2022

Dated: July __, 2022

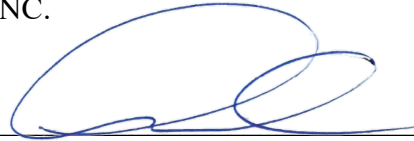
PLAINTIFF ALBERTO MAGANA SALAS

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Alberto Magana Salas

Dated: July 06, 2022

DEFENDANT BOWLES FARMING COMPANY,
INC.



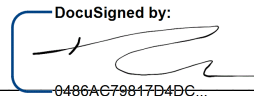
Cannon Michael, CEO

APPROVED AS TO FORM:

7/8/2022

Dated: July __, 2022

PROXY LAW FIRM LLP

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Rana Nader
Hengameh Safaei
Counsel for Plaintiff

Dated: July 8, 2022

FISHER & PHILLIPS LLP



Alden J. Parker
Rebecca A. Hause-Schultz
Counsel for Defendant

CERTIFICATE OF TRANSLATION

I, Monica Cicchetti, hereby attest as follows: I am fluent in the English and Spanish languages. Alberto Magana Salas appeared before me and I translated the PAGA Representative Action Settlement Agreement in the matter of *Alberto Magana Salas v. Bowles Farming Company, Inc.* from the English language to the Spanish language before him. I declare to the best of my abilities and belief that I provided a true and accurate translation of the document, and the declarant acknowledged understanding.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: 7/8/2022 In Hacienda Heights, California.

Signature: 
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Certified Court Interpreter Number: 301169