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**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS**

HECTOR O. ACOSTA, individually, and on
behalf of all others similarly situated and
aggrieved,

Plaintiff,

vs. TURLOCK WALNUT COMPANY,
INC., a California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO. CV-22-001051

Assigned for All Purposes to:
Hon. Stacy D. Speiller
Dept. 22

STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE

**STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND RELEASE**

This Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Hector O. Acosta (“Plaintiff” or “Class Representative”), as an individual and on behalf of all other employees similarly situated and aggrieved, and Defendant Turlock Walnut Company, Inc. (“Defendant” or “TWC”) (collectively with Plaintiff, the “Parties”).

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DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means the civil lawsuits filed by Plaintiff against Defendant, titled Hector O. Acosta v. Turlock Walnut Company, Inc., Stanislaus County Superior Court Case No. CV-22-001051.

2. “Appeal” means a timely appeal by a Class Member to the Order and Judgment approving the Settlement, or an appeal by one of the Parties to an order that materially alters the Settlement.

3. “Attorney’s Fees and Costs” means attorney’s fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of an Order and Judgment approving the Settlement, and expenses for any experts. Class Counsel will request not more than one-third of the Gross Settlement Amount, or Twenty Thousand Dollars and No Cents (\$20,000.00) in attorney’s fees, and not more than Ten Thousand Dollars and No Cents (\$10,000.00) in litigation costs and expenses. Defendant has agreed not to oppose Class Counsel’s request for attorney’s fees and costs and expenses as set forth above.

4. “Class Counsel” means J. Kirk Donnelly and the Law Offices of J. Kirk Donnelly, A Professional Corporation.

5. “Class List” means a complete list of all Class Members that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator within ten (10) business days after entry of an Order granting Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address and telephone number; Social Security Number; and dates of employment.

6. “Class Member(s)” or “Settlement Class” means all individuals employed by Defendant in California as an hourly-paid, non-exempt employee during the Class Period.

7. “Class Notice” means the Notice of Class Action Settlement substantially in the form attached hereto as **Exhibit A**, and approved by the Court. The Class Notice will be issued in both English and Spanish.

8. “Class Period” means the period from March 7, 2018 through the date of Preliminary Approval or sixty (60) days after the November 8, 2022 mediation, whichever comes first.

9. “Class Representative” means Plaintiff Hector O. Acosta.

10. “Class Representative Enhancement Payment” means the amount agreed upon by the Parties and approved by the Court for Plaintiff’s service as the Class Representative. The Class Representative Enhancement Payment will not exceed Five Thousand Dollars and No Cents (\$5,000.00).

11. “Gross Settlement Amount” means the amount of Sixty Thousand Dollars and No Cents (\$60,000.00), to be paid by Defendant in full satisfaction of all claims alleged in the Action or that could have been alleged in the Action, based on the operative facts alleged therein, which includes all Individual Settlement Payments to Participating Class Members, the PAGA Payment, Attorney’s Fees and Costs, the Class Representative Enhancement Payment, and Settlement Administration Costs. There will be no reversion of any portion of the Gross Settlement Amount to Defendants.

12. “Court” means Department 22 of the Stanislaus County Superior Court.

13. “Effective Date” shall be when Final Approval of the Settlement can no longer be appealed by an objector, or in the absence of any objections (or if all objections are withdrawn with Court approval by the time of the Final Approval Hearing) or any plaintiff in intervention, upon Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no appeal is taken of the Judgment by an objector or plaintiff in intervention, then the Effective Date shall be sixty-five (65) calendar days after Notice of Entry of Judgment. If any appeal is taken from the Court’s overruling of any objections to the Settlement, then the Effective Date shall be

ten (10) calendar days after all appeals are withdrawn or after an appellate decision affirming the Final Approval and Judgment becomes final.

14. “Final Approval” means the Court’s Order granting final approval of the Settlement.

15. “Individual Settlement Payment” means each Participating Class Member’s respective share of the Net Settlement Amount.

16. “LWDA Payment” means the payment of One Thousand Five Hundred Dollars (\$1,500.00) from the PAGA Payment to the California Labor & Workforce Development Agency for its portion of the civil penalties paid under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

17. “Net Settlement Amount” means the portion of the Gross Settlement Amount remaining after deducting the Class Representative Enhancement Payments, the PAGA Payment, Attorney’s Fees and Costs, and Settlement Administration Costs. The entire Net Settlement Amount will be distributed to the Participating Class Members. There will be no reversion of any portion of the Net Settlement Amount to Defendants. The Parties estimate there were approximately 2,100 Qualified Workweeks at issue. If the number of Qualified Workweeks is 10% higher (or 2,310 Qualified Workweeks), then the Gross Settlement Amount shall be increased proportionally by the Qualified Workweeks worked in excess of 2,310 workweeks multiplied by the per Workweek Value. The Parties agree that the Workweek Value is \$28.57 (\$60,000/2,100 workweeks).

18. “Notice of Entry of Judgment” means a Notice of Entry of Judgment pursuant to section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiff.

19. “Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For an Objection to be valid, it must include: (i) the objector’s full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iii) copies of papers, briefs, or other documents upon which the objection is based, if any. Alternatively, any Class Member may object by appearing at the Final Approval Hearing either with or without submitting a written

1 Objection.

2 20. "PAGA Group" means all individuals employed by Defendant in California as an
3 hourly-paid, non-exempt employee during the PAGA Period.

4 21. "PAGA Group Payment" means the payment of Five Hundred Dollars (\$500.00)
5 from the PAGA Payment to the PAGA Group members for their share of the civil penalties paid
6 under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

7 22. "PAGA Payment" means the amount of Two Thousand Dollars and No Cents
8 (\$2,000.00) to be paid from the Gross Settlement Amount for alleged civil penalties owed by
9 Defendant under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et*
10 *seq.*

11 23. "PAGA Period" means the period from January 2, 2021 through the date of
12 Preliminary Approval or sixty (60) days after the November 8, 2022 mediation, whichever comes
13 first.

14 24. "Participating Class Member" means any Class Member who does not submit a
15 timely and valid Request for Exclusion.

16 25. "Parties" means Plaintiff and Defendant collectively.

17 26. "Plaintiff" means Hector O. Acosta.

18 27. "Plaintiff's Counsel" means J. Kirk Donnelly and the Law Office of J. Kirk
19 Donnelly, A Professional Corporation.

20 28. "Preliminary Approval" means the Court order granting preliminary approval of
21 the Settlement.

22 29. "Qualifying Workweek(s)" means each seven-day period(s) commencing on
23 Sunday at 12:00 a.m. and ending on a Saturday at 11:59 p.m. in which a Class Member was
24 employed by Defendants in California during the Class Period, minus furlough/leave dates (as
25 applicable).

26 30. "Released Claims" means any and all class claims that were asserted in the
27 operative Class and Representative Action Complaint or that could have been asserted based on
28 the allegations made in the operative Class and Representative Action Complaint, for the duration

1 of the Class Period. As to claims under PAGA, the Released Claims include any and all claims for
2 civil penalties under PAGA asserted in the PAGA Notice filed with the LWDA, or claims for civil
3 penalties under PAGA that arise based on the allegations in the PAGA Notice filed with the
4 LWDA, for the duration of the PAGA Period. The Released Claims do not include any claims that
5 cannot be released as a matter of law.

6 31. "Released Parties" means defendant Turlock Walnut Company, Inc. and each of
7 its past, present and future subsidiaries, dbas, parents, divisions, related entities, joint venturers, as
8 well as each of their respective owners, co-employers, joint employers, agents, officers, directors,
9 stockholders, shareholders, members, principles, subsidiaries, affiliates, partners, predecessors and
10 successors in interest, insurers, reinsurers, employees, attorneys, assigns, heirs, spouses, associates,
11 representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored
12 employee benefit plans of any nature, and all other legal entities affiliated with the foregoing,
13 including, but not limited to Turlock Freezer Storage.

14 32. "Request for Exclusion" means a timely letter submitted by a Class Member
15 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
16 forth the name, address, telephone number and last four digits of the Social Security Number of
17 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
18 the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be
19 included in the Settlement; and (v) be postmarked on or before the Response Deadline.

20 33. "Response Deadline" means the deadline by which Class Members must postmark
21 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
22 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
23 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a
24 Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day
25 on which the U.S. Postal Service is open.

26 34. "Settlement Administration Costs" means the costs to the Settlement
27 Administrator for administering this Settlement, including, but not limited to, printing,
28 distributing, and tracking documents for this Settlement, creating and maintaining a web site and

1 toll-free telephone number, tax reporting, distributing the Gross Settlement Amount, and
2 providing necessary reports and declarations, as requested by the Parties or the Court. The
3 Settlement Administration Costs will not exceed Five Thousand Dollars and No Cents
4 (\$5,000.00).

5 35. "Settlement Administrator" means Phoenix Settlement Administrators, or any
6 other third-party class action settlement administrator agreed to by the Parties and approved by
7 the Court for the purposes of administering this Settlement. The Parties each represent that they
8 do not have any financial interest in the Settlement Administrator or otherwise have a relationship
9 with the Settlement Administrator that could create a conflict of interest.

10 **TERMS OF AGREEMENT**

11 The Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as
12 follows:

13 36. Class Certification. For settlement purposes only, the Parties agree that the Class
14 shall be certified. This Settlement Agreement is contingent upon the approval and certification by
15 the Court of the Class for settlement purposes only. Defendant does not waive, and instead
16 expressly reserves, all rights to challenge the propriety of class certification for any purpose
17 should the Court not approve the Settlement. In connection with the proposed certification of the
18 Class, the Parties shall cooperate and present to the Court for its consideration competent
19 evidence, as may be requested by the Court, under the applicable due process requirements and
20 standards for class certification. In the event either preliminary or final approval of the
21 Settlement is not obtained or, if obtained, is reversed upon appeal, the Parties shall be returned to
22 their respective positions in the action as they existed immediately prior to the execution of this
23 Agreement. Furthermore, nothing said or represented in connection with obtaining approval of
24 the Court with respect to this settlement, either on a preliminary or final basis, shall be admissible
25 for any purpose other than to obtain approval by the Court of this Settlement.

26 37. Funding of the Gross Settlement Amount. Defendant will deposit the Gross
27 Settlement Amount via wire transfer into a Qualified Settlement Account ("QSA") to be
28 established by the Settlement Administrator in three installments as follows:

1 First Installment: in the amount of Thirty Thousand Dollars and No Cents (\$30,000.00)
2 within fifteen (15) calendar days of Preliminary Approval or by March 1, 2023, whichever comes
3 later; and

4 Second Installment: in the amount of Thirty Thousand Dollars and No Cents (\$30,000.00)
5 within ninety (90) calendar days of the First Installment or June 1, 2023, whichever comes first.

6 38. Attorney's Fees and Costs. Defendant agrees not to oppose or impede any
7 application or motion by Class Counsel for Attorney's Fees and Costs, not to exceed one-third
8 (1/3) of the Gross Settlement Amount, or Twenty Thousand Dollars and No Cents (\$20,000.00) in
9 attorney's fees, and actual litigation costs and expenses not to exceed Ten Thousand Dollars and
10 No Cents (\$10,000.00). The Parties stipulate that, for purposes of settlement only, Plaintiff and
11 the Class are the prevailing parties in the Action and are entitled to attorney's fees and costs
12 under the applicable fee-shifting statutes, including, inter alia, California Code of Civil Procedure
13 section 1021.5, and Labor Code sections 218.5, 1194(a) and 2699(g). Any funds allocated to
14 Attorney's Fees and Costs but not awarded by the Court will be included in the Net Settlement
15 Amount and distributed pro rata to the Participating Class Members. The Settlement
16 Administrator will issue an IRS Form 1099 to Class Counsel for the Attorney's Fees and Costs.

17 39. Class Representative Enhancement Payment. In exchange for a general release,
18 and in recognition of his effort and work in prosecuting the Action on behalf of the Class
19 Members, Defendants agree not to oppose or impede any application or motion for a Class
20 Representative Enhancement Payment not to exceed Five Thousand Dollars and No Cents
21 (\$5,000.00) to Plaintiff. The Class Representative Enhancement Payment will be paid from the
22 Net Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment. Any
23 funds allocated to the Class Representative Enhancement Payment but not awarded by the Court
24 will be included in the Net Settlement Amount and distributed pro rata to the Participating Class
25 Members. Plaintiff will be solely responsible to pay any and all applicable taxes on the payment
26 made pursuant to this paragraph, and the Settlement Administrator will issue an IRS Form 1099
27 to Plaintiff for the Class Representative Enhancement Payment.

28 40. Settlement Administration Costs. The Settlement Administrator will be paid for

1 the reasonable costs of administration of the Settlement and distribution of payments from the
2 Gross Settlement Amount, which Settlement Administration Costs shall not exceed Five
3 Thousand Dollars and No Cents (\$5,000.00). These costs, will include, *inter alia*, the required
4 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
5 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
6 calculating Individual Settlement Payments and distributing the Gross Settlement Amount as set
7 forth herein, and providing necessary reports and declarations. These costs shall be paid from the
8 Gross Settlement Amount. Any funds allocated to Settlement Administration Costs but not
9 incurred by or otherwise paid to the Settlement Administrator will be included in the Net
10 Settlement Amount and distributed pro rata to the Participating Class Members.

11 41. PAGA Payment. The Parties agree to allocate Two Thousand Dollars and No
12 Cents (\$2,000) from the Gross Settlement Amount to the resolution of all claims related to the
13 PAGA Group members arising under the California Private Attorneys General Act of 2004
14 (California Labor Code sections 2698, *et seq.*, "PAGA"). Pursuant to PAGA, Seventy-Five
15 Percent (75%) of the PAGA Payment, or One Thousand Five Hundred Dollars and No Cents
16 (\$1,500.00), will be paid to the California Labor & Workforce Development Agency as the
17 LWDA Payment, and the remaining Twenty Five Percent (25%) of the PAGA Payment, or Five
18 Hundred Dollars and No Cents (\$500.00), will be distributed pro rata to the PAGA Group
19 members as the PAGA Group Payment.

20 42. Individual Settlement Payment Calculations. The Individual Settlement Payment
21 for each Participating Class Member shall be determined as follows: the Net Settlement Amount
22 shall be divided by the total number of Qualifying Workweeks of all Participating Class
23 Members, and the result of this division is referred to as the "Weekly Rate;" and (b) the amount
24 of each Participating Class Member's Individual Settlement Payment shall be the result of
25 multiplying each Participating Class Member's number of Qualifying Workweeks by the
26 applicable Weekly Rate. The Settlement Administrator will perform all calculations necessary to
27 determine the Individual Settlement Payments based upon information provided by Defendant
28 with the Class List.

1 43. PAGA Group Payment Calculations. The payment to each PAGA Group Member
2 will be determined as follows: the PAGA Group Payment shall be divided by the total number of
3 Qualifying Workweeks of all PAGA Group members during the PAGA Period, and the result of
4 this division is referred to as the “PAGA Weekly Rate;” and (b) the amount of each PAGA Group
5 member’s payment shall be the result of multiplying each PAGA Group member’s number of
6 Qualifying Workweeks during the PAGA Period by the applicable PAGA Weekly Rate. The
7 Settlement Administrator will perform all calculations necessary to determine the Individual
8 Settlement Payments based upon information provided by Defendant with the Class List.

9 44. The Settlement Administrator shall be responsible for reducing each Individual
10 Settlement Payment based on any required deductions for each Participating Class Member as
11 specifically set forth herein, including employee-side tax withholdings or deductions.

12 45. The entire Net Settlement Amount will be disbursed to all Class Members who do
13 not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests
14 for Exclusion from members of the Class, the Settlement Administrator shall not include all
15 Qualifying Workweeks attributable to such individuals as part of the calculation of the total class-
16 wide Qualifying Workweeks for all Participating Class Members under paragraph 42 above, so
17 that the amount available for distribution to the Participating Class Members equals 100% of the
18 Net Settlement Amount.

19 46. No Credit To Benefit Plans. The Individual Settlement Payments made to
20 Participating Class Members under this Settlement, as well as any other payments made pursuant
21 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
22 to which any Class Members may be eligible, including, but not limited to: profit-sharing plans,
23 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
24 any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not
25 affect any rights, contributions, or amounts to which any Class Members may be entitled under
26 any benefit plans.

27 47. Administration Process. The Parties agree to cooperate in the administration of the
28 settlement and to make all reasonable efforts to control and minimize the costs and expenses

1 incurred in administration of the Settlement.

2 48. Delivery of the Class List. Within ten (10) business days of Preliminary Approval,
3 Defendant will provide the Class List to the Settlement Administrator.

4 49. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the
5 Class List from Defendant, the Settlement Administrator will mail a Class Notice to all Class
6 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
7 identified in the Class List.

8 50. Confirmation of Contact Information in the Class List. Prior to mailing, the
9 Settlement Administrator will perform a search based on the National Change of Address
10 Database for information to update and correct for any known or identifiable address changes.
11 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the
12 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
13 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
14 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
15 promptly attempt to determine the correct address using a skip-trace or other search using the
16 name, address and/or Social Security Number of the Class Member involved, and will then
17 perform a single re-mailing. The Response Deadline will be extended by ten (10) calendar days
18 for all Notices re-mailed under this paragraph.

19 51. Class Notices. All Class Members will be mailed a Class Notice via First Class
20 U.S. Mail. Each Class Notice will provide: (i) information regarding the nature of the Actions;
21 (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the
22 total number of Qualifying Work Weeks worked by each respective Class Member while working
23 for Mowbray's as an hourly-paid, non-exempt employee performing tree trimming related
24 activities during the Class Period; (v) each Class Member's estimated Individual Settlement
25 Payment and the formula for calculating Individual Settlement Payments; (vi) the procedure for a
26 Class Member to dispute the calculation of their estimated Individual Settlement Payments; (vii)
27 the dates that comprise the Class Period; (viii) instructions on how to submit a Request for
28 Exclusion or Objection; (ix) the deadlines by which the Class Member must postmark Requests

1 for Exclusion, and the deadlines by which the Class Members must postmark Objections to the
2 Settlement; and (x) the claims to be released. The Class Notice shall be in substantially the same
3 form as **Exhibit A** hereto, as approved by the Court.

4 52. The Settlement Administrator will also set up and maintain a toll-free telephone
5 number for Class Members to contact the Settlement Administrator regarding the Settlement, and
6 the toll-free telephone number will be identified in the Class Notice.

7 53. Disputed Information on Class Notices. Class Members will have an opportunity
8 to dispute the information provided in their Class Notices. To the extent Class Members dispute
9 their total Qualifying Work Weeks while working for Defendant as an hourly-paid, non-exempt
10 employee during the Class Period, Class Members may produce evidence to the Settlement
11 Administrator showing that such information in the Class Notice is inaccurate. The Settlement
12 Administrator will decide the dispute. Defendants' records will be presumed correct, but the
13 Settlement Administrator will evaluate the evidence submitted by the Class Member and will
14 make the final decision as to the merits of the dispute, which decision shall be final and
15 unappealable by any Party or Class Member. All disputes will be resolved within ten (10)
16 business days of the Response Deadline.

17 54. Request for Exclusion Procedures. Any Class Member wishing to opt-out from
18 the Settlement Agreement must sign and postmark a written Request for Exclusion to the
19 Settlement Administrator within the Response Deadline. The postmark date will be the exclusive
20 means to determine whether a Request for Exclusion has been timely submitted. There is no right
21 to opt out of receiving a PAGA Group Payment or to opt out of the PAGA Released Claims.

22 55. Defective Submissions. If a Class Member's Request for Exclusion is defective as
23 to the requirements listed herein, that Class Member will be given an opportunity to cure the
24 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
25 business days of receiving the defective submission to advise the Class Member that his or her
26 submission is defective and that the defect must be cured to render the Request for Exclusion
27 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) ten (10)
28 calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the

1 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

2 56. Option to Rescind the Settlement Agreement: Defendant may elect, at its option,
3 to rescind the Settlement if more than five percent (5%) of Class Members submit timely and
4 valid Requests for Exclusion. If Defendant exercises the conditional right to rescind, it must do
5 so by written communication to Class Counsel that is received by Class Counsel within thirty
6 (30) calendar days of the Response Deadline. In the event Defendant exercises the conditional
7 right to rescind, Defendant will be responsible for all Settlement Administration Costs incurred to
8 the date of rescission.

9 57. Settlement Terms Bind All Class Members Who Do Not Opt-Out, And All PAGA
10 Group Members. Any Class Member who does not affirmatively opt-out of the Settlement
11 Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its
12 terms, including those pertaining to the Released Claims, as well as any Judgment that may be
13 entered by the Court if it grants final approval to the Settlement, and all PAGA Group members
14 will be bound by the Released Claims regarding claims under PAGA.

15 58. Objection Procedures. To object to the Settlement Agreement, a Class Member
16 must timely submit to the Settlement Administrator a written Objection. Any written Objection
17 must be signed by the Class Member and contain all information required by this Settlement
18 Agreement, as specified in the Class Notice. Written Objections may be mailed to the Settlement
19 Administrator as explained in the Class Notice. The Settlement Administrator will forward
20 copies of all written Objections to both Class Counsel and counsel for the Defendants within three
21 (3) calendar days of receipt. The postmark date will be deemed the exclusive means for
22 determining whether a written Objection is timely. Class Members who fail to object in the
23 manner specified above will be deemed to have waived all objections to the Settlement and will
24 be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement
25 Agreement. Alternatively, any Class Member may appear at the Final Approval Hearing,
26 personally or through their own counsel, in order to have their objections heard by the Court,
27 regardless of whether such Class Member submits a written Objection. Only those Class
28 Members who do not submit a Request for Exclusion may object to the Settlement. At no time

1 will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to
2 submit written or oral objections to the Settlement Agreement or appeal from the Order and
3 Judgment. Class Counsel will not represent any Class Members with respect to any such
4 objections to this Settlement.

5 59. Certification Reports. The Settlement Administrator will provide all counsel with
6 a weekly report that certifies the number of Class Members who have submitted valid Requests
7 for Exclusion, and whether any Class Member has submitted a challenge to any information
8 contained in their Class Notice. Additionally, the Settlement Administrator will provide to
9 counsel for both Parties any updated reports regarding the administration of the Settlement
10 Agreement as needed or requested.

11 60. Distribution of Settlement Payments. Within ten (10) calendar days of receipt of
12 Second Installment Payment, the Settlement Administrator will issue all Court-approved
13 payments to: (i) the Participating Class Members; (ii) the PAGA Group members; (iii) the Labor
14 & Workforce Development Agency; (iv) Plaintiff; (v) Class Counsel, and (vi) itself.

15 61. Un-cashed Settlement Checks. Participating Class Member's Individual
16 Settlement Payment checks and PAGA Group member's checks will remain valid and negotiable
17 for 180 days after issuance. Subject to Court approval, the funds represented by uncashed
18 settlement checks and funds represented by Individual Settlement Payment checks returned as
19 undeliverable will be forwarded to the California State Controller's Unclaimed Property Fund.

20 62. Certification of Completion. Upon completion of administration of the Settlement,
21 the Settlement Administrator will provide a written declaration under oath to certify such
22 completion to the Court and counsel for all Parties.

23 63. Treatment of Individual Settlement Payments. All Individual Settlement Payments
24 will be allocated entirely to penalties and interest for which IRS Forms 1099-MISC will be
25 issued.

26 64. Administration of Taxes by the Settlement Administrator. The Settlement
27 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
28 Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to

1 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll
2 taxes and penalties to the appropriate government authorities.

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

27 66. No Prior Assignments. The Parties and their counsel represent, covenant, and
28 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported

1 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
2 demand, action, cause of action or right herein released and discharged.

3 67. Nullification of Settlement Agreement. In the event that: (i) the Court does not
4 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for
5 any other reason, then this Settlement Agreement, and any documents generated to bring it into
6 effect, will be null and void. Any order or judgment entered by the Court in furtherance of this
7 Settlement Agreement will likewise be treated as void from the beginning.

8 68. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
9 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval
10 Order for (a) conditional certification of the Settlement Class for settlement purposes only, (b)
11 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for the Final
12 Approval. The Preliminary Approval Order will provide for the Class Notice to be sent to all
13 Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
14 Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and
15 will include the proposed Class Notice, which is attached hereto as Exhibit A. Plaintiff shall also
16 timely provide notice of the settlement and Preliminary Approval Hearing to the Labor &
17 Workforce Development Agency as required by PAGA.

18 69. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
19 deadline to postmark Requests for Exclusion and Objections, and with the Court's permission, a
20 Final Approval Hearing will be conducted to determine the Final Approval of the Settlement,
21 along with the amounts properly payable for: (i) Individual Settlement Payments and PAGA
22 Group payments; (ii) the LWDA Payment; (iii) the Class Representative Enhancement Payment;
23 (iv) Attorney's Fees and Costs; and (v) all Settlement Administration Costs. The Final Approval
24 Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
25 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class
26 Counsel will also be responsible for drafting the application for the Representative Enhancement
27 Payments and Attorney's Fees and Costs, and a request for approval of the Settlement
28 Administration Costs, to be heard at the Final Approval Hearing.

1 70. Release by Plaintiff, the Settlement Class, PAGA Group and LWDA. Upon the
2 Effective Date and conditioned upon full satisfaction of the payment obligations in Paragraph 60,
3 Plaintiff and all Participating Class Members will be deemed to have released the Released
4 Claims, and the PAGA Group and LWDA will be deemed to have released the Released Claims
5 brought under PAGA, and will be barred from bringing or prosecuting any of the Released
6 Claims against the Released Parties.

7 71. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
8 the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court
9 for its approval. After entry of the Judgment, under Code of Civil Procedure section 664.6, the
10 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
11 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such
12 post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement
13 Agreement.

14 72. Release by Plaintiff. Upon the Effective Date, in addition to the claims being
15 released by all Participating Class Members, Plaintiff will release and forever discharge the
16 Released Parties, to the fullest extent permitted by law, of and from any and all claims, known
17 and unknown, asserted and not asserted, which Plaintiff has or may have against the Released
18 Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing
19 releases are releases to which Section 1542 of the California Civil Code or similar provisions of
20 other applicable law may apply, Plaintiff expressly waives any and all rights and benefits
21 conferred upon him by the provisions of Section 1542 of the California Civil Code or similar
22 provisions of applicable law, which are as follows:

23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
24 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
25 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
26 **RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
27 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
28 **PARTY.**

1 73. Exhibit Incorporated by Reference. The terms of this Settlement Agreement
2 include the terms set forth in the attached Exhibit, which is incorporated by this reference as
3 though fully set forth herein. Any Exhibit to this Settlement Agreement is an integral part of the
4 Settlement.

5 74. Entire Agreement. This Settlement Agreement and attached Exhibit constitute the
6 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
7 agreements may be deemed binding on the Parties. The Parties expressly recognize California
8 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
9 that a written agreement is to be construed according to its terms and may not be varied or
10 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
11 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

12 75. Amendment or Modification. Except as to non-material changes required by the
13 Court, no amendment, change, or modification to this Settlement Agreement will be valid unless
14 in writing and signed by the Parties. Concerning non-material changes required by the Court, the
15 Parties agree that their counsel may submit stipulated amendments to this Settlement Agreement
16 without obtaining further signatures from the Parties.

17 76. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
18 and represent they are expressly authorized by the Parties whom they represent to negotiate this
19 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
20 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
21 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
22 counsel will cooperate with each other and use their best efforts to effect the implementation of
23 the Settlement. If the Parties are unable to reach agreement on the form or content of any
24 document needed to implement the Settlement, or on any supplemental provisions that may
25 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
26 the Court to resolve such disagreement.

27 77. Binding on Successors and Assigns. This Settlement Agreement will be binding
28 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously

1 defined.

2 78. California Law Governs. All terms of this Settlement Agreement and Exhibit
3 hereto will be governed by and interpreted according to the laws of the State of California.

4 79. Execution and Counterparts. This Settlement Agreement is subject only to the
5 execution of all Parties. However, the Settlement Agreement may be executed in one or more
6 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
7 of the signature page, will be deemed to be one and the same instrument provided that counsel for
8 the Parties will exchange among themselves original signed counterparts.

9 80. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
10 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
11 arrived at this Settlement after adversarial and arm's-length negotiations before a well-respected
12 and neutral mediator, in the context of adversarial litigation, and taking into account all relevant
13 factors, present and potential. The Parties further acknowledge that they are each represented by
14 competent counsel and that they have had an opportunity to consult with their counsel regarding
15 the fairness and reasonableness of this Settlement.

16 81. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
18 extent possible consistent with applicable precedents so as to define all provisions of this
19 Settlement Agreement valid and enforceable.

20 82. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
21 that either party may appeal any court order that materially alters the Settlement Agreement's
22 terms.

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

27 To Plaintiff and the Settlement Class:

28 J. Kirk Donnelly

1 LAW OFFICES OF J. KIRK DONNELLY, APC
2 2173 Salk Ave., Suite 250
3 Carlsbad, CA 92008

4 To Defendant:

5 Raquel A. Hatfield
6 HENDERSON HATFIELD, APC
7 1101 15th Street
8 Modesto, CA 95354

9 84. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
10 dispute that has arisen between them and to avoid the burden, expense and risk of continued
11 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that
12 it violated any federal, state, or local law; violated any regulations or guidelines promulgated
13 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
14 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
15 engaged in any other unlawful conduct with respect to its employees. Neither this Settlement
16 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will
17 be construed as an admission or concession by Defendant of any such violations or failures to
18 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
19 Settlement, this Settlement Agreement and its terms and provisions will not be offered or received
20 as evidence in any action or proceeding to establish any liability or admission on the part of
21 Defendant or to establish the existence of any condition constituting a violation of, or a non-
22 compliance with, federal, state, local or other applicable law.

23 85. Waiver. No waiver of any condition or covenant contained in this Settlement
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
25 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
26 right or remedy.

27 86. Enforcement Actions. In the event that one or more of the Parties institutes any
28 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's'

1 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

2 87. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
3 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
4 construed more strictly against one party than another merely by virtue of the fact that it may
5 have been prepared by counsel for one of the Parties, it being recognized that, because of the
6 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
7 this Settlement Agreement.

8 88. Representation By Counsel. The Parties acknowledge that they have been
9 represented by counsel throughout all negotiations that preceded the execution of this Settlement
10 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
11 counsel. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on
12 the Settlement Agreement.

13 89. All Terms Subject to Final Court Approval. All amounts and procedures described
14 in this Settlement Agreement herein will be subject to final Court approval.

15 90. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
16 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
17 this Settlement Agreement.

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

23 92. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in
24 the Action, except such proceedings necessary to implement and complete the Settlement, in
25 abeyance pending the Final Approval to be conducted by the Court.

26 93. Confidentiality. Plaintiff, Plaintiff's Counsel, Defendant and its counsel agree that
27 they will not issue any press releases, initiate any contact with the press, respond to any press
28 inquiry or have any communication with the press about the fact, amount or terms of the

1 Settlement Agreement prior to Preliminary Approval. Nothing in this Settlement Agreement shall
2 limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in
3 furtherance of business purposes, including the fulfillment of obligations stated in this Settlement
4 Agreement.

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6 **SIGNATURES FOLLOW ON NEXT PAGE**
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SIGNATURES

PLAINTIFF

DEFENDANT

DATED: 11 / 21 / 2022

DATED:

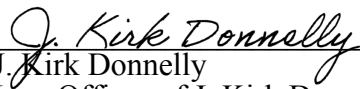
By 
Hector O. Acosta

By
Name
Title
Turlock Walnut Company, Inc.

APPROVED AS TO FORM:

DATED: 11/16/22

DATED:

By 
J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
Attorneys for Hector O. Acosta

By
Raquel A. Hatfield
Stacy L. Henderson
Henderson Hatfield, APC
Attorneys for Turlock Walnut
Company, Inc.

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SIGNATURES

PLAINTIFF

DATED:

By

Hector O. Acosta

DEFENDANT

DATED: 11/28/2022 signed by:

By

Name Kevin Kajioka
Title Owner
Turlock Walnut Company, Inc.

APPROVED AS TO FORM:

DATED:

By

J. Kirk Donnelly
Law Offices of J. Kirk Donnelly, APC
Attorneys for Hector O. Acosta

DATED:

By

11/17/2022
Raquel A. Hatfield
Stacy L. Henderson
Henderson Hatfield, APC
Attorneys for Turlock Walnut
Company, Inc.

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS**

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU WORKED AS AN HOURLY PAID EMPLOYEE IN CALIFORNIA FOR TURLOCK WALNUT COMPANY, INC., YOU MAY OBTAIN PAYMENTS FROM A SETTLEMENT REACHED IN A PROPOSED CLASS AND REPRESENTATIVE ACTION LAWSUIT

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.

This Notice is court approved. This is **not** a solicitation from an attorney.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	Receive compensation but release your rights to sue separately. If you do nothing, you will receive a proportional share of the settlement based on the time you worked in a relevant position during the Settlement Class period for the claims alleged in this lawsuit. You will also give up your rights to sue Turlock Walnut Company, Inc. about any of the claims in this case that arose during the Settlement Class period.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Get no compensation but keep rights to sue separately. If you ask to exclude yourself or “opt out” from the settlement, you remove yourself from this lawsuit and will not receive any compensation from the settlement, but you will keep your rights to sue Turlock Walnut Company, Inc. for the claims alleged in the lawsuit. However, the PAGA claims as described in this Notice will be released even if you opt-out of the Settlement. You will still receive your portion of the aggrieved employees’ in PAGA penalties as explained in more detail below.
OBJECT OR COMMENT	Tell the Court why you like or don’t like the settlement. You may write to the Court, or you may appear personally or through your own attorney and your own expense, and tell the Court about why you do or do not like the settlement. You must remain a

Any Questions? Call **[Settlement Admin Toll Free Ph. #]**

	part of the lawsuit to comment or object to the settlement, and you cannot object if you also ask to be excluded.
These rights and options – and the time deadlines for exercising them – are explained further in this Notice.	

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Turlock Walnut Company, Inc.’s (“TWC”) records identify that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of a lawsuit called *Hector O. Acosta v. Turlock Walnut Company, Inc.*, filed on March 7, 2022 in the Stanislaus County Superior Court, Case Number CV-22-001051 (the “Lawsuit”). This Notice is being sent to you by the order of the Stanislaus County Superior Court, which preliminarily approved the settlement and conditionally certified the Settlement Class on [REDACTED].

At this time, the Court has determined only that there is sufficient evidence that the settlement might be fair, reasonable and adequate and any final determination of these issues will be made at the Final Approval Hearing described below. The Court has not made any rulings on the merits of the claims alleged.

This Notice informs you of the terms of the proposed settlement, describes your rights and options in connection with the settlement, and explains what steps you may take to participate in, object to, or exclude yourself from, the settlement. If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.

2. WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by Plaintiff Hector O. Acosta on behalf of all individuals who worked in California as employees paid on an hourly basis by defendant TWC at any point between March 7, 2018 and [REDACTED], inclusive.

The Lawsuit currently alleges Defendant failed to pay Class Members for all hours worked, failed to provide all meal and rest breaks required under California law, failed to provide proper itemized wage statements, and failed to pay all wages due upon separation of employment. The Lawsuit also contains claims for unfair competition and violation of PAGA based on the same alleged Labor Code violations. Plaintiff seeks allegedly unpaid wages as well as statutory and civil penalties related to these claims. Defendant denies each and all of the claims and contentions alleged by the Plaintiff and believe it has consistently complied with all applicable laws. The Court has not made any rulings regarding the merits of the Lawsuit.

After engaging in extensive investigation and a full day of mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendant agreed on a settlement of all class and PAGA claims that was preliminarily approved by the Court on [REDACTED]. Plaintiff and Class Counsel support the settlement.

Any Questions? Call [Settlement Admin Toll Free Ph. #]

The settlement represents a compromise of highly disputed claims. Nothing in the settlement is intended to or will be construed as an admission by Defendant that Plaintiff's claims in the Lawsuit have merit or that it has any liability to Plaintiffs or the Class on those claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. TWC has agreed to settle the case as part of a compromise with Plaintiff solely because of the risk and expense of continued litigation.

The parties and their counsel have concluded that the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation and trial.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who they believe have similar claims. Plaintiff Hector Acosta is the Class Representative in the Lawsuit, and he asserts claims on behalf of himself and the Class Members. A class action potentially allows one court to resolve the claims of all the Class Members who choose not to exclude themselves from the class at the same time. A Class Member is bound by the determination or judgment entered in this case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action.

4. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, both sides avoid the risks and costs of a trial, and people affected will quickly receive compensation. The Class Representative and the attorneys think the settlement is best for the Class.

5. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All individuals who worked as an hourly-paid employee employed by TWC in California at any point from March 7, 2018 through [REDACTED], inclusive, are included in the Class.

According to Defendant's records, you are member of the Class and eligible for payments under the settlement. If you are still not sure if you are entitled to participate in the settlement, please call [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER].

All individuals employed by Defendant as an hourly-paid employee at any point from January 2, 2021 through [REDACTED], inclusive, are also a "PAGA Group member" and are eligible to receive a separate payment representing civil penalties allegedly owed under PAGA.

6. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against them and final disposition of the Lawsuit, Defendant will pay a total of Sixty Thousand Dollars and Zero Cents (\$60,000.00) ("Gross Settlement Amount" or "GSA"). Defendants will pay the GSA in two installments, and the second payment will be made no later than June 1, 2023, assuming final Court approval of the Settlement.

Any Questions? Call [Settlement Admin Toll Free Ph. #]

After attorney's fees and costs, a service payment to Plaintiff, a payment for alleged PAGA penalties, and settlement administration costs are deducted from the Gross Settlement Amount, the remaining "Net Settlement Amount" will be distributed to Class Members who do not validly exclude themselves from the settlement ("Participating Class Members").

Subject to Court approval, the Gross Settlement Amount will be allocated as follows:

- **Individual Settlement Payment: Each Participating Class Member will receive a payment based the total number of "Qualifying Workweeks" they were employed by Defendant in California as an hourly-paid employee during the relevant time period.**

Individual Settlement Payments will be calculated as follows: first, the allocation of the Net Settlement Amount for each group identified above will be divided by the total number of Qualifying Workweeks worked by all of the Class Members in each to determine the applicable "Workweek Rate." Second, the number of Qualifying Workweeks worked by individual Class Members in each group will be multiplied by the applicable Workweek Rate to arrive at each person's Individual Settlement Payment.

Your estimated Individual Settlement Payment is set forth in Section 7 below.

- **Class Representative Service Payments:** For acting as the Class Representative, Plaintiff will request from the Court an award of \$5,000.00 in recognition of and as compensation for his efforts, such as starting the Lawsuit, volunteering time to assist with the case, and providing information and documents, as well as risks he assumed in starting and assisting with the prosecution of the Lawsuit. Any amounts ordered by the Court will be paid from the Gross Settlement Amount.
- **Class Counsel's Attorney's Fees and Costs:** Class Counsel will request from the Court no more than one-third (1/3) of the Gross Settlement Amount (\$20,000.00) as attorney's fees for litigation and resolution of the Lawsuit. Class Counsel will also request from the Court reimbursement for litigation costs advanced on behalf of the Class, which will be no more than \$10,000.00. Any amount ordered by the Court for Class Counsel's attorney's fees and costs will be paid from the Gross Settlement Amount.
- **PAGA Payment:** \$2,000.00 from the Gross Settlement Amount is allocated for settlement of Plaintiff's claims under PAGA. Upon Court approval, 75% of the PAGA Payment (\$1,500.00) will be paid to the California Labor & Workforce Development Agency, and 25% of the PAGA Payment (\$500.00) will be distributed to PAGA Group members. There is no statutory right to opt out or otherwise exclude yourself from your individual share of the PAGA Payment and the associated release of claims and rights under PAGA.
- **Settlement Administration:** The costs of settlement administration will not exceed \$5,000.00, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Gross Settlement Amount.
- All checks issued to Participating Class Members and PAGA Employees shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. After expiration of this time, all funds related to unclaimed or uncashed checks will be forwarded to the California State Controller's Unclaimed Property Fund.

7. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT, AND HOW MUCH WILL I RECEIVE?

You do not need to do anything to receive a payment from the settlement.

Defendant's records show that you worked a total of [Number of Workweeks] as an hourly-paid employee during the relevant time period. Accordingly, your anticipated Individual Settlement Payment is [\$ AMOUNT]. The actual amount you receive may vary somewhat depending on actual implementation of the Settlement. If you are a member of the PAGA Group, you will receive an additional distribution from the PAGA Payment.

Your Individual Settlement Payment will be issued in a check representing alleged penalties and interest, and you will be issued an IRS Form 1099 for tax purposes. 100% of your share of the PAGA Payment, if any, will be issued in a check representing alleged penalties, and you will be issued an IRS Form 1099 for tax purposes. You will need to speak with an accountant or other tax professional about any tax issues related to your settlement checks.

If you dispute the information about the amount of your anticipated Individual Settlement Payment, you must send the Settlement Administrator in the mail any records (such as paystubs, pay checks or other records) supporting your calculation of the total number of work weeks you were employed by Defendant in an hourly-paid position in California during the relevant time frame, along with a letter explaining the reasons for your dispute that also include the last four digits of your social security number. The letter must be sent to the Settlement Administrator by [RESPONSE DEADLINE]. The date of the postmark will determine if it was timely mailed. The Settlement Administrator will review the information you submit along with Defendant's records and make a final determination as to the correct amount of your settlement share.

The Settlement Administrator is:

Acosta v. Turlock Walnut Company Settlement Administration
 c/o Settlement Administrator
 Street Address/PO Box
 City, State, Zip Code

8. WHAT AM I GIVING UP TO STAY IN THE CLASS AND GET COMPENSATION?

For all Class Members, unless you ask to be excluded, you will remain a part of the Settlement Class, and that means you can't sue, continue to sue, or be a part of any other lawsuit or proceeding making any of the same claims and allegations made in *this* case. It also means all of the Court's orders will apply to you and legally bind you. If you stay in the Settlement Class, you will be deemed to have released and discharged Turlock Walnut Company, Inc. and each of its past, present and future subsidiaries, dbas, parents, divisions, related entities, joint venturers, as well as each of their respective owners, co-employers, joint employers, agents, officers, directors, stockholders, shareholders, members, principles, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, reinsurers, employees, attorneys, assigns, heirs, spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored employee benefit plans of any nature, and all other legal entities affiliated with the foregoing, including, but not limited to Turlock Freezer Storage (the

Any Questions? Call [Settlement Admin Toll Free Ph. #]

“Released Parties”) from any and all class claims that were asserted in the operative Class and Representative Action Complaint or that could have been asserted based on the allegations made in the operative Class and Representative Action Complaint, for the duration of the Class Period (the “Released Claims”). As to claims under PAGA, the Released Claims include any and all claims for civil penalties under PAGA asserted in the PAGA Notice filed with the LWDA, or claims for civil penalties under PAGA that arise based on the allegations in the PAGA Notice filed with the LWDA, for the duration of the PAGA Period. The Released Claims do not include any claims that cannot be released as a matter of law.

The Settlement Agreement contains additional details about the scope of the Released Claims and you may obtain a copy of the Settlement Agreement from the Settlement Administrator or Class Counsel listed below.

9. DO I HAVE A LAWYER IN THIS CASE?

The Court has decided the law firm below is qualified to represent you and the Settlement Class. This law firm is called “Class Counsel.”

Law Offices of J. Kirk Donnelly, APC
2173 Salk Ave., Suite 250
Carlsbad CA 92008
(760) 209-5894

If you want to be represented by your own lawyer, you may hire one at your own expense.

10. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a Request for Exclusion to the Settlement Administrator at the following address:

Acosta v. Turlock Walnut Company Settlement Administration
c/o Settlement Administrator
Street Address/PO Box
City, State, Zip Code

You must send your Request for Exclusion Form by mail no later than [RESPONSE DEADLINE] to the Settlement Administrator at the above address. The date of the postmark will determine if your Request for Exclusion Form was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Gross Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. However, to the extent you are a PAGA Group member and eligible to receive a portion of the PAGA Allocation, you will still receive that amount whether or not you submit a Request for Exclusion. This is because, if the Court approves the PAGA Payment, there is no statutory right to opt out, object or otherwise exclude yourself from receiving a payment for PAGA claims and the associated release of claims and rights under PAGA.

Any Questions? Call [Settlement Admin Toll Free Ph. #]

11. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the proposed settlement either in writing, by appearing at the Final Approval Hearing in person or through an attorney at your own expense, or both. The Final Approval Hearing is scheduled to take place on [REDACTED], 2023, at 8:30 a.m. in Department 22 of the Stanislaus County Superior Court, located at the City Towers Courthouse, 801 10th Street, Modesto, California 95354.

You must submit your Objection and all supporting papers if any to the Settlement Administrator by mailing to the following address:

Acosta v. Turlock Walnut Company Settlement Administration
c/o Settlement Administrator
Street Address/PO Box
City, State, Zip Code

To be valid, your Objection and all supporting papers must be postmarked on or before [RESPONSE DEADLINE].

If you do not submit a written Objection, you may still appear at the Final Approval Hearing and make your objection verbally to the Court.

12. WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court, will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Individual Settlement Award. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from initiating a lawsuit or proceeding regarding the Released Claims.

13. WHAT IF MY CONTACT INFORMATION CHANGES?

If, after you receive this Notice you change your mailing address, it is your responsibility to inform the Settlement Administrator of your updated information.

14. THE FINAL APPROVAL HEARING

The Final Approval Hearing is scheduled to take place on [REDACTED], 2023, at 8:30 a.m. in Department 22 of the Stanislaus County Superior Court, located at the City Towers Courthouse, 801 10th Street, Modesto, California 95354. The date and time may change without further notice to the Class.

At the Final Approval Hearing, the Court will make a final decision whether to approve the settlement, and will also decide what amounts will be awarded to Plaintiff for a service award, and to Class Counsel for attorney's fees and costs.

Any Questions? Call [Settlement Admin Toll Free Ph. #]

15. FURTHER INFORMATION

This Notice is only a summary of the settlement. To obtain a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), the Court's Preliminary Approval Order, or the operative complaint filed in the Lawsuit, please contact the Settlement Administrator at [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER] or Class Counsel listed above.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER] or Class Counsel listed above. Please refer to the Acosta v. Turlock Walnut Company, Inc.. Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT, THE OFFICE OF THE CLERK OR DEFENDANT WITH QUESTIONS OR FOR INFORMATION REGARDING THIS SETTLEMENT

Any Questions? Call [Settlement Admin Toll Free Ph. #]