

Settlement Agreement and Release of Claims

This Settlement Agreement and Release of Claims (“Settlement Agreement”) is entered into by: **(1)** Nelson Omar Balderas (“Plaintiff”), and **(2)** Organic Berries, LLC (“Defendant”). Plaintiff and Defendant are collectively referred to as the “Parties” or individually as “Party.”

Recitals

- A.** Plaintiff has filed an action against Defendant, currently pending in the Superior Court for the County of Santa Cruz, entitled *Nelson Omar Balderas v. Organic Berries, LLC*, Case No. 22CV00227 (“Action”). The Action is currently plead as a representative action brought pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
- B.** In the Action, Plaintiff has sought PAGA penalties against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and **(12)** all claims for penalties, interest, fees, and costs based on the foregoing.
- C.** Defendant denies all claims set forth in in the Action.
- D.** To avoid further controversy and litigation of this matter, and without admission of any liability, fact, claim, or defense by any Party, the Parties wish to settle all disputes now existing between them on terms and conditions set forth below.

Agreement

Pursuant to the terms and conditions of this Settlement Agreement, which all Parties acknowledge as fair, reasonable, and adequate and in their mutual best interests, the Parties agree to settle all claims and finally resolve all disputes between the Parties as follows:

- 1. Settlement Amount.** In exchange for the promises and releases contained in this Settlement Agreement, Defendant will pay to Plaintiff the gross settlement amount of \$15,000.00 (“Settlement Amount”) made payable as follows:

 - a. One check in the amount of \$1,469.53, less applicable payroll and tax withholdings, made payable to “Nelson Omar Balderas” and sent to the office of Plaintiff’s counsel, representing wages, for which Nelson Omar Balderas will receive an IRS Form W-2.
 - b. One check in the amount of \$5,878.08 made payable to “Nelson Omar Balderas” and sent to the office of Plaintiff’s counsel, representing non-wage damages, for which Nelson Omar Balderas will receive an IRS Form 1099.
 - c. One check in the amount of \$7,652.39 made payable to “Melmed Law Group P.C.” and sent to the office of Plaintiff’s counsel, for attorneys’ fees and costs, for which Plaintiff’s counsel will receive an IRS Form 1099.
- 2. Timing and Delivery of Payments.** Within five calendar days of the date on which all Parties have executed this Settlement Agreement, Plaintiff and Plaintiff’s counsel shall provide to Defendant all necessary tax forms (including a completed IRS Form W-4 for Plaintiff and IRS Form W-9s for Plaintiff and Plaintiff’s counsel). Within ten calendar days of the date on which all Parties have executed this Settlement Agreement, Defendant shall mail the checks described above to:

Melmed Law Group P.C.
1801 Century Park East
Suite 850
Los Angeles, California 90067
- 3. Mutual Release.** On receipt and clearance of the Settlement Amount, the Parties agree to mutually release, discharge, and agree to hold harmless one another, including, but not limited to, each Party’s owners, subsidiaries, shareholders, members, predecessors, successors, attorneys, and officers (all entities released are referred to collectively as the “Released Parties”) from any and all claims, damages, debts, agreements, lawsuits, and judgments, whether known or unknown, arising out of or in any way connected with Plaintiff’s employment by Defendant and any and all transactions, occurrences, or matters between the Parties occurring prior to

the date of this Settlement Agreement. Plaintiff is making this release in Plaintiff's individual capacity, and not in a capacity as a private attorney general for the State of California.

4. **Release of Unknown Claims.** As further consideration for the releases being provided, the Parties expressly waive any right or benefit available to them under the provisions of California Civil Code section 1542, which provides as follows:

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

Notwithstanding anything to the contrary in this Settlement Agreement, the releases described do not apply to claims arising from workers' compensation laws or any rights which, by law, may not be waived. Moreover, nothing in this Agreement shall be deemed to prohibit the Parties from participating or cooperating with any governmental or law enforcement agency in any investigation, administrative proceeding, or action involving any other Party.

5. **Dismissal of Action.** In return for the consideration provided in this Settlement Agreement, Plaintiff agrees to dismiss with prejudice Plaintiff's *individual* claims in the Action. Plaintiff, having resolved all individual claims against the Released Parties, agrees that Plaintiff is no longer a suitable PAGA representative and agrees to not file any future PAGA representative actions against the Released Parties. To the extent there are any remaining PAGA claims in the Action, Plaintiff agrees to dismiss those claims *without* prejudice. Within seven calendar days of the date the Settlement Amount is received by Plaintiff's counsel and all checks have cleared, Plaintiff shall file a request for dismissal as outlined above in the Action and provide Defendant with a copy of the signed request for dismissal at that time. Plaintiff agrees to do all things necessary to effectuate the complete dismissal of Plaintiff's claims in the Action.
6. **No Consideration for Representative Claims.** The Parties acknowledge that this Settlement Agreement includes fair and reasonable consideration for the settlement of Plaintiff's *individual* claims. Plaintiff is entering this Settlement Agreement solely in an individual capacity, and not in any capacity as a private attorney general for the State of California. All consideration under this Settlement Agreement provided to Plaintiff is for Plaintiff's release of individual claims against the Released Parties, as defined above. Plaintiff, having resolved all individual claims against the Released Parties, agrees that Plaintiff is no longer a suitable PAGA representative and agrees to not file or participate in any future class or

representative actions against any Released Parties for any claims arising out of or in any way connected with Plaintiff's employment by Defendant and any and all transactions, occurrences, or matters between the Parties occurring prior to the date of this Settlement Agreement, unless otherwise required by law.

7. **Attorneys' Fees and Costs.** Except as provided in this Settlement Agreement, the Parties shall bear their own costs, expenses, and attorneys' fees. The Parties further agree to not seek to recover their costs, expenses, and attorneys' fees from the other Party incurred in or arising out of or in any way related to the matters released in this Settlement Agreement, except for those costs and attorneys' fees as specifically stated herein.
8. **Mutual Non-Disparagement.** Each Party agrees to refrain from making or soliciting comments, statements, or the like to the media or to others that may be considered to be derogatory or detrimental to their good name and/or business reputation. This provision shall not prohibit the Parties from giving truthful responses or testimony in any legal or regulatory proceeding or inquiry.
9. **Neutral Reference.** Defendant agrees that on any employment-related inquiry, other than one based on a subpoena or other process of law compelling testimony, Defendant, and/or any of its agents shall disclose only the following: confirmation of Plaintiff's employment, position(s) held, and dates of employment.
10. **Remedies for Breach.** The Parties agree that in the event any action or motion is initiated by either Party to interpret or enforce this Settlement Agreement, or to recover damages for breach of this Settlement Agreement, or to collect the Settlement Amount to be paid by Defendant under this Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees incurred in conjunction with the litigation or motion, in addition to any other relief granted.
11. **Covenant to Effectuate Agreement.** Each Party agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Settlement Agreement.
12. **Disclaimer of Liability.** Nothing in this Settlement Agreement shall constitute or be construed as an admission of liability or wrongdoing by the Parties. The Parties expressly deny that they have done anything wrong or unlawful.
13. **Confidentiality.** The terms of this Settlement Agreement shall be confidential. The Parties agree to not make any public statement about and not disclose to any third party the fact of, or contents, or terms of this Settlement Agreement, unless necessary to implement or enforce its terms or to seek tax or legal advice regarding this Settlement Agreement. Plaintiff

may disclose information about this Settlement Agreement to Plaintiff's immediate family or Plaintiff's financial, tax, and legal advisors. Plaintiff will not disclose any information about this Settlement Agreement or the Settlement Amount made pursuant to this Settlement Agreement, to any current or former employee of Defendant.

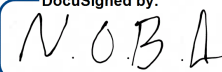
14. **No Representation of Tax Liabilities.** No Party, including the attorneys for any Party, has made any representations or warranties regarding whether the Settlement Amount is subject to taxation. No Party shall bear any responsibility for tax liability of any other Party that may arise because of the payment of the Settlement Amount. Each Party agrees to assume any responsibility for payment of taxes for any of the Settlement Amounts. Each Party agrees to hold all other Released Parties harmless from any and all tax liability which may become due as a result of the payment of the Settlement Amount under this Settlement Agreement.
15. **No Prior Assignments.** The Parties represent that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or any interest therein against any other Party.
16. **Binding Nature.** This Settlement Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of Plaintiff, and inure to the benefit of Defendant, Defendant's agents, managers, members, officers, employees, servants, successors, and assigns.
17. **Consultation with Counsel.** The Parties affirm that, prior to execution of this Settlement Agreement, they have consulted with their respective legal counsel concerning the terms and conditions set forth herein, and that they understand the advice provided to them.
18. **Severability.** Should any clause of this Settlement Agreement be found void by a court of law, with the exception of the requirement that Defendant pay Plaintiff and Plaintiff's counsel the Settlement Amount, that fact shall not impair the remainder of this Settlement Agreement.
19. **Interpretation.** This Settlement Agreement has been jointly negotiated and drafted by counsel for the Parties. The language in this Settlement Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties. This Settlement Agreement shall be interpreted according to the laws of the State of California.
20. **Counterparts.** This Settlement Agreement may be executed in identical counterparts, each of which shall constitute an original of this Settlement Agreement. Signatures of the Parties may be exchanged electronically and shall be treated as an original.
21. **Amendment.** This Settlement Agreement may not be modified, altered, or changed, except in writing and signed by the Parties.

22. **Entire Agreement.** This Settlement Agreement contains all the terms and conditions agreed on by the Parties regarding the subject matter of this Settlement Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Settlement Agreement, not expressly set forth in this Settlement Agreement, are of no force or effect.

Approval and Execution by the Parties

Plaintiff:

Dated: 10/26/2022

DocuSigned by:

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Nelson Omar Balderas
Plaintiff

Defendant:

Dated: 10-26-2022

Organic Berries, LLC



By: Stephen F. Mc Guire

Title: Manager