

1 B. James Fitzpatrick (SBN: 129056)
2 Laura L. Franklin (SBN: 282642)
3 **FITZPATRICK & SWANSTON**
4 555 S. Main Street
5 Salinas, CA 93901
6 Telephone: (831) 755-1311
7 Facsimile: (831) 755-1319

8 Larry W. Lee (SBN 228175)
9 Max W. Gavron (SBN 291697)
10 **DIVERSITY LAW GROUP, P.C.**
11 515 S. Figueroa Street, Suite 1250
12 Los Angeles, California 90071
13 Telephone: (213) 488-6555
14 Facsimile (213) 488-6554
15 lwlee@diversitylaw.com
16 mgavron@diversitylaw.com

17 Attorneys for Plaintiff,
18 JUAN RAMON TORRES REYES on behalf of himself
19 and all similarly aggrieved employees

20 **SUPERIOR COURT OF CALIFORNIA**

21 **COUNTY OF MONTEREY**

22 JUAN RAMON TORRES REYES, on behalf
23 of himself and all similarly aggrieved
24 employees,

25 Plaintiff,

26 v.

27 MB LABOR CONTRACTING, INC.;
28 D'ARRIGO BROS. CO., OF CALIFORNIA;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000682

**DECLARATION OF MAX W. GAVRON
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 28, 2024

Time: 8:30 A.M.

Dept.: 14

Complaint Filed: March 11, 2022

Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6

7

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

24

25

26

27

28

1 six months chosen by Plaintiff's counsel during the class period. This permitted Plaintiff's
2 counsel to evaluate the potential exposure, while balancing the time and expense of evaluating
3 and analyzing records that were kept in a format that did not readily lend itself to electronic
4 production. This investigation enabled Plaintiff to perform an analysis of the putative class
5 and Defendants' liability.

6 4. On October 24, 2023, the Parties engaged in private mediation with the
7 Honorable David A. Garcia (Ret.). After thorough investigation and evaluation of the facts and
8 claims, as well as arm's length negotiation, the Parties reached an agreement in principle and
9 entered into a memorandum of understanding. After further negotiation, the Parties entered the
10 proposed settlement now presented to the Court for preliminary approval. The Parties
11 recognize the risk, expense, and delay in continuing litigation with the class and PAGA
12 claims, and believe the settlement to be fair, reasonable, and adequate.

13 5. In settlement of Plaintiff's claims against Defendants, the Parties entered into the
14 Joint Stipulation of Class Action and PAGA Settlement ("Agreement" or "Settlement
15 Agreement"). A true and correct copy of the Settlement Agreement is attached herewith as
16 **Exhibit A.**

17 **SUMMARY OF THE SETTLEMENT TERMS**

18 6. The Agreement provides for One Hundred Sixty-Seven Thousand Two Hundred
19 Eighty-Three Dollars and Ninety-Two Cents (\$167,283.92) as the total Gross Settlement
20 Amount. See Agreement ¶ 17. The Net Settlement Amount [calculated after deduction of the
21 Class Counsel Award of attorneys' fees (up to \$55,761.31), litigation costs (up to \$20,000.00),
22 Class Representative Enhancement Payment (up to \$2,500.00), PAGA Payment (\$15,000.00),
23 and Settlement Administration Costs (up to \$13,000.00)] is estimated to be approximately
24 \$61,022.61. See Agreement ¶¶ 6, 10, 17, 19, 22, 35. Each Class Member who does not opt-out
25 of the settlement ("Participating Class Member") will be awarded a portion of the Net
26 Settlement Amount on a pro-rata basis, based upon the total number of workweeks he or she
27 worked during the Class Period. See Agreement ¶ 46.

28 7. Based thereon, on a raw average, each Participating Class Member potentially

1 may recover approximately \$66.47. The amount actually paid to each Participating Class
2 Member will increase or decrease depending on the actual number of workweeks he or she
3 worked during the Class Period. Finally, funds from any checks that have not been cashed
4 within 180 days of issuance shall be paid to the designated cy pres recipient: the State Bar of
5 California's Justice Gap Fund, a reserve that provides funding to about 100 legal aid
6 organizations across the state.

7 **POTENTIAL STATUTORY AND CIVIL PENALTIES**

8 8. I was able to estimate the potential damages and penalties based on the data and
9 documents provided by MB Labor.

10 9. **Class Size:** Pursuant to the Agreement, MB Labor has represented that
11 approximately 918 Class Members worked approximately 9,692 workweeks during the Class
12 Period.

13 10. **Data & Policies Produced:** MB Labor produced a sampling of time and pay
14 records that permitted Plaintiff to evaluate the potential exposure. MB Labor also produced its
15 written policies applicable to the class period, including, but not limited to, sick leave policies,
16 Injury and Illness Prevention, Final Pay, Employee Handbooks, meal and rest periods, and
17 commuting/travel between fields. Based on the sampling provided by MB Labor, D'Arrigo's
18 liability was entirely derivative of the liability evaluated against its farm labor contractor, MB
19 Labor.

20 11. **Class Damages:** Based on the class data provided by MB Labor, Plaintiff
21 estimated that Defendants MB Labor Contracting, Inc. and D'Arrigo could face potential
22 maximum liability of up to approximately \$5.3 million for Plaintiff's class claims, if Plaintiff
23 was successful on all of his claims and obtained certification. This amount likely overstates the
24 realistic range of recovery, however, for the reasons below. Plaintiff calculated the maximum
25 penalties as follows:

- 26 • ~\$35,000 for unpaid minimum and overtime wages, assuming 6 minutes of off-
27 the-clock work per week ((9,692 workweeks x 0.1) x \$14.75 average rate of pay)
28 and approximately ((9,692 workweeks x 0.1) x \$22.13 average overtime rate of

1 pay);

- 2 • \$71,478.50 for meal and \$71,478.50 for rest period violations, assuming a 50%
3 violation rate (9,692 workweeks x \$14.75 average rate of pay);
- 4 • \$923,300 for Labor Code § 226(e) penalties ((9,692 workweeks x \$100 penalty)
5 – (918 class members x \$50)); and
- 6 • \$3.7 million in waiting time penalties [918 former employees x (30 days x 8
7 hours x \$14.75)], which subsumes the potential exposure on Plaintiff’s sick pay
8 theory of liability.

9 12. Plaintiff’s estimates above assume certification of the class. However, these
10 types of claims can be difficult to certify for class treatment where the defendant maintains
11 facially compliant policies. Accordingly, this exposure is entitled to a significant discount at
12 the settlement stage given the difficulties in proving this claim on a class basis if moving
13 forward with litigation.

14 13. Each of Plaintiff’s putative class claims faced unique challenges from
15 Defendants. For one, Defendants would have argued that the waiting time penalties, which
16 comprise a significant portion of the estimated damages, are subject to a complete defense.
17 Defendants would have argued that a good faith dispute exists as to whether the allegedly
18 underpaid wages were due to Plaintiff and the Class Members considering what Defendants
19 argued were compliant policies and procedures. If Defendants were successful in their good
20 faith defense, the Court may not have awarded waiting time penalties at all, reducing the
21 exposure of each defendant by several million. *Hill v. Walmart, Inc.*, 32 F.4th 811 (9th Cir.
22 2022) (upholding good faith defense because defendant reasonably believed wages were not
23 due and owing at time of separation of employment); *Chavez v. Converse, Inc.*, 2020 WL
24 1233919, at *1 (N.D. Cal. 2020) (holding that an employer’s failure to pay is not willful where
25 there is uncertainty in the law or a “good faith mistaken belief that wages are not owed”).

26 14. Similarly, on Plaintiff’s wage statement claim, Plaintiff would face the
27 additional burden of demonstrating that any alleged omission of information from the wage
28 statements was a “knowing and intentional failure” by Defendants to comply with Labor Code

1 § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)
2 (granting summary judgment in favor of employer and finding its conduct was not “knowing
3 and intentional”); Defendants also would have argued that penalties under Section 226 are
4 subject to a similar “good faith” defense as articulated above in the context of Plaintiff’s
5 claims for waiting time penalties. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL
6 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is
7 not in violation of Section 226, any violation is not knowing and intentional.”). The California
8 Supreme Court also recently approved a good faith defense to the imposition of Section 226
9 penalties, which further undermines the certainty of recovering these damages even if Plaintiff
10 prevailed on liability. *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980,
11 at *1 (Cal. May 6, 2024). Losing on this claim would lower the potential exposure
12 approximately another \$1 million.

13 15. Defendants also would have argued that Plaintiff could not demonstrate an
14 underlying violation of the Labor Code to support his meal and rest period claims. *See Brinker*
15 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On the other
16 hand, the employer is not obligated to police meal breaks and ensure no work thereafter is
17 performed.”). Defendants would have argued that their legally compliant written policies
18 satisfied *Brinker* and that any failure to take a legally compliant meal or rest period by
19 employees was the result of individual choice and thus not capable of class resolution.

20 16. Defendants also contended that they paid employees all minimum and overtime
21 wages. Defendants argued that any work performed off the clock was unauthorized and not
22 subject to a uniform policy and thus would not be susceptible of class resolution as some
23 employees traveled between fields and others did not.

24 17. **PAGA Penalties:** Plaintiff calculated Defendants’ potential maximum exposure
25 under the PAGA as approximately \$969,200 (9,692 pay periods x \$100 penalty). This assumes
26 complete victory at trial and that the Court would award the maximum penalty of \$100 per pay
27 period, which is far from certain as discussed above. Further, while the PAGA provides for a
28 heightened penalty for a “subsequent violation,” courts are hesitant to award the heightened

1 penalty absent a showing of a prior violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th
2 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
3 *Service, Inc.* 2009 WL 2448430 at *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law,
4 courts have held that employers are not subject to heightened penalties for subsequent
5 violations unless and until a court or commissioner notifies the employer that it is in violation
6 of the Labor Code”); *see also Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)
7 (holding no subsequent penalty unless prior citation or court ruling).

8 18. Even assuming Plaintiff ultimately prevailed on his PAGA claims, the Court still
9 has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court
10 can decline to award PAGA penalties where “if, based on the facts and circumstances of the
11 particular case, to do otherwise, would result in an award that is unjust, arbitrary and
12 oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington*
13 *v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA
14 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
15 the employer’s good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the
16 Court of Appeal found such a reduction to be proper. *Id.* at p. 539. Thus, even if Plaintiff was
17 to successfully prove his claims at trial, there is a possibility that the Court may only award a
18 small percentage of PAGA penalties, as the Court has discretion to do so.

19 19. While Plaintiff believes in the merits of the alleged claims, Plaintiff is aware that
20 Defendants may raise some of the defenses to the claims addressed above that could persuade
21 the Court to reduce the PAGA penalties. The Gross Settlement Amount was premised with
22 this risk in mind, associated with the possibility of the Court significantly reducing Plaintiff’s
23 PAGA penalties, along with other attendant risks.

24 20. Although Plaintiff believes that the class can be certified, Plaintiff also believes
25 in the fairness of the settlement that is based on factoring in the uncertainty and risks to
26 Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged
27 in the operative Complaint, the possibility of non-certification, and the potential for appeals.
28 These risks on class certification are compounded by the California Supreme Court’s holding

1 in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class
2 certification and subsequently prevailed at trial after eight years of litigation, but the judgment
3 and the certification ruling were reversed by the California Supreme Court after an additional
4 five years of litigation. The case was remanded to superior court where class certification was
5 denied and plaintiffs' subsequent appeal also was denied.

6 21. Defendant MB Labor's financial condition also supports the reasonableness of
7 the discounted settlement value. As demonstrated by the terms of the agreement, Defendant
8 MB Labor required a payment plan to fund the settlement. Agreement ¶ 42. Accordingly,
9 even if Plaintiff litigated this case through trial and was successful, a judgment may not have
10 been collectable. Thus, the settlement for each Class Member is fair, reasonable, and
11 adequate, given the inherent risks of litigation, including the substantial risks relative to class
12 certification, the costs of pursuing such litigation, and the risks associated with the Court's
13 discretion to reduce PAGA penalties. The settlement is the result of extensive arm's-length
14 negotiations between the Parties and their counsel and was facilitated by an experienced and
15 neutral mediator.

16 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

17 22. Based on my own independent investigation and evaluation, I am of the opinion
18 that settlement for the consideration and on the terms set forth in the Joint Stipulation of Class
19 Action and PAGA Settlement is fair, reasonable, and adequate and is in the best interests of
20 the Class and Defendants in light of all known facts and circumstances, and the uncertainty
21 and risks to Plaintiff involved in not prevailing on one or more of the causes of action or
22 theories alleged in the operative Complaint, the possibility of non-certification, and the
23 potential for appeals.

24 23. From the inception of the case, Class Counsel have zealously represented the
25 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to
26 the individual Class Representative. Further, Class Counsel have been approved as class
27 counsel on a number of prior cases, have litigated numerous other class action cases, and are
28 competent to represent the Class.

24. Both Plaintiff's and Defendants' counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience.

25. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties.

26. The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

27. My office was retained based upon a contingency fee arrangement wherein Plaintiff's counsel agreed to advance all costs and receive no fee unless a recovery was accomplished. Specifically, had Plaintiff failed to prevail on these cases, counsel for Plaintiff would have spent a significant amount of time, money, and other resources without any benefit or return. In addition, had Plaintiff also failed to prevail in the present case, Defendants would have been able to seek costs in connection with their defense of the case.

28. I have spent significant time researching and pursuing the claims that have been alleged in this action. The Parties engaged in formal and informal discovery, with the production of relevant documents and payroll information.

ATTORNEY EXPERIENCE

29. I am one of the primary attorneys on this matter. My qualifications are as follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a Notes and Comments Editor on the Southwestern Law Review. I also received awards for achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at the United States District Court for the Central District. Immediately after law school, I taught several courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I taught those courses for approximately four years.

30. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach

1 of contract dispute. I also regularly litigated cases across the civil litigation spectrum,
2 including employment matters.

3 31. From February 2016, through Fall 2017, I practiced at the international law firm
4 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune
5 50 companies in Multi-District Litigation primarily in the product liability sphere. I also
6 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a
7 summary judgment decision regarding trade secret issues, in addition to working in several
8 other practice groups. *See Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893
9 F.3d 1176 (9th Cir. 2018).

10 32. From September 2017, through September 2018, I served as a law clerk to a
11 Judge sitting on the United States District Court, Central District of California. I regularly
12 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
13 working on wage and hour class actions.

14 33. I am currently an associate at the law firm Diversity Law Group, P.C., an
15 employment law firm that has handled numerous wage and hour class and individual actions,
16 on both plaintiff and defense sides. My current practice focuses on employment matters
17 involving both class actions, and single plaintiffs. The firm currently has cases in courts
18 throughout the State of California, including but not limited to the Los Angeles Superior
19 Court, Orange County Superior Court, San Diego County Superior Courts, Santa Clara County
20 Superior Court, and the United States District Courts for the Central, Northern, and Eastern
21 Districts of California. I am currently handling, or have handled, numerous wage and hour
22 class action lawsuits with the firm, including, but not limited to: *Agar v. Sensient Natural*
23 *Ingredients, LLC* (Case No. CV-19-001906, Stanislaus County Superior Court); *Heredia v.*
24 *Eddie Bauer LLC* (Case No. 16CV300475, United States District Court, Northern District of
25 California); *Martin v. Streetplus Company, LLC* (Case No. 19STCV15522, Los Angeles
26 County Superior Court); *Parsons v. Estenson Logistics, LLC* (Case No. 34-2019-00252929,
27 Sacramento County Superior Court), *Pevey v. Lumber City Corp.* (Case No. CIVDS2010240,
28 San Bernardino County Superior Court), and *Weybrew v. BEI Construction, Inc.* (Case No.

1 FCS055658, Solano County Superior Court), among many others.

2 34. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court
3 of Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On
4 June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor
5 of our clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

6 35. I have also assisted the firm in numerous wage and hour class action mediations.

7 36. My co-counsel and I will adequately represent the Class Members in this action.
8 Plaintiff's counsel have and will zealously represent Plaintiff and the Class and pursue this
9 lawsuit to its conclusion.

10 37. I do not have any conflict of interest with the proposed *cy pres* recipient, the
11 State Bar of California's Justice Gap Fund.

12 38. In conjunction with the filing of this Motion, my office uploaded the Settlement
13 Agreement and Motion to the Labor and Workforce Development Agency.

14 39. The Settlement Administration costs are estimated by CPT Group to be \$13,000.
15 CPT Group is a well-recognized class action settlement administrator. The Parties believe that
16 the administration fee is reasonable and should be approved, as it results in an anticipated cost
17 of approximately \$14.16 per class member, which is commensurate with similar settlements.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on this 5th day of June 2024, at Los Angeles, California.

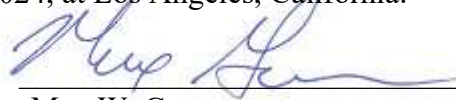
21 
22 _____
23 Max W. Gavron

EXHIBIT A

This Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement”) is made and entered into by and between Plaintiff Juan Ramon Torres Reyes (“Plaintiff”) and Defendants MB Labor Contracting, Inc. and D’Arrigo Bros. Co., of California (collectively “Defendants”) (Plaintiff and Defendants hereinafter referred collectively as “the Parties”).

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

2. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement, including the Notice of Proposed Class Action Settlement (“Class Notice”) attached as Exhibit A.

4. “Class” or “Class Member(s)” mean all current and former non-exempt employees of Defendant MB Labor Contracting, Inc. that were assigned to work for Defendant D’Arrigo Bros. Co., of California in California, at any time from March 11, 2018, to October 24, 2023. Defendant MB Labor’s records indicate that there are approximately 918 Class Members.

6. “Class Counsel Award” means such award of fees and costs and expenses as the Court may authorize to be paid to Class Counsel, from the Gross Settlement Amount, for the

1 services they have rendered and will render to Plaintiff and the Class in the Action. Defendants
2 agree not to oppose Class Counsel Award not to exceed one-third of the Gross Settlement
3 Amount (\$167,283.92), *i.e.*, the sum of Fifty-Five Thousand Seven Hundred Sixty-One Dollars
4 and Thirty-One Cents Dollars (\$55,761.31), and litigation costs in the amount of up to Twenty
5 Thousand Dollars (\$20,000.00), subject to the Court finally approving this Settlement. Any
6 portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net
7 Settlement Amount, and shall be distributed to Class Members as provided in this Agreement.

8 7. "Class Data" means information regarding all Class Members that MB Labor will
9 diligently and in good faith compile from its records and provide to the Settlement Administrator
10 after Preliminary Approval of this Settlement. The Class Data shall include: each Class
11 Member's full name, most recent mailing address, employee number, Social Security number,
12 the number of workweeks worked by each Class Member during the Class Period, and the
13 number of pay periods worked by each Aggrieved Employee during the PAGA Period. This
14 information shall be treated as confidential by the Settlement Administrator and shall not be
15 disclosed to Plaintiffs Class Counsel or any other person without prior approval from
16 Defendants' counsel.

17 8. "Class Period" means the period from March 11, 2018, through October 24, 2023.

18 9. "Class Representative" means Plaintiff Juan Ramon Torres Reyes.

19 10. "Class Representative Enhancement Payment" means the amount that the Court
20 authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition
21 of his efforts and risks in assisting with the prosecution of the Action and in consideration for
22 providing a general release of all claims and a waiver under Civil Code § 1542, as limited by
23 Paragraph 71 below. Subject to the Court granting final approval, the Parties agree that Plaintiff
24 shall be paid up to Two Thousand Five Hundred Dollars (\$2,500.00) from the Gross Settlement
25 Amount for his Class Representative Enhancement Payment.

26 11. "Counsel for Defendant MB Labor Contracting, Inc. means James K. Gumberg
27 and Anais Mora of Patane Gumberg Avila, LLP.

28 12. Counsel for Defendant D'Arrigo Bros. Co., of California means Geoffrey F.

1 Gega of Law Offices of Geoffrey F. Gega and Regina Silva of Littler Mendelson.

2 13. "Court" means the Superior Court for the State of California, County of Monterey,
3 or any other court taking jurisdiction of the Action.

4 14. "Defendants" means Defendants MB Labor Contracting, Inc., and D'Arrigo Bros.
5 Co., of California.

6 15. "Effective Date" means: (a) the date when the Final Approval Order is signed,
7 if there are no objections, or if an objection is withdrawn prior to the Final Approval hearing,
8 or (b) in the event there are objectors, sixty (60) days after service of notice of entry of the
9 Final Approval Order and Judgment on the Parties and all objectors to the Settlement without
10 any appeals or request for review being taken, or orders affirming said Final Approval Order
11 and Judgment or denying review after exhaustion of all appellate remedies, if appeals or
12 requests for review have been taken.

13 16. "Final Approval" means the Final Approval Order and Judgment signed and
14 entered by the Court approving the Settlement on substantially the terms provided herein or
15 as the same may be modified by subsequent written agreement of the Parties as approved by
16 the Court following the Final Approval Hearing in accordance with the terms herein.

17 17. "Gross Settlement Amount" means the all-inclusive maximum settlement amount
18 of One Hundred Sixty-Seven Thousand Two Hundred Eighty-Three Dollars and Ninety-Two
19 Cents (\$167,283.92), based upon the rate agreed to between MB Labor and Plaintiff of \$17.26
20 per workweek, to be paid by MB Labor Contracting, Inc., as a result of this Stipulation, subject
21 to the Escalation Clause under Paragraph 60 herein. The Gross Settlement Amount is calculated
22 with reference to the total number of weeks worked at D'Arrigo Bros. by Class Members during
23 the Class Period, which Defendant MB Labor Contracting, Inc. represents was 9,692 total
24 workweeks. During the mediation, MB Labor and Plaintiff agreed that the Gross Settlement
25 Amount will be based upon a rate of \$17.26 per workweek for all work weeks worked at
26 D'Arrigo Bros. by Class Members during the Class Period (the "Gross Settlement Amount").
27 The Gross Settlement Amount includes all Individual Settlement Payments to Participating
28 Class Members, including all wages, damages, interest, and penalties, Class Representative

Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, PAGA Payment (including payment to LWDA), and Class Counsel Award. The Gross Settlement Amount shall also include any interest that accrues in the escrow account created by the Settlement Administrator. It is understood by all the Parties that Defendant D'Arrigo Bros. will not be making any contribution to the Settlement entered in this matter, regardless of any increase to the Gross Settlement Amount due to the application of the Escalation Clause under Paragraph 60 herein.

18. "Individual Settlement Payment" means the pro rata share of the Net Settlement Amount that shall be paid to Participating Class Members, less the employee's portion of required federal and state withholdings, which shall be calculated pursuant to Paragraph 47. Individual Settlement Payments will be equal to each Participating Class Member's proportional share of the Net Settlement Amount (which shall be determined by the calculations provided in this Settlement).

19. "Net Settlement Amount" means the balance of the Gross Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payment, Settlement Administration Costs, PAGA Payment, and Class Counsel Award. The entire Net Settlement Amount is the maximum amount that will be available for distribution to Participating Class Members.

20. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement. For the Notice of Objection to be valid, it must include: (a) the name and case number of this lawsuit (*Juan Ramon Reyes v. MB Labor Contracting, Inc., et. al.* (Case No. 22CV000682) (b) the objector's full name, address, and telephone number; (c) a written statement of basis for the objection; and (d) the objector's signature. The objector may include any copies of papers, briefs, or documents upon which the objection is based. The Notice of Objection must be returned by mail or fax to the Settlement Administrator at the specified address/facsimile indicated in the Notice Packet and be postmarked by the Response Deadline. The Parties will be permitted to respond in writing to any such objections at least seven (7) calendar days prior to the Final Approval hearing or within the time period set by the Court.

1 Any member of the Class who does not submit a valid and timely written objection to the
2 Settlement will be deemed to have waived any objections and will be foreclosed from making
3 any objection to the Settlement, including by way of appealing the order granting Final
4 Approval.

5 21. "Notice Packet" means the Notice of Proposed Class Action Settlement,
6 substantially in the form attached as Exhibit A, which shall be mailed to employees in both
7 English and Spanish.

8 22. "PAGA Payment" means the portion of the Gross Settlement Amount that the
9 Parties have agreed will be allocated to resolve all claims and remedies under the Labor Code
10 Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, "PAGA"). The amount
11 of the PAGA Payment is subject to Court approval pursuant to California Labor Code § 2699(l).
12 The Parties have agreed that Fifteen Thousand Dollars and Zero Cents (\$15,000.00) of the Gross
13 Settlement Amount shall be allocated to the resolution of any Class Members' claims arising
14 under PAGA. Pursuant to the PAGA, 75% of the PAGA Payment, *i.e.*, the sum Eleven
15 Thousand Two Hundred and Fifty Dollars and Zero Cents (\$11,250.00), shall be paid to the
16 California Labor and Workforce Development Agency ("LWDA"), and 25% of the PAGA
17 Payment, *i.e.*, the sum Three Thousand Seven Hundred and Fifty Dollars and Zero Cents
18 (\$3,750.00) shall be distributed to Aggrieved Employees pursuant to Paragraph 46. This
19 Settlement will be forwarded to the LWDA by Class Counsel or the Settlement Administrator
20 and any reallocation or adjustment by the Court of settlement proceeds to increase the PAGA
21 payment will not constitute grounds by any Party to void this Agreement, so long as the Gross
22 Settlement Amount remains the same.

23 23. "PAGA Period" means the period from January 5, 2021, through October 24,
24 2023.

25 24. "Parties" means Plaintiff, on behalf of himself and the Class, and Defendants
26 collectively.

27 25. "Participating Class Members" means all Class Members who do not submit valid
28 and timely Requests for Exclusion pursuant to paragraph 55 below, and will therefore receive

1 his or her share of the settlement proceeds automatically without the need to return a claim form
2 to be paid his/her Individual Settlement Payment.

3 26. "Plaintiff" means Juan Ramon Torres Reyes.

4 27. "Preliminary Approval" means the Court's order granting preliminary approval of
5 the Settlement.

6 28. "Released Class Claims" means all claims that were alleged in the operative
7 complaint of the Action and derivative claims related thereto, arising from the facts, claims,
8 or causes of action alleged or that could have reasonably been alleged based on the facts
9 alleged in the operative complaint of the Action, including but not limited to Labor Code §§
10 201-204, 207-211, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512,
11 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 (PAGA), *et seq.*, including
12 §§ 2699, 2699.3, and 2699.5, and Business and Professions Code § 17200 *et seq.*, including
13 § § 17201, 17203, and 17208, those arising under the Industrial Welfare Commission Orders,
14 and California Code of Civil Procedure 1021.5. The Released Class Claims explicitly excludes
15 the claims asserted in the action entitled, *Juan Ramon Torres Reyes v. Brothers Harvesting Inc.*,
16 *et al.*, Monterey County Superior Court Case No. 22CV000658.

17 29. "Released Claims Period" means the period from March 11, 2018, through
18 October 24, 2023.

19 30. "Released PAGA Claims" means all claims for penalties under the Private
20 Attorneys General Act that were alleged in the and in the notice to the LWDA and in the
21 operative complaint in the Action and derivative claims related thereto, arising from the facts,
22 claims, or causes of action alleged or that could have reasonably been alleged based on the
23 facts alleged in the operative complaint in the Action and in the notice to the LWDA,
24 including, but not limited Labor Code §§ 201-204, 207-211, 216, 218, 218.5, 218.6, 221, 223,
25 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1,
26 1198, 1199, and 2698 (PAGA), *et seq.*, including §§ 2699, 2699.3, and 2699.5, those arising
27 under the Industrial Welfare Commission Orders, and California Code of Civil Procedure
28 1021.5 The Released PAGA Claims explicitly excludes the claims asserted in the action

entitled, *Juan Ramon Torres Reyes v Brothers Harvesting Inc., et al.*, Monterey County Superior Court Case No. 22CV000658.

31. "Released Parties" means Defendants MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California, and each of their past and present affiliated entities, parent companies, predecessors and assigns, successors, related organizations, subsidiaries, divisions, payroll processors, independent contractors, insurers, owners, officers, shareholders, executives, managers, attorneys, and employees.

32. "Request for Exclusion" means a timely written letter submitted by a Class Member indicating a request to be excluded from/opt out of the Settlement. The Request for Exclusion must: (a) state that the Class Member does not wish to be included in the Settlement; (b) set forth the name, address, and telephone number of the Class Member requesting exclusion; and (c) be signed by the Class Member. The Request for Exclusion must be returned by mail or fax to the Settlement Administrator at the specified address/facsimile indicated in the Notice Packet and must be postmarked on or before the Response Deadline. The Request for Exclusion may be made in English or Spanish.

33. "Response Deadline" means forty-five (45) calendar days after the Settlement Administrator initially mails the Notice Packet to Class Members, and the last date on which Class Members may submit Requests for Exclusion or Notices of Objections to the Settlement. Those Class Members who receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) calendar days from the original Response Deadline.

34. "Settlement" means the agreement among the Parties to resolve the Action, as set forth in this Stipulation.

35. "Settlement Administration Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, which are currently estimated at Thirteen Thousand Dollars (\$13,000.00). Any portion of the Settlement Administration Costs not approved by the Court shall become part of the Net Settlement Amount.

36. "Settlement Administrator" means CPT Group.

35. This Settlement is made and entered into by and between Plaintiff and Defendant MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California, and is subject to the terms and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants.

37. On October 24, 2023, the Parties participated in private mediation with Honorable David A. Garcia (Ret.). After arm's-length negotiations during mediation, the Parties and their counsel have agreed to settle the Action on the terms set forth herein.

18 39. Contingent Nature of Agreement. This Settlement is contingent upon the approval
19 and certification by the Court. The Parties stipulate to the certification of the Class with respect
20 to all causes of action alleged in the Action for settlement purposes only. As such, this
21 Settlement requires preliminary and final approval by the Court. If the Effective Date does not
22 occur, the fact that the Parties were willing to stipulate for the purposes of this Settlement shall
23 have no bearing on, nor be admissible in connection with, the issue of certification of the Class
24 with respect to all causes of action alleged in the Action, and this Settlement shall not be referred
25 to or used for any purpose whatsoever. Defendants do not consent to certification of the Class
26 for any purpose other than to effectuate settlement of the Action. If the Effective Date does not
27 occur, any certification of the Class as to Defendants for purposes of settlement will be vacated
28 and Plaintiffs, Defendants, and the Class will be returned to their respective positions in the

1 Action as if the Settlement had not been executed. In the event that the Effective Date does not
2 occur: (a) any Court orders preliminarily or finally approving certification of any class
3 contemplated by this Settlement shall be null, void, and vacated, and shall not be used or cited
4 thereafter by any person or entity; and (b) the fact of the settlement reflected in this Settlement,
5 the fact that Defendants did not oppose the certification of a Class under this Settlement, or that
6 the Court preliminarily approved the certification of the Class, shall not be used or cited
7 thereafter by any person or entity, including in any manner whatsoever, including without
8 limitation any contested proceeding relating to the certification of any class. **If the Effective
9 Date does not occur, this Settlement shall be null and void, shall be of no force or effect
10 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants
11 expressly reserve the right to challenge the propriety of class certification in the Action for
12 any purpose if the Effective Date does not occur.**

13 40. The Parties and their respective counsel shall take all steps that may be requested
14 by the Court relating to the approval and implementation of this Settlement and shall otherwise
15 use their respective best efforts to obtain Court approval and implement this Settlement. If the
16 Court does not grant the Motion for Preliminary Approval and/or the Motion for Final Approval,
17 the Parties agree to meet and confer in good faith to address the Court's concerns. If the Parties
18 are unable to agree upon a resolution, the Parties agree to seek guidance from the Court in an
19 attempt to resolve the dispute.

20 **TERMS OF AGREEMENT**

21 Plaintiff, on behalf of themselves and the Class, and Defendants agree as follows:

22 41. Settlement Consideration. Defendant MB Labor Contracting, Inc., shall pay the
23 sum of the Gross Settlement Amount as specified in this Agreement, which shall be used to pay:
24 (1) Individual Settlement Payments to Class Members; (2) Class Counsel Award; (3) Class
25 Representative Enhancement Payment; (4) Settlement Administration Costs to the Settlement
26 Administrator; and (5) the PAGA Payment (including LWDA payment). The Parties agree that
27 this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall
28 revert to Defendants. Subject to the Escalation Clause under Paragraph 60 herein, in no event

1 shall MB Labor Contracting, Inc. be required to pay more than the Gross Settlement Amount as
2 specified in this Agreement, with the exception of its share of employer payroll taxes, which
3 shall be paid separate and in addition to the Gross Settlement Amount.

4 42. Funding of the Gross Settlement Amount. Defendant MB Labor Contracting, Inc.
5 shall make three equal payments of Fifty-Five Thousand Seven Hundred Sixty-One Dollars and
6 Thirty-One Cents (\$55,761.31) to fund the Gross Settlement Amount into a Qualified Settlement
7 Account to be established by the Settlement Administrator, as follows:

8 a. The first payment will be due within 30 days of Plaintiff's service on
9 Defendants of a filed copy of the Court's Preliminary Approval Order.

10 b. The second payment will be due 90 days after the date that the first
11 payment is due.

12 c. The third payment along with the MB Labor's share of payroll taxes will
13 be due 180 days after the date that the first payment is due.

14 43. Class Counsel Award. Defendants agree not to oppose or impede any application
15 or motion by Class Counsel for attorneys' fees not to exceed one-third of the Gross Settlement
16 Amount (\$167,283.92), *i.e.*, the sum of Fifty-Five Thousand Seven Hundred Sixty-One Dollars
17 and Thirty-One Cents (\$55,761.31), and costs in the amount of up to Twenty Thousand Dollars
18 (\$20,000.00), which shall be paid from the Gross Settlement Amount. The Settlement
19 Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys'
20 fees and costs. Any portion of the Class Counsel Award not awarded to Class Counsel shall
21 become part of the Net Settlement Amount and shall be distributed to Class Members as
22 provided in this Agreement.

23 44. Class Representative Enhancement Payment. Defendants agree not to oppose or
24 impede any application or motion by Plaintiff for a Class Representative Enhancement Payment
25 of up to Two Thousand Five Hundred Dollars (\$2,500.00) to Plaintiff. The Class Representative
26 Enhancement Payment shall be paid from the Gross Settlement Amount and shall be paid in
27 addition to the Class Representative's Individual Settlement Payment as a Class Member. The
28 Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Class

1 Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay
2 any and all applicable taxes on his Class Representative Enhancement Award and shall hold
3 harmless, and indemnify, Defendants and Released Parties from any claim or liability for
4 taxes, penalties, interest, or other payments and costs arising as a result of the non-withholding
5 of taxes from the Class Representative Enhancement Award. Any portion of the Class
6 Representative Enhancement Payment not awarded to Plaintiff shall become part of the Net
7 Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

8 45. Settlement Administration Costs. The Settlement Administrator shall be paid for
9 the reasonable costs of administration of the Settlement from the Gross Settlement Amount, not
10 to exceed Thirteen Thousand Dollars (\$13,000.00). These costs, which shall be paid from the
11 Gross Settlement Amount, shall include, *inter alia*, distributing the Notice Packet, the required
12 tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
13 establishing a Qualified Settlement Fund, administering and distributing the Gross Settlement
14 Amount and Class Counsel Award, and providing necessary reports and declarations. Any
15 portion of the Settlement Administration Costs not approved by the Court shall become part of
16 the Net Settlement Amount and shall be distributed to Class Members as provided in this
17 Agreement.

18 46. PAGA Payment. In consideration of the claims made under PAGA, and the
19 release obtained therefor by virtue of this Settlement, Class Counsel will request that the Court
20 approve, the allocation of Fifteen Thousand Dollars and Zero Cents of the Gross Settlement
21 Amount shall be designated for satisfaction of claims for civil penalties under the Labor Code
22 Private Attorneys General Act of 2004. The Settlement Administration shall pay seventy-five
23 percent (75%) of the PAGA payment, *i.e.*, the sum of Eleven Thousand Two Hundred and Fifty
24 Dollars and Zero Cents (\$11,250.00), to the California Labor and Workforce Development
25 Agency. The remaining twenty-five percent (25%) of the PAGA Payment, *i.e.*, the sum of Three
26 Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$3,750.00), shall be distributed to
27 Aggrieved Employees on a pro rata basis, based on the number of pay periods each respective
28 Aggrieved Employee worked during the PAGA Period as compared to all aggregate pay periods

1 worked by all Aggrieved Employees during the PAGA Period.

2 47. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
3 Individual Settlement Payments to Participating Class Members in accordance with the terms
4 of this Agreement. The Settlement Administrator will allocate the Individual Settlement
5 Payments by first dividing the Net Settlement Amount by the total number of workweeks
6 worked by Class Members during the Class Period. That value will then be multiplied by the
7 number of workweeks each respective Participating Class Member worked during the Class
8 Period to arrive at the Individual Settlement Amount for each respective Participating Class
9 Member. Participating Class Members are entitled to 100% of the Net Settlement Amount.
10 Defendants maintain no reversionary right to any portion of the Net Settlement Amount. If
11 there are any timely submitted Requests for Exclusion, the Settlement Administrator shall
12 proportionately increase the Individual Settlement Payments for each Participating Class
13 Member so that the amount actually distributed to Participating Class Members equals 100%
14 of the Net Settlement Amount.

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

23 49. Settlement Administration Process. The Parties agree to cooperate in the
24 administration of the Settlement and to make all reasonable efforts to control and minimize the
25 costs and expenses incurred in the administration of the Settlement. The Settlement
26 Administrator shall provide the following services:

- 27 a. Establish and maintain a Qualified Settlement Fund account;
- 28 b. Calculate the amount of the Settlement each Class Member/Aggrieved

Employee is eligible to receive;

c. Prior to mailing the Notice Packet, the Settlement Administrator will verify the last known address for each Class Member through a generally utilized, national address update database;

d. Translating (if necessary), printing, and mailing the Notice Packet;

e. Establishing and maintaining a toll-free informational telephone support line to assist Class Members who have questions regarding the Notice Packet;

f. Conducting additional address searches for mailed Notice Packets that are returned as undeliverable, and to the extent new and more current addresses are found, the Settlement Administrator will also reprint and re-mail Notice Packets accordingly;

g. Calculating Participating Class Members' settlement shares, fielding inquiries from Class Members, and administration of any Requests for Exclusion. This service will include settlement proceed calculations, printing and issuance of checks, and preparation of IRS Forms W-2 and 1099. Basic accounting for and payment of employee tax withholdings will also be included as part of this service;

h. Providing declarations and/or other information to the Court as requested.

50. Delivery of the Class Data. Within thirty (30) calendar days of Preliminary Approval, Defendant MB Labor Contracting, Inc. shall provide the Class Data to the Settlement Administrator. Following MB Labor Contracting's delivery of the Class Data to the Settlement Administrator after Preliminary Approval, the Settlement Administrator shall acknowledge to all counsel that the data has been received, and state the number of Class Employees, and total workweeks and Pay Periods in the Class Data.

51. Notice by First-Class U.S. Mail. Within seven (7) calendar days after receiving the Class Data from Defendants, the Settlement Administrator shall mail the Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class Data. The Notice Packet shall be provided in both English and Spanish.

52. Confirmation of Contact Information in the Class Data. Prior to mailing of the

1 Notice Packet, the Settlement Administrator shall perform a search of all Class Member
2 addresses against the National Change of Address Database and shall update and correct any
3 addresses before mailing the Notice Packet.

4 53. Notice Packets. All Class Members will be mailed a Notice Packet in English and
5 Spanish. Each Notice Packet will include without limitation: (1) information regarding the
6 nature of the Action and relevant time periods at issue; (2) a summary of the Settlement's
7 principal terms; (3) each Class Member's estimated Individual Settlement Payment and the
8 formula for calculating Individual Settlement Payments, if they do not request to be excluded;
9 (4) the Aggrieved Employee's estimated PAGA payment and the formula for calculating the
10 payment; (5) instructions on how to submit valid opt outs or objections; (6) the deadlines by
11 which the Class Member must submit their exclusions or objections to the Settlement; (7) the
12 date for the final approval hearing; and (8) the claims to be released. The Notice Packet will
13 also inform Class Members that in order to receive the Individual Settlement Payment, they do
14 not need to do anything except keep the Settlement Administrator apprised of their current
15 mailing addresses.

16 54. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
17 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly
18 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
19 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
20 address is provided, the Settlement Administrator shall promptly attempt to determine the
21 correct address using a skip-trace, or mass search on LexisNexis databases based on set criteria
22 and, if another address is identified, shall mail the Notice Packet to the newly identified address.
23 If no address can be determined by the Settlement Administrator after these efforts, no further
24 efforts to determine an address shall be required. Those Class Members who receive a re-mailed
25 Notice Packet shall have their Response Deadline extended fifteen (15) calendar days from the
26 original Response Deadline.

27 55. Request for Exclusion Procedures. Any Class Member may opt-out from the
28 Settlement by submitting a written Request for Exclusion to the Settlement Administrator

1 postmarked by the Response Deadline. Such request may be made in English or Spanish.
2 Requests for Exclusion must: (1) contain the name, address, and telephone number of the person
3 requesting exclusion; (2) state that the Class Member does not wish to be included in the
4 Settlement; and (3) be signed by the Class Member. The Request for Exclusion must be returned
5 by mail or fax to the Settlement Administrator at the specified address/facsimile number, and be
6 postmarked on or before the Response Deadline. The date of the postmark or fax stamp shall
7 be the exclusive means to determine whether a Request for Exclusion has been timely submitted.
8 By submitting such a Request for Exclusion, a Class Member shall be deemed to have exercised
9 his or her option to opt out of the Action and not be bound by this Agreement. Accordingly, a
10 Class Member that timely submits a valid Request for Exclusion will not be entitled to any
11 payments under this Settlement and will not be bound by the terms of the Settlement except
12 Class Members who are also Aggrieved Employees will still release the Released PAGA
13 Claims. Any Class Member who fails to submit a valid and timely Request for Exclusion on or
14 before the Response Deadline shall be deemed a Participating Class Member and will be bound
15 by all terms of the Settlement, if the Settlement is granted final approval by the Court.

16 56. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
17 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
18 Request for Exclusion shall be bound by all of its terms, including those pertaining to the
19 Released Claims, as well as any Judgment that may be entered by the Court.

20 57. No PAGA Opt-Out. The Parties acknowledge and agree that for purposes of the
21 Settlement, all Aggrieved Employees were allegedly aggrieved in the same manner pursuant to
22 Labor Code § 2698, *et seq.*, in that each Aggrieved Employee allegedly suffered at least one of
23 the alleged Labor Code violations asserted in the operative complaint for which the PAGA
24 provides an available remedy. In light of the binding nature of a PAGA judgment on non-party
25 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), and *Cardenas v.*
26 *McLane Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011), individuals
27 otherwise meeting the definition of Aggrieved Employees who exclude themselves from the
28 Settlement, nonetheless shall be bound by the Judgment of the Released PAGA Claims and will

1 receive their proportionate share of the PAGA Payment. All Aggrieved Employees shall be
2 bound by the Judgment entered herein and will have released the Released PAGA Claims upon
3 the final approval of this Settlement and the payment of the Settlement Payment Check.

4 58. Objection Procedures. Any Class Member who does not opt-out of this Settlement
5 shall be entitled to object to the Settlement. To submit a written objection or Notice of Objection
6 to the Settlement, a Class Member should return by mail or fax a written statement of objection
7 to the Settlement Administrator at the specified address or facsimile by the Response Deadline.
8 The Notice of Objection must include: (a) the objector's full name, address, and telephone
9 number; (b) a written statement of basis for the objection; and (c) the objector's signature. The
10 objector may include any copies of papers, briefs, or documents upon which the objection is
11 based. The Notice of Objection must be returned by mail and/or fax the Settlement
12 Administrator at the specified address/facsimile indicated in the Notice Packet and should be
13 postmarked and/or fax stamped on or before the Response Deadline. The Notice of Objection
14 may be in English or Spanish. The date of the postmark/fax stamp on the Notice of Objection
15 shall be deemed the exclusive means for determining that a Notice of Objection is timely. Any
16 Class Member who does not submit a Notice of Objection in compliance with this section, or
17 who does not appear at the final approval hearing and present an oral objection to the Settlement,
18 shall be deemed to have waived any objection(s), shall be conclusively deemed a Participating
19 Class Member, and shall be precluded from making any objection (including by appeal or
20 otherwise) to the Settlement. At no time shall any of the Parties or their counsel seek to solicit
21 or otherwise encourage Class Members to object to the Settlement or appeal from the Order and
22 Judgment. Class Counsel shall not represent any Class Members with respect to any such
23 objections to this Settlement. Any Class Member who submits a valid Request for Exclusion
24 shall not be allowed to object to this Settlement.

25 59. Defendants' Right to Rescind. If the number of Class Members opting out of the
26 Settlement by submitting valid and timely Requests for Exclusion account for more than five
27 percent (5%) of the total number of Class Members, Defendants have the right in their sole
28 discretion to elect to rescind the Parties' Settlement. The Parties agree that they will not

1 encourage any Class Member to object or to opt out. If either Defendant exercises the option to
2 rescind, that Defendant shall: (a) provide written notice to Class Counsel at least ten (10)
3 business days prior to the final approval hearing, and (b) pay all Settlement Administration Costs
4 incurred by the Settlement Administrator up to the date of that Defendant's notice to rescind. In
5 the event the Settlement is terminated, the Parties shall proceed in all respects as if this
6 Agreement had not been executed.

7 60. Escalation Clause. In the event that the total number of workweeks worked by
8 the Class Members during the Class Period is more than 9,692 total workweeks (or 5% above
9 9,692 total workweeks), Defendant MB Labor shall pay each additional workweek above the
10 5% at a rate of \$17.26 per workweek.

11 61. Certification Reports Regarding Individual Settlement Payment Calculations.
12 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report
13 which certifies the number of Class Members who have submitted valid Requests for Exclusion.
14 Additionally, the Settlement Administrator will provide to counsel for all Parties any updated
15 reports regarding the administration of the Settlement as needed or requested.

16 62. Distribution Timing of Individual Settlement Payments. Within seven (7)
17 calendar days of Defendant MB Labor fully funding the Gross Settlement Amount, the
18 Settlement Administrator shall issue respective payments to (1) Participating Class Members,
19 including Aggrieved Employees; (2) the Labor and Workforce Development Agency; (3)
20 Plaintiff; and (4) Class Counsel. The Settlement Administrator shall also issue a payment to
21 itself for services performed in connection with the Settlement.

22 63. Uncashed Settlement Payment Checks. Any checks issued by the Settlement
23 Administrator to Class Members and/or Aggrieved Employees shall be negotiable for not less
24 than one hundred and eighty (180) days from the date of their issuance. In the event an
25 Individual Settlement Payment check has not been cashed within one hundred and eighty (180)
26 days, all funds represented by such uncashed checks shall be distributed to the following *cypres*
27 beneficiary: State Bar's Justice Gap Fund. In such event, those Class Members and/or
28 Aggrieved Employees will nevertheless remain bound by the Settlement.

1 64. Certification of Completion. Upon completion of administration of the
2 Settlement, the Settlement Administrator shall provide a written declaration under oath to certify
3 such completion to the Court and counsel for all Parties.

4 65. Administration Costs if Settlement Fails or is Delayed. If an objection to the
5 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
6 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall
7 be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

8 66. Treatment of Individual Settlement Payments. All Individual Settlement
9 Payments to Class Members shall be allocated as follows: 20% as payment for wages, of which
10 an IRS Form W-2 shall issue, and 80% as penalties and interest, of which an IRS Form 1099
11 shall issue. 100% of the PAGA Payment distributed to Aggrieved Employees shall be allocated
12 as penalties and reported on IRS Form 1099.

13 67. Administration of Taxes by the Settlement Administrator. The Settlement
14 Administrator shall be responsible for issuing to Plaintiff, Participating Class Members, and
15 Class Counsel, 1099 forms or other tax forms as may be required by law for all amounts paid
16 pursuant to this Agreement.

17 68. Tax Liability. Defendants make no representation as to the tax treatment or legal
18 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
19 not relying on any statement, representation, or calculation by Defendants or by the Settlement
20 Administrator in this regard. Plaintiff and Participating Class Members understand and agree
21 that they will be solely responsible for the payment of any employee's payroll withholdings and
22 taxes (*i.e.*, Social Security, Medicare, federal and state income taxes, SDI, etc.) assessed on their
23 respective payments described herein and will defend, indemnify, and hold Defendants and
24 Released Parties free and harmless from and against any claims, taxes, penalties, and/or
25 assessments resulting from treatment of such payments as wages or non-taxable damages.

26 69. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
27 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
28 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER

PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

70. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

71. Release of Claims by Participating Class Members. Upon the Effective Date and funding of the Gross Settlement Amount, all Participating Class Members hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and

1 discharged any and all of the Released Parties of and from any and all Released Class Claims
2 that accrued during the Released Claims Period.

3 72. Release of Claims by Aggrieved Employees. Upon the Effective Date and funding
4 of the Gross Settlement Amount, all Aggrieved Employees, on behalf of themselves and the
5 State of California, hereby do and shall be deemed to have fully, finally and forever released,
6 settled, compromised, relinquished and discharged any and all of the Released Parties of and
7 from any and all Released PAGA Claims that accrued during the PAGA Period.

8 73. Release of Claims by Class Representative. Upon the Effective Date and funding
9 of the Gross Settlement Amount, Plaintiff shall and does hereby forever release, discharge, and
10 agree to hold harmless the Released Parties from any and all charges, complaints, claims,
11 liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action,
12 suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs),
13 known or unknown, at law or in equity, which they may now have or may have after the signing
14 of this Agreement, against the Released Parties including, but not limited to, the Released
15 Claims, claims that were asserted or could have been asserted in the Complaint, and claims of
16 any kind related to any and all transactions, occurrences, or matters between the parties
17 occurring during the Released Claims Period. Without limiting the generality of the foregoing,
18 this release shall include, but not be limited to, any and all claims under the (a) Americans With
19 Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the
20 Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in
21 Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay
22 Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated
23 Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and
24 Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and
25 Housing Act; (n) the California Constitution; (o) the California Labor Code; (p) the California
26 Government Code; (q) the California Civil Code; and (r) any and all other federal, state and
27 local statutes, ordinances, regulations, rules and other laws, and any and all claims based on
28 constitutional, statutory, common law or regulatory grounds as well as any other claims based

1 on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud,
2 misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional
3 distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules
4 or laws. This release is for any and all relief, no matter how denominated, including, but not
5 limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages,
6 liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and
7 costs, and Plaintiff hereby forever releases, discharges, and agrees to hold harmless Defendants
8 and the Released Parties from any and all claims for attorney fees and costs arising out of the
9 matters released in this Agreement.

10 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions
11 of Civil Code § 1542, which provides as follows:

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

18 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and
19 benefits he may have under Section 1542 as well as any other statutes or common law principles
20 of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those
21 which they now know or believe to be true with respect to the subject matter of all the claims
22 referenced herein, but stipulate and agree that, upon the Effective Date, they shall and hereby
23 do fully, finally, and forever settle and release any and all claims against the Released Parties,
24 known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted
25 or could have been asserted upon any theory of law or equity without regard to the subsequent
26 discovery of existence of such different or additional facts. Plaintiff's general release and waiver
27 of the protections of Civil Code § 1542 explicitly excludes the claims asserted in the action
28 entitled, *Juan Ramon Torres Reyes v Brothers Harvesting Inc., et al.*, Monterey County Superior
Court Case No. 22CV000658.

1 74. Nullification of Settlement. In the event that the Settlement does not become final
2 for any reason, then this Agreement, and any documents generated to bring it into effect, shall
3 be null and void. Moreover, should Defendant MB Labor not fully fund the Settlement, this
4 Agreement will be null and void. Any order or judgment entered by the Court in furtherance of
5 this Agreement shall likewise be treated as void from the beginning. Moreover, all Parties to
6 this Settlement shall stand in the same position, without prejudice, as if the Settlement has been
7 neither entered into nor filed with the Court. The fact that the Parties were willing to stipulate
8 to class certification of all causes of action pled in the Action as part of the Settlement will have
9 no bearing on, and will not be admissible in connection with, the issue of whether the Class
10 should be certified by the Court in a non-settlement context in this Action, or any other action,
11 and in any of those events, Defendants expressly reserves the right to oppose certification of the
12 Class.

13 Invalidation of any material portion of this Settlement shall invalidate the Settlement in its
14 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
15 remain in full force and effect.

16 75. Disputes Regarding Individual Settlement Payments. In the event that Class
17 Members have a dispute as to the data provided by Defendant MB Labor, Class Members will
18 have the opportunity to provide documentation and/or an explanation. If there is a dispute, the
19 Settlement Administrator will consult with the Parties to determine whether an adjustment is
20 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of,
21 any Individual Settlement Payments under the terms of this Agreement, and that determination
22 shall be binding, subject to final resolution by the Court if the Court decides to rule on the
23 dispute. If the Court does not issue a ruling on the dispute, the Settlement Administrator's
24 determination of the dispute will be binding upon Class Members.

25 76. Disputes Regarding Administration of Settlement. Any disputes not resolved by
26 the Settlement Administrator concerning the administration of the Settlement will be resolved
27 by the Court under the laws of the State of California. Prior to any such involvement of the
28 Court, counsel for Parties will confer in good faith to resolve the disputes without the necessity

1 of involving the Court.

2 77. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court
3 to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval
4 Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final
5 Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall provide for the
6 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
7 Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth the terms
8 of this Settlement, and will include the proposed Notice Packet, attached to this Agreement as
9 Exhibit A. If the Court declines to approve the Settlement or approves it conditionally on
10 modification to the settlement terms, the Parties shall work in good faith to modify the settlement
11 terms to obtain approval, provided that the material terms of the Settlement are not affected.

12 78. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
13 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
14 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
15 Final Approval of the Settlement along with the amounts properly payable for (i) Individual
16 Settlement Payments; (ii) the payment to the Labor and Workforce Development Agency; (ii)
17 the Class Counsel Award; (iii) the Class Representative Enhancement Payment; and (iv)
18 Settlement Administration Costs. Class Counsel will be responsible for drafting all documents
19 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
20 attorneys' fees and costs application to be heard at the final approval hearing.

21 79. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
22 Motion for Final Approval, the Parties shall also joint seek the entry of Judgment consistent
23 with the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
24 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
25 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters
26 as may be appropriate under court rules or as set forth in this Agreement.

27 80. Mutual Non-Disparagement. No Party shall disparage or defame another party to
28 any third parties with or through any written or oral statement or image (including, but not

1 limited to, any statements made via websites, blogs, postings to the internet, or emails).

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

5 82. Entire Agreement. This Agreement and any attached Exhibits 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. There are no restrictions, promises,
8 representations, warranties, covenants, or undertakings governing the subject matter of this
9 Settlement other than those expressly set forth or referred to herein. This Settlement supersedes
10 all prior agreements, and all understandings among the Parties hereto with respect to the
11 settlement of the Action, including correspondence between Class Counsel and Defense Counsel
12 and drafts of prior agreements or proposals.

13 83. Amendment or Modification. This Agreement may be amended or modified only
14 by a written instrument signed by the Parties, their counsel, or their successors-in-interest.

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

25 85. Binding on Successors and Assigns. This Agreement shall be binding upon, and
26 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

27 86. California Law Governs. All terms of this Agreement and Exhibits hereto shall
28 be governed by and interpreted according to the laws of the State of California.

1 87. Execution and Counterparts. This Agreement is subject only to the execution of
2 all Parties. However, the Agreement may be executed in one or more counterparts, including
3 by electronic scan, .pdf, or DocuSign. All executed counterparts and each of them, including
4 facsimile and scanned or electronic copies of the signature page, shall be deemed to be one and
5 the same instrument provided that counsel for the Parties shall exchange among themselves
6 original signed counterparts.

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

13 89. Invalidity of Any Provision. Before declaring any provision of this Agreement
14 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent
15 possible consistent with applicable precedents so as to define all provisions of this Agreement
16 valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the Court
17 shall in no way affect any other provision if Defendant and Class Counsel, on behalf of the
18 Parties and the Class, mutually elect in writing to proceed as if such invalid, illegal, or
19 unenforceable provision had never been included in this Agreement.

20 90. Waiver of Certain Appeals. Provided that the Final Approval Order is consistent
21 with the terms and conditions of this Settlement, all Class Members who do not submit timely
22 written objections to the Settlement or orally object at the Final Approval Hearing shall have
23 waived any and all rights to appeal from the Final Approval Order and Judgment, including all
24 rights to any post-Final Approval Order proceeding and appellate proceeding, such as a motion
25 to vacate or set-aside the Final Approval Order and Judgment, a motion for new trial, and any
26 extraordinary writ, and the Final Approval Order and Judgment therefore shall become final and
27 non-appealable at the time it is entered. This waiver does not include any waiver of the right to
28 oppose any appeal, appellate proceedings, or post-Final Order proceedings. A modification by

the Court of the requested amount of the Class Representative Enhancement Payment shall not constitute a basis for appeal of the Final Approval Order. Class Counsel may appeal any reduction in the Class Counsel's Award below the amount Class Counsel requests, and either party may appeal any order that materially alters the Agreement's terms.

91. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, either of them have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

92. Captions. The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

93. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or remedy.

94. Enforcement Actions. Pursuant to California Code of Civil Procedure § 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection

1 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for
2 purposes of interpreting, implementing, and enforcing the settlement embodied in this
3 Agreement and all orders and judgments entered in connection therewith.

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

10 96. Representation by Counsel. The Parties acknowledge that they have been
11 represented by counsel throughout all negotiations that preceded the execution of this
12 Agreement, and that this Agreement has been executed with the consent and advice of counsel.
13 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
14 Agreement.

15 97. No Collateral Attack. The Settlement shall not be subject to collateral attack by
16 any Class Member or any recipient of the Class Notice after the Effective Date. Such prohibited
17 collateral attacks shall include but not be limited to claims that the Class Member failed for any
18 reason to receive timely notice of the procedure for disputing the calculation of his or her
19 Individual Settlement Payment.

20 98. Cooperation and Execution of Necessary Documents. All Parties shall cooperate
21 in good faith and execute all documents to the extent reasonably necessary to effectuate the
22 terms of this Agreement.

23 99. Binding Agreement. The Parties warrant that they understand and have full
24 authority to enter into this Agreement, and further intend that this Agreement shall be fully
25 enforceable and binding on all Parties and agree that it shall be admissible and subject to
26 disclosure in any proceeding to enforce its terms.

27 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
28 Joint Stipulation of Class Action Settlement Between Plaintiff and Defendants MB Labor

Contracting, Inc. and D'Arrigo Bros. Co., of California as of the date(s) set forth below:

READ CAREFULLY BEFORE SIGNING.

Dated: 06/04/2024, 2024

PLAINTIFF JUAN RAMON TORRES REYES

JUAN R. TORRES

Juan Ramon Torres Reyes

Dated: _____, 2024

DEFENDANT MB LABOR CONTRACTING, INC.

By: Mike Baclig

Dated: June 5, 2024

DEFENDANT D'Arrigo Bros. Co., of California

J. Culligan

By: John Culligan

APPROVED AS TO FORM

Dated: June 4, 2024

FITZPATRICK & SWANSTON

By: B. James Fitzpatrick

Attorneys for Plaintiff,
JUAN RAMON TORRES REYES

Dated: June 4, 2024

DIVERSITY LAW GROUP, P.C.

By: Larry W. Lee

Attorneys for Plaintiff,
JUAN RAMON TORRES REYES

Dated: _____, 2024

PATANE GUMBERG AVILA, LLP

By: Anais Mora

Attorneys for Defendant,
MB LABOR CONTRACTING, INC.

Dated: 6/5, 2024

LAW OFFICES OF GEOFFREY F. GEGA

By: Geoffrey F. Gega

Attorneys for Defendant,
D'ARRIGO BROS. CO., OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 5, 2024

LITTLER MENDELSON, PC

By: 
Regina Silva
Attorneys for Defendant,
D'ARRIGO BROS. CO., OF CALIFORNIA

EXHIBIT A

TORRES REYES v. MB LABOR CONTRACTING, INC., ET AL.
SETTLEMENT ADMINISTRATOR
[INSERT SETTLEMENT ADMINISTRATOR]

IMPORTANT LEGAL MATERIALS

Barcode39 - <<SequenceNo>>

<<Name1>> <<Name2>> <<Name3>> <<Name4>>

<<Address1>>

<<Address2>>

<<City>> <<State>> <<Zip10>>

<<CountryName>>

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY
TORRES REYES v. MB LABOR CONTRACTING, INC., Case No. 22CV000682

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you were employed by MB Labor Contracting, Inc. and were assigned to work for D'Arrigo Bros. Co., of California at any time from March 11, 2018, to October 24, 2023, you may be eligible to receive compensation from a class action settlement.

- A former employee of MB Labor Contracting, Inc. filed a wage-and-hour class and Private Attorneys General Act ("PAGA") action on behalf all other similarly situated employees against MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California (this "Action"). MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California deny all allegations and contend that they have lawfully and fairly treated Class Members at all relevant times.
- To avoid the continuing expense of litigation, however, the parties have reached a settlement that the Court has preliminarily approved on the ground that the settlement is fair, reasonable, adequate, and in the best interests of the Class Members.

This Notice is Court Approved. This is not a solicitation from an attorney.

YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be deemed part of the Class Action, will receive payment from the Net Settlement Amount, and will be releasing all claims you may have in the Action.
EXCLUDE YOURSELF	You will NOT be deemed part of the Class Action and will NOT receive any money or release any claims under the Labor Code. However, if you are an "Aggrieved Employee" (defined below) you will still receive a portion of the PAGA penalties even if you exclude yourself.

Your options are explained in this notice. Read the entire notice. If you still have questions, please call **Settlement Administrator** at xxx-xxx-xxxx.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED
SETTLEMENT.**

1.	Why did I get this notice?	2
2.	What is the action about?	2
3.	What is a class action?	3
4.	Who is included in the settlement class?	3
5.	How much is the settlement?	3
6.	How much will I receive from the settlement?	4
7.	What is being released as part of the settlement?	4
8.	What are my options under the settlement?	5
9.	Who are the lawyers in this case?	6
10.	How will the lawyers and the class representatives be paid?	6
11.	Notice of hearing on final approval and objections to class action settlement.	6
12.	How do I get more information?.....	7
13.	What if my information changes?.....	7

1. WHY DID I GET THIS NOTICE?

You received this Notice because MB Labor Contracting, Inc. business records reflect that you worked, or continue to work, as a non-exempt employee for MB Labor Contracting, Inc. and were assigned to perform work for D'Arrigo Bros. Co., of California between March 11, 2018, to October 24, 2023.

This Notice is to let you know that there was a hearing on **Preliminary Approval Hearing Date**, in the Superior Court of the State of California for the County of Monterey, at which time Judge Carrie M. Panetta preliminarily approved the Settlement, conditionally certified a class action for the purposes of settlement only, and ordered that you receive this Notice.

The Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section **12**, below.

2. WHAT IS THE ACTION ABOUT?

Plaintiff Juan Ramon Torres Reyes, a former employee of MB Labor Contracting, Inc., claims that MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California violated state wage and hour laws and unfair competition laws by, among other things: failing to pay wages for all hours worked; failing to provide legally compliant meal and/or rest periods; failing to pay premiums for missed meal and rest periods; failing to pay sick pay wages at the regular rate of pay; failing to provide legally compliant wage statements; and failing to pay wages timely upon termination. MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California deny all of the allegations in the Action, assert that they have fully complied with all of their legal obligations, and are prepared to continue to defend the action vigorously. The Court has not made any ruling on the merits in the Action.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Juan Ramon Torres Reyes ("Plaintiff") is the individual who is bringing this Action on your behalf and on behalf of other similarly situated employees.

In this Action, the Plaintiff seeks to represent you on a class and representative basis. A class action allows the Court to resolve the claims of all the class members at the same time. A class member is bound by the determination or judgment entered in the 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. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

Plaintiff also seeks penalties pursuant to the Private Attorneys General Act ("PAGA") on a representative basis, on behalf of the State of California and other aggrieved employees. The Aggrieved Employees in this Action are all current and former non-exempt employees employed by Defendant MB Labor Contracting, Inc. who were assigned to work for Defendant D'Arrigo Bros. Co., of California in California, at any time from January 12, 2021, through October 24, 2023 (the "PAGA Period").

4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former non-exempt employees of Defendant MB Labor Contracting, Inc. that were assigned to perform work for Defendant D'Arrigo Bros, at any time from March 11, 2018, to October 24, 2023 (the "Class Period").

5. HOW MUCH IS THE SETTLEMENT?

The parties have agreed to settle the case, with the total settlement to be paid by MB Labor Contracting, Inc., for a maximum total payment of \$167,283.92 ("Gross Settlement Amount"), which includes: (1) anticipated attorneys' fees of \$55,761.31, which is 1/3 of the maximum total payment, and costs to Class Counsel, which will not exceed \$20,000.00; (2) a service payment to Plaintiff for acting as the class representative, which will not exceed \$2,500.00 to Plaintiff; (3) settlement administration costs, which are estimated to be \$13,000.00; and (4) PAGA penalties (the "PAGA Payment"), which are estimated to be \$15,000.00, divided between the State of California (75% or \$11,250.00) and the Aggrieved Employees (25% or \$3,750.00). The amount of money remaining after these payments, which is known as the "Net Settlement Amount," will be distributed to all Class Members who do not exclude themselves from the Settlement (the "Participating Class Members").

Twenty-five percent (25%), or \$3,750.00, of the PAGA Payment shall be distributed to the Aggrieved Employees regardless of whether they request to be excluded from the Settlement. This amount is referred to as the “Total Aggrieved Employee Payment.”

If the Court finally approves the Settlement, the Gross Settlement Amount will be funded by MB Labor Contracting, Inc. in three equal payments, with the last payment due approximately 210 days after hearing on preliminary approval. However, the timing of the payments is dependent on when the Court enters its order, so this is only an estimate and may change.

Each Participating Class Member’s share of the Net Settlement Amount will be calculated based on the number of workweeks they worked between March 11, 2018, and October 24, 2023 (the “Class Period”). The Net Settlement Amount shall be divided among the Participating Class Members on a pro-rata basis, calculated as follows: the Net Settlement Amount will be divided by the total number of workweeks worked by all Class Members during the Class Period to establish a value for each workweek. That weekly value will then be multiplied by the number of workweeks worked by each Participating Class Member to determine his or her settlement amount. For tax reporting purposes, the Individual Settlement Payment will be allocated as 20% wages (reported on a Form W-2, with required taxes withheld) and 80% penalties and interest (reported on a Form 1099, with no withholding taken).

Each Aggrieved Employee’s share of the Total Aggrieved Employee Payment shall be divided among the Aggrieved Employees on a pro-rata basis, based upon the number of pay periods worked during the PAGA Period. Each individual Aggrieved Employee’s number of pay periods worked will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then multiplied by the Total Aggrieved Employee Payment, to obtain his or her respective individual portion of the PAGA Payment. For tax reporting purposes, the individual PAGA Payment amount will be allocated as 100% penalties (reported on a Form 1099, with no withholding taken).

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

6. HOW MUCH WILL I RECEIVE FROM THE SETTLEMENT?

MB Labor Contracting, Inc.’s business records indicate that you worked as a non-exempt employee and were assigned to perform work at D’Arrigo Bros. Co., of California for <<Workweeks>> during the Class Period. Therefore, assuming every Class Member participates in the Settlement, you can expect to receive approximately \$<<EstimatedAward>>.

[**APPLIES ONLY TO AGGRIEVED EMPLOYEES**: MB Labor Contracting, Inc.’s business records indicate that you worked as a non-exempt employee and were assigned to perform work at D’Arrigo Bros. Co., of California for <<PayPeriods>> during the PAGA Period. Therefore, you are entitled to receive approximately [REDACTED] as your individual PAGA Payment.]

If you disagree with the number of workweeks indicated, please contact the Settlement Administrator and provide the total number of relevant workweeks that you believe you worked for MB Labor Contracting, Inc. and were assigned to work at D’Arrigo Bros. Co., of California as a non-exempt employee during the Class Period. If you dispute MB Labor Contracting, Inc.’s business records of the number of relevant workweeks you worked, you must submit

documentation, such as pay records, that you believe demonstrate that the number of relevant workweeks stated above is incorrect. Any such documentation must be postmarked on or before [REDACTED], 2024. Disputes postmarked after this date will not be honored.

If you do not provide satisfactory supporting documentation of the relevant workweeks that you believe you worked when you were employed by MB Labor Contracting, Inc. and were assigned to work at D'Arrigo Bros. Co., of California during the Class Period, any payment you receive will be based only on the workweeks stated by MB Labor Contracting, Inc.'s records as indicated above. MB Labor Contracting, Inc.'s records will be presumed to be correct, but the Settlement Administrator will evaluate any information and evidence you submit and determine which dates should be applied. If any dispute remains thereafter, the Court will adjudicate the dispute.

7. WHAT IS BEING RELEASED AS PART OF THE SETTLEMENT?

Upon final approval of the Settlement by the Court and funding of the Gross Settlement Amount by MB Labor Contracting, Inc., Class Members who do not exclude themselves from the Settlement will release and fully discharge Defendants MB Labor Contracting, Inc. and D'Arrigo Bros. Co., of California, and each of their past and present affiliated entities, parent companies, predecessors and assigns, successors, related organizations, subsidiaries, divisions, payroll processors, independent contractors, insurers, owners, officers, shareholders, executives, managers, attorneys, and employees ("Released Parties") from any and all Released Class Claims that accrued during the Released Claims Period (March 11, 2018, through October 24, 2023). The Released Class Claims are all claims that were alleged in the operative complaint of the Action and derivative claims related thereto, arising from the facts, claims, or causes of action alleged or that could have reasonably been alleged based on the facts alleged in the operative complaint of the Action, including but not limited to Labor Code §§ 201-204, 207-211, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 (PAGA), *et seq.*, including §§ 2699, 2699.3, and 2699.5, and Business and Professions Code § 17200 *et seq.*, including §§ 17201, 17203, and 17208, those arising under the Industrial Welfare Commission Orders, and California Code of Civil Procedure 1021.5. The Released Class Claims explicitly excludes the claims asserted in the action entitled, *Juan Ramon Torres Reyes v. Brothers Harvesting Inc., et al.*, Monterey County Superior Court Case No. 22CV000658.

The Judgment will resolve the claims to the extent provided in the Settlement Agreement and will permanently bar Participating Class Members from prosecuting any and all such claims against the Released Parties. You will remain bound by the Settlement, and you cannot sue, continue to sue, or be a part of any other lawsuit about the Released Class Claims. It also means that all Court orders in this Action will apply to you and legally bind you.

[APPLIES ONLY TO AGGRIEVED EMPLOYEES]: Upon final approval of the Settlement by the Court and funding of the Gross Settlement Amount, Aggrieved Employees will release and fully discharge the Released Parties from any and all Released PAGA Claims that accrued during the PAGA Period (January 5, 2021, through October 24, 2023). The Released PAGA Claims are all claims for penalties under the Private Attorneys General Act that were alleged in the and in the notice to the LWDA and in the operative complaint in the Action and derivative claims related thereto, arising from the facts, claims, or causes of action alleged or that could have reasonably been alleged based on the facts alleged in the operative complaint in the Action and in the notice to the LWDA, including, but not limited Labor Code §§ 201-204, 207-211, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 (PAGA), *et seq.*, including

§§ 2699, 2699.3, and 2699.5, those arising under the Industrial Welfare Commission Orders, and California Code of Civil Procedure 1021.5. The Released PAGA Claims explicitly excludes the claims asserted in the action entitled, *Juan Ramon Torres Reyes v Brothers Harvesting Inc., et al.*, Monterey County Superior Court Case No. 22CV000658.

The Judgment will resolve the claims to the extent provided in the Settlement Agreement and will permanently bar Aggrieved Employees from prosecuting any and all such claims against the Released Parties. You will remain bound by the Settlement, and you cannot sue, continue to sue, or be a part of any other lawsuit about the Released PAGA Claims. It also means that all Court orders in this Action will apply to you and legally bind you. This is true even if you decide to opt out of the class portion of the Settlement.]

8. WHAT ARE MY OPTIONS UNDER THE SETTLEMENT?

(a) DO NOTHING.

You do not need to do anything to participate in the settlement. If the Settlement is approved and no objections are filed, you will receive an Individual Settlement Payment from this Settlement as described above after the Final Approval Hearing on [REDACTED], 2024. You will be deemed a part of the Class Action, and you will be releasing the claims you may have, as described above. Class Counsel have been appointed and approved by the Court and Class Counsel will represent you.

(b) OBJECT TO THE SETTLEMENT.

You can object to any of the terms of the Settlement before the Final Approval Hearing. Failure to take the steps below will be deemed a waiver of your objections. If the Court rejects your objection, you will still be bound by the terms of the Settlement, and you will also receive an Individual Settlement Payment. To object, you must mail your written objection (in English or Spanish) and any notice of intention to appear at the Final Approval Hearing to the Settlement Administrator at the address listed below by [INSERT OBJECTION DEADLINE] (45 days after the date of mailing of this Notice):

TORRES REYES v. MB LABOR CONTRACTING, INC.
SETTLEMENT ADMINISTRATOR
[INSERT SETTLEMENT ADMINISTRATOR]
Toll-free number: [TBD]

Any written objection must state the specific reason(s) for your objection and any legal support for each objection. Your objection and the envelope containing the objection must state: “Attention: *TORRES REYES v. MB LABOR CONTRACTING, INC.*, CASE NO. 22CV000682.” Your objection must also state your full name, current address, telephone number, and signature, and include any and all evidence you want considered by the Court. If you wish to address the Court at the Final Approval Hearing scheduled for [REDACTED], you must also state your desire to be heard at the Final Approval Hearing in your written objection. If you follow these procedures, you may appear personally at the Final Approval Hearing, or through your own counsel, paid for at your own expense.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

(c) REQUEST TO BE EXCLUDED FROM THE SETTLEMENT.

If you do not want to participate in the settlement, you have the right to request to be excluded. To do so, you must submit a written request for exclusion (either in English or Spanish) to the Settlement Administrator at the following address:

TORRES REYES v. MB LABOR CONTRACTING, INC.
SETTLEMENT ADMINISTRATOR
[INSERT SETTLEMENT ADMINISTRATOR]

To be valid, a written request for exclusion must state that you wish to be excluded, and (1) must contain your name, current address, and telephone number; (2) must be signed by you; (3) must be postmarked on or before **[EXCLUSION DEADLINE]**; and (4) must be returned to the Settlement Administrator at the address listed above.

Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the Settlement, including the Released Class Claims (and Released PAGA Claims, if applicable) described in this Notice. Class Counsel will not represent your interests if you request to be excluded.

[APPLIES TO AGGRIEVED EMPLOYEES]: Even if you exclude yourself from the class action portion of the settlement, you will still receive your portion of the PAGA Payment and discharge the Released PAGA Claims.]

9. WHO ARE THE LAWYERS IN THIS CASE?

Counsel for PLAINTIFF and the CLASS:

B. James Fitzpatrick, Esq.
Laura L. Franklin, Esq.
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311

Larry W. Lee, Esq.
Max W. Gavron, Esq.
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

10. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVE BE PAID?

The lawyers representing Plaintiff and the Class Members (“Class Counsel”) will be requesting from the Court an amount not to exceed one-third (1/3) of the Gross Settlement Amount (or approximately \$55,761.31) for their attorneys’ fees, and reimbursement of their litigation costs not to exceed \$20,000.00. A copy of Class Counsel’s application for attorneys’ fees and costs can be viewed at the courthouse after **[INSERT DATE 16 Court days before final approval]**, during normal business hours. The actual amount awarded to Class Counsel will be determined by the Court.

Class Counsel will also ask the Court to approve a payment to Plaintiff Juan Ramon Torres Reyes of up to \$2,500.00 for his services as Class Representative and his willingness to accept the risks of bringing this case. This amount also is subject to Court approval.

11. NOTICE OF HEARING ON FINAL APPROVAL AND OBJECTIONS TO CLASS ACTION SETTLEMENT.

The Court will hold a Final Approval Hearing on [REDACTED], 2024, at 8:30 a.m., in Department 14 of the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940, to consider any objections that may be submitted and determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class. The Final Approval Hearing may be continued without further notice to the Class Members.

It is not necessary for you to appear at the Final Approval Hearing unless you have timely filed an objection with the Court. However, you have the right to attend the Final Approval Hearing and be represented by your own counsel at your own expense. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time. If the Settlement is not approved by the Court or does not become final for some reason, the Action may continue to trial.

If you have requested exclusion from the Settlement, you may not speak at the Final Approval Hearing.

12. HOW DO I GET MORE INFORMATION?

This Notice contains a summary of the basic terms of the Settlement. For the precise terms, you may review the Joint Stipulation of Class Action and PAGA Settlement (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Action). The pleadings and other records in this litigation, including the Complaint, the Court's Preliminary Approval Order, and Class Counsel's application for attorneys' fees and costs, may be examined in person at the Clerk's office at the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below, toll free. Please refer to the Torres Reyes v. MB Labor Contracting, Inc. Class Action Settlement.

TORRES REYES v. MB LABOR CONTRACTING, INC.
SETTLEMENT ADMINISTRATORw
[INSERT INFO]

You may also contact the attorneys for the Class, whose names and contact information are listed above. **PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANTS' LAWYERS FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIMS PROCESS.**

13. WHAT IF MY INFORMATION CHANGES?

If, after you receive this Notice, you change your postal address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of your Individual Settlement Payment.