

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 BROTHERS HARVESTING INC.;  
28 D'ARRIGO BROS. CO., OF CALIFORNIA;  
and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000658

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

Date: September 20, 2024

Time: 8:30 A.M.

Dept.: 14

Complaint Filed: March 9, 2022

Trial Date: None Set

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1 class and Defendants' liability.

2 4. On October 24, 2023, the Parties engaged in private mediation with the  
3 Honorable David A. Garcia (Ret.). However, the case did not resolve at mediation. Following  
4 the failed mediation attempt and continued litigation, including the filing of a motion to  
5 compel and the deposition of Ruben Ortiz, to the Parties reached an agreement in principle and  
6 entered into this proposed agreement. The Parties recognize the risk, expense, and delay in  
7 continuing litigation with the class and PAGA claims, and believe the settlement to be fair,  
8 reasonable, and adequate.

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

13 **SUMMARY OF THE SETTLEMENT TERMS**

14 6. The Agreement provides for One Hundred Seventy-Four Thousand Six Hundred  
15 and Two Dollars and Sixteen Cents (\$174,602.16) as the total Gross Settlement Amount. See  
16 Agreement ¶ 17. The Net Settlement Amount [calculated after deduction of the Class Counsel  
17 Award of attorneys' fees (up to \$58,200.72), litigation costs (up to \$12,500.00), Class  
18 Representative Enhancement Payment (up to \$2,500.00), PAGA Payment (\$15,000.00), and  
19 Settlement Administration Costs (up to \$16,000.00)] is estimated to be approximately  
20 \$70,901.44 See Agreement ¶¶ 6, 10, 17, 19, 22, 35. Each Class Member who does not opt-out  
21 of the settlement ("Participating Class Member") will be awarded a portion of the Net  
22 Settlement Amount on a pro-rata basis, based upon the total number of workweeks he or she  
23 worked during the Class Period. See Agreement ¶ 46.

24 7. Based thereon, on a raw average, each Participating Class Member potentially  
25 may recover approximately \$46.56. The amount actually paid to each Participating Class  
26 Member will increase or decrease depending on the actual number of workweeks he or she  
27 worked during the Class Period. Finally, funds from any checks that have not been cashed  
28 within 180 days of issuance shall be paid to the designated *cy pres* recipient: the Rancho Cielo.

**POTENTIAL STATUTORY AND CIVIL PENALTIES**

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

9. **Class Size:** Pursuant to the Agreement, Brothers has represented that approximately 1,512 Class Members worked approximately 10,112 workweeks during the Class Period.

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

11. **Class Damages:** Based on the class data provided by Brothers, Plaintiff estimated that Defendants Brothers and D'Arrigo could face potential maximum liability of up to approximately \$6 million for Plaintiff's class claims, if Plaintiff was successful on all of his claims and obtained certification. This amount likely overstates the realistic range of recovery, however, for the reasons below. Plaintiff calculated the maximum penalties as follows:

- ~\$37,000 for unpaid minimum and overtime wages, assuming 6 minutes of off-the-clock work per week ((10,112 workweeks x 0.1) x \$14.75 average rate of pay) and approximately ((10,112 workweeks x 0.1) x \$22.13 average overtime rate of pay);
- \$74,576.00 for meal and \$74,576.00 for rest period violations, assuming a 50% violation rate (10,112 workweeks x \$14.75 average rate of pay);
- \$941,900 for Labor Code § 226(e) penalties ((10,112 workweeks x \$100 penalty) – (1,386 class members x \$50));
- \$4.9 million in waiting time penalties [1,386 former employees x (30 days x 8 hours x \$14.75)], which subsumes the potential exposure on Plaintiff's sick pay

theory of liability.

12. Plaintiff's estimates above assume certification of the class. However, these types of claims can be difficult to certify for class treatment where the defendant maintains facially compliant policies. Accordingly, this exposure is entitled to a significant discount at the settlement stage given the difficulties in proving this claim on a class basis if moving forward with litigation. Another significant issue in this case was Brothers' ability to satisfy any judgment, if Plaintiff were to succeed in establishing liability. While Plaintiff contended that D'Arrigo was a joint employer and/or liable pursuant to Section 2810.3, this theory was not guaranteed, so Plaintiff still took into consideration Brothers' financial condition in evaluating the reasonableness of the settlement.

13. Each of Plaintiff's putative class claims faced unique challenges from Defendants. For one, Defendants would have argued that the waiting time penalties, which comprise a significant portion of the estimated damages, are subject to a complete defense. Defendants would have argued that a good faith dispute exists as to whether the allegedly underpaid wages were due to Plaintiff and the Class Members considering what Defendants argued were compliant policies and procedures. If Defendants were successful in their good faith defense, the Court may not have awarded waiting time penalties at all, reducing the exposure of each defendant by several million. *Hill v. Walmart, Inc.*, 32 F.4th 811 (9th Cir. 2022) (upholding good faith defense because defendant reasonably believed wages were not due and owing at time of separation of employment); *Chavez v. Converse, Inc.*, 2020 WL 1233919, at \*1 (N.D. Cal. 2020) (holding that an employer's failure to pay is not willful where there is uncertainty in the law or a "good faith mistaken belief that wages are not owed"). Even if Plaintiff were successful in establishing these penalties but Brothers defaulted, Plaintiff would have faced hurdles in obtaining these penalties from D'Arrigo because it likely would have argued that Section 2810.3 does not render it liable for penalties, as the statute only provides it is jointly liable for "wages." See Cal. Labor Code § 2810.3(b)(1).

14. Similarly, on Plaintiff's wage statement claim, Plaintiff would face the additional burden of demonstrating that any alleged omission of information from the wage

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

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

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

25 17. **PAGA Penalties:** Plaintiff calculated Defendants’ potential maximum exposure  
26 under the PAGA as approximately \$1,011,200 (10,112 pay periods x \$100 penalty). This  
27 assumes complete victory at trial and that the Court would award the maximum penalty of  
28 \$100 per pay period, which is far from certain as discussed above. Further, while the PAGA

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

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

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

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

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

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

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

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

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

1 competent to represent the Class.

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

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

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

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

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

18 **ATTORNEY EXPERIENCE**

19 29. I am one of the primary attorneys on this matter. My qualifications are as  
20 follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in  
21 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I  
22 was a Notes and Comments Editor on the Southwestern Law Review. I also received awards  
23 for achieving the highest grade in my class in several courses. In 2012, I was a full-time  
24 extern, at the United States District Court for the Central District. Immediately after law  
25 school, I taught several courses at Southwestern, including Principles of Legal Analysis and  
26 Legal Methods. I taught those courses for approximately four years.

27 30. I practiced civil litigation at Haight Brown & Bonesteel LLP from  
28 approximately September 2013, through January 2016. I was third-chair in a federal court jury

1 trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach  
2 of contract dispute. I also regularly litigated cases across the civil litigation spectrum,  
3 including employment matters.

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

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

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

1 San Bernardino County Superior Court), and *Weybrew v. BEI Construction, Inc.* (Case No.  
2 FCS055658, Solano County Superior Court), among many others.

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

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

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

11 37. I do not have any conflict of interest with the proposed *cy pres* recipient, the  
12 Rancho Cielo.

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

15 39. The Settlement Administration costs are estimated by CPT Group to be \$16,000.  
16 CPT Group is a well-recognized class action settlement administrator. The Parties believe that  
17 the administration fee is reasonable and should be approved, as it results in an anticipated cost  
18 of approximately \$10.58 per class member, which is commensurate with similar settlements.

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

21 Executed on this 28<sup>th</sup> day of August 2024, at Los Angeles, California.

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**EXHIBIT A**

1                   **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

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

7                                   **DEFINITIONS**

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

10           1.    “Action” means *Juan Ramon Torres Reyes v. Brothers Harvesting Inc.*,  
11 Monterey County Superior Court Case No. 22CV000658, filed on March 9, 2022. For all  
12 purposes herein, this Action constitutes the operative complaint in this matter.

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

16           3.    “Aggrieved Employees” means all current and former non-exempt employees  
17 employed by Defendant Brothers Harvesting Inc. (“Brothers”) who were assigned to work for  
18 Defendant D’Arrigo Bros. Co., of California in California (“D’Arrigo Bros.” or “D’Arrigo”),  
19 at any time from January 12, 2021, through August 4, 2022.

20           4.    “Class” or “Class Member(s)” mean all current and former non-exempt  
21 employees of Defendant Brothers Harvesting Inc. that were assigned to work for Defendant  
22 D’Arrigo Bros. Co., of California in California, at any time from March 9, 2018, to August 4,  
23 2022 . Defendant Brothers’s records indicate that there are approximately 1,512 Class Members  
24 during the Class Period, and that no employees of Brothers were assigned to work for D’Arrigo  
25 Bros. in California at any time prior to March 2020.

26           5.    “Class Counsel” means B. James Fitzpatrick and Laura L. Franklin of Fitzpatrick  
27 & Swanston; Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C.

28           6.    “Class Counsel Award” means such award of fees and costs and expenses as the

1 Court may authorize to be paid to Class Counsel, from the Gross Settlement Amount, for the  
2 services they have rendered and will render to Plaintiff and the Class in the Action. Defendants  
3 agree not to oppose Class Counsel Award not to exceed one-third of the Gross Settlement  
4 Amount (\$174,602.16), *i.e.*, the sum of Fifty-Eight Thousand Two Hundred Dollars and  
5 Seventy-Two Cents Dollars (\$58,200.72), and litigation costs in the amount of up to Twelve  
6 Thousand Five Hundred Dollars (\$12,500.00), subject to the Court finally approving this  
7 Settlement. Any portion of the Class Counsel Award not awarded to Class Counsel shall be  
8 added to the Net Settlement Amount, and shall be distributed to Class Members as provided in  
9 this Agreement.

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

19 8. "Class Period" means the period from March 9, 2018, through August 4, 2022.

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

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

28 11. "Counsel for Defendant Brothers Harvesting Inc. means James K. Gumberg and

Anais Mora of Patane Gumberg Avila, LLP.

12. Counsel for Defendant D'Arrigo Bros. Co., of California means Geoffrey F. Gega of Law Offices of Geoffrey F. Gega and Regina Silva of Littler Mendelson.

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

14. "Defendants" means Defendants Brothers Harvesting Inc., and D'Arrigo Bros. Co., of California.

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

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

17. "Gross Settlement Amount" means the all-inclusive maximum settlement amount of One Hundred Seventy-Four Thousand Six Hundred and Two Dollars and Sixteen Cents (\$174,602.16), based upon the rate agreed to between Defendants and Plaintiff of \$17.26 per workweek times 10,116 total workweeks. The Gross Settlement Amount is calculated with reference to the total number of weeks worked at D'Arrigo Bros. by Class Members during the Class Period, which Defendant Brothers represents was 10,116 total workweeks. During the mediation and subsequent negotiations, Defendants and Plaintiff agreed that the Gross Settlement Amount will be based upon a rate of \$17.26 per workweek for all work weeks worked at D'Arrigo Bros. by Class Members during the Class Period (the "Gross Settlement Amount").

1 The Gross Settlement Amount includes all Individual Settlement Payments to Participating  
2 Class Members, including all wages, damages, interest, and penalties, Class Representative  
3 Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement  
4 Administrator, PAGA Payment (including payment to LWDA), and Class Counsel Award. The  
5 Gross Settlement Amount shall also include any interest that accrues in the escrow account  
6 created by the Settlement Administrator. It is understood by all the Parties that Defendant  
7 Brothers's contribution to the Gross Settlement Amount shall not exceed \$74,000 under any  
8 circumstances regardless of the application of the escalation clause under Paragraph 60 herein.  
9 Similarly, it is understood by all the Parties that Defendant D'Arrigo Bros.' contribution to the  
10 Gross Settlement Amount shall not exceed \$100,602.16 under any circumstances regardless of  
11 the application of the escalation clause under Paragraph 60 herein.

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

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

23 20. "Notice of Objection" means a Class Member's valid and timely written objection,  
24 which may be made in English or Spanish, to the Settlement. For the Notice of Objection to be  
25 valid, it must include: (a) the name and case number of this lawsuit (*Juan Ramon Reyes v.*  
26 *Brothers Harvesting Inc., et. al.* (Case No. 22CV000658) (b) the objector's full name, address,  
27 and telephone number; (c) a written statement of basis for the objection; and (d) the objector's  
28 signature. The objector may include any copies of papers, briefs, or documents upon which the

1 objection is based. The Notice of Objection must be returned by mail or fax to the Settlement  
2 Administrator at the specified address/facsimile indicated in the Notice Packet and be  
3 postmarked by the Response Deadline. The Parties will be permitted to respond in writing to  
4 any such objections at least seven (7) calendar days prior to the Final Approval hearing or within  
5 the time period set by the Court. Any member of the Class who does not submit a valid and  
6 timely written objection to the Settlement will be deemed to have waived any objections and  
7 will be foreclosed from making any objection to the Settlement, including by way of appealing  
8 the order granting Final Approval.

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

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

27 23. "PAGA Period" means the period from January 12, 2021, through August 4,  
28 2022.

1           24. “Parties” means Plaintiff, on behalf of himself and the Class, and Defendants  
2 collectively.

3           25. “Participating Class Members” means all Class Members who do not submit valid  
4 and timely Requests for Exclusion pursuant to paragraph 55 below, and will therefore receive  
5 his or her share of the settlement proceeds automatically without the need to return a claim form  
6 to be paid his/her Individual Settlement Payment.

7           26. “Plaintiff” means Juan Ramon Torres Reyes.

8           27. “Preliminary Approval” means the Court’s order granting preliminary approval of  
9 the Settlement.

10          28. “Released Class Claims” means all claims that were alleged in the operative  
11 complaint of the Action and derivative claims related thereto, arising from the facts, claims,  
12 or causes of action alleged or that could have reasonably been alleged based on the facts  
13 alleged in the operative complaint of the Action, including but not limited to Labor Code §§  
14 201-204, 207-211, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512,  
15 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 (PAGA), *et seq.*, including  
16 §§ 2699, 2699.3, and 2699.5, and Business and Professions Code § 17200 *et seq.*, including  
17 § § 17201, 17203, and 17208, those arising under the Industrial Welfare Commission Orders,  
18 and California Code of Civil Procedure 1021.5. The Released Class Claims explicitly excludes  
19 the claims asserted in the action entitled, *Juan Ramon Torres Reyes v. MB Labor Contracting,*  
20 *Inc., et al.*, Monterey County Superior Court Case No. 22CV000682.

21          29. “Released Claims Period” means the period from March 9, 2018, through August  
22 4, 2022.

23          30. “Released PAGA Claims” means all claims for penalties under the Private  
24 Attorneys General Act that were alleged in the and in the notice to the LWDA and in the  
25 operative complaint in the Action and derivative claims related thereto, arising from the facts,  
26 claims, or causes of action alleged or that could have reasonably been alleged based on the  
27 facts alleged in the operative complaint in the Action and in the notice to the LWDA,  
28 including, but not limited Labor Code §§ 201-204, 207-211, 216, 218, 218.5, 218.6, 221, 223,

1 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1,  
2 1198, 1199, and 2698 (PAGA), *et seq.*, including §§ 2699, 2699.3, and 2699.5, those arising  
3 under the Industrial Welfare Commission Orders, and California Code of Civil Procedure  
4 1021.5 The Released PAGA Claims explicitly excludes the claims asserted in the action  
5 entitled, *Juan Ramon Torres Reyes v MB Labor Contracting, Inc., et al.*, Monterey County  
6 Superior Court Case No. 22CV000682.

7 31. “Released Parties” means Defendants Brothers Harvesting Inc. and D’Arrigo  
8 Bros. Co., of California, and each of their past and present affiliated entities, parent companies,  
9 predecessors and assigns, successors, related organizations, subsidiaries, divisions, payroll  
10 processors, independent contractors, insurers, owners, officers, shareholders, executives,  
11 managers, attorneys, and employees.

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

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

25 34. “Settlement” means the agreement among the Parties to resolve the Action, as set  
26 forth in this Stipulation.

27 35. “Settlement Administration Costs” means the fees and expenses reasonably  
28 incurred by the Settlement Administrator as a result of the procedures and processes expressly

1 required by this Agreement, which are currently estimated at Sixteen Thousand  
2 Dollars\_(\$16,000.00). Any portion of the Settlement Administration Costs not approved by the  
3 Court shall become part of the Net Settlement Amount.

4 36. "Settlement Administrator" means CPT Group.

5 37. "Settlement Payment Check" means the payment to Participating Class Members  
6 and/or Aggrieved Employees pursuant to this Settlement.

### 7 **RECITALS**

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

13 36. Procedural History. On March 9, 2022, Plaintiff initiated this action in Monterey  
14 County Superior Court.

15 37. On October 24, 2023, the Parties participated in private mediation with Honorable  
16 David A. Garcia (Ret.). However, the case did not resolve at mediation. Following the failed  
17 mediation attempt and continued litigation, the Parties and their counsel have agreed to settle  
18 the Action on the terms set forth herein.

19 38. The Parties recognize the risk, expense, and delay in continuing the Action, and  
20 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties  
21 desire to settle, compromise, and discharge all disputes and claims arising from or relating to  
22 the Action.

23 39. Contingent Nature of Agreement. This Settlement is contingent upon the approval  
24 and certification by the Court. The Parties stipulate to the certification of the Class with respect  
25 to all causes of action alleged in the Action for settlement purposes only. As such, this  
26 Settlement requires preliminary and final approval by the Court. If the Effective Date does not  
27 occur, the fact that the Parties were willing to stipulate for the purposes of this Settlement shall  
28 have no bearing on, nor be admissible in connection with, the issue of certification of the Class

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

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

#### 25 **TERMS OF AGREEMENT**

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

27 41. Settlement Consideration. Defendants shall pay the sum of the Gross Settlement  
28 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement

1 Payments to Class Members; (2) Class Counsel Award; (3) Class Representative Enhancement  
2 Payment; (4) Settlement Administration Costs to the Settlement Administrator; and (5) the  
3 PAGA Payment (including LWDA payment). The Parties agree that this is a non-reversionary  
4 Settlement and that no portion of the Gross Settlement Amount shall revert to Defendants.  
5 Subject to the Escalation Clause under Paragraph 60 herein, in no event shall Defendants be  
6 required to pay more than the Gross Settlement Amount as specified in this Agreement, with the  
7 exception of it's share of employer payroll taxes, which shall be paid separate and in addition to  
8 the Gross Settlement Amount by D'Arrigo.

9 42. Funding of the Gross Settlement Amount. Defendants shall fund the Gross  
10 Settlement Amount, as set forth below:

11 a. Brothers shall pay Seventy-Four Thousand Dollars (\$74,000) toward the  
12 Gross Settlement Amount, in three payments into a Qualified Settlement  
13 Account to be established by the Settlement Administrator, as follows:

14 i. The first payment of Twenty-Five Thousand Dollars (\$25,000)  
15 shall be due thirty (30) days following service on Defendants of a  
16 filed copy of the Court's Preliminary Approval Order;

17 ii. The second payment of Twenty-Five Thousand Dollars  
18 (\$25,000.00) will be due 30 days after the date that the first  
19 payment is due.

20 iii. The third payment of Twenty-Four Thousand Dollars (\$24,000.00)  
21 will be due 30 days after the date that the second payment is due.

22 iv. Brothers shall not make any payments towards the employer's  
23 share of payroll taxes.

24 b. Within thirty (30) days of the Effective Date, D'Arrigo shall pay One  
25 Hundred Thousand Six Hundred and Two Dollars and Sixteen Cents  
26 (\$100,602.16) in addition to the full amount of the employer's share of  
27 payroll taxes, as determined by the Settlement Administrator, into a  
28 Qualified Settlement Account to be established by the Settlement

1 Administrator; provided, however, if the Settlement Administrator has not  
2 determined the employer's share of payroll taxes by the Effective Date,  
3 D'Arrigo Bros. will pay said payroll taxes within 30 days after that  
4 calculation has been provided to D'Arrigo Bros.

5 43. Class Counsel Award. Defendants agree not to oppose or impede any application  
6 or motion by Class Counsel for attorneys' fees not to exceed one-third of the Gross Settlement  
7 Amount (\$174,602.16), *i.e.*, the sum of Fifty-Eight Thousand Two Hundred Dollars and  
8 Seventy-Two Cents (\$58,200.72), and costs in the amount of up to Twelve Thousand Five  
9 Hundred Dollars (\$12,500.00), which shall be paid from the Gross Settlement Amount. The  
10 Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the  
11 awarded attorneys' fees and costs. Any portion of the Class Counsel Award not awarded to  
12 Class Counsel shall become part of the Net Settlement Amount and shall be distributed to Class  
13 Members as provided in this Agreement.

14 44. Class Representative Enhancement Payment. Defendants agree not to oppose or  
15 impede any application or motion by Plaintiff for a Class Representative Enhancement Payment  
16 of up to Two Thousand Five Hundred Dollars (\$2,500.00) to Plaintiff. The Class Representative  
17 Enhancement Payment shall be paid from the Gross Settlement Amount and shall be paid in  
18 addition to the Class Representative's Individual Settlement Payment as a Class Member. The  
19 Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Class  
20 Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay  
21 any and all applicable taxes on his Class Representative Enhancement Award and shall hold  
22 harmless, and indemnify, Defendants and Released Parties from any claim or liability for  
23 taxes, penalties, interest, or other payments and costs arising as a result of the non-withholding  
24 of taxes from the Class Representative Enhancement Award. Any portion of the Class  
25 Representative Enhancement Payment not awarded to Plaintiff shall become part of the Net  
26 Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

27 45. Settlement Administration Costs. The Settlement Administrator shall be paid for  
28 the reasonable costs of administration of the Settlement from the Gross Settlement Amount, not

1 to exceed Sixteen Thousand Dollars (\$16,000.00). These costs, which shall be paid from the  
2 Gross Settlement Amount, shall include, *inter alia*, distributing the Notice Packet, the required  
3 tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,  
4 establishing a Qualified Settlement Fund, administering and distributing the Gross Settlement  
5 Amount and Class Counsel Award, and providing necessary reports and declarations. Any  
6 portion of the Settlement Administration Costs not approved by the Court shall become part of  
7 the Net Settlement Amount and shall be distributed to Class Members as provided in this  
8 Agreement.

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

21 47. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy  
22 Individual Settlement Payments to Participating Class Members in accordance with the terms  
23 of this Agreement. The Settlement Administrator will allocate the Individual Settlement  
24 Payments by first dividing the Net Settlement Amount by the total number of workweeks  
25 worked by Class Members during the Class Period. That value will then be multiplied by the  
26 number of workweeks each respective Participating Class Member worked during the Class  
27 Period to arrive at the Individual Settlement Amount for each respective Participating Class  
28 Member. Participating Class Members are entitled to 100% of the Net Settlement Amount.

Defendants maintain no reversionary right to any portion of the Net Settlement Amount. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

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

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

- a. Establish and maintain a Qualified Settlement Fund account, and report and submit the employer's share payroll taxes;
- 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

1 returned as undeliverable, and to the extent new and more current addresses are found, the  
2 Settlement Administrator will also reprint and re-mail Notice Packets accordingly;

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

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

9 50. Delivery of the Class Data. Within thirty (30) calendar days of Preliminary  
10 Approval, Defendant Brothers shall provide the Class Data to the Settlement Administrator and  
11 D'Arrigo Bros. Following Brothers' delivery of the Class Data to the Settlement Administrator  
12 after Preliminary Approval, the Settlement Administrator shall acknowledge to all counsel that  
13 the data has been received, and state the number of Class Members, and total workweeks and  
14 Pay Periods in the Class Data.

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

20 52. Confirmation of Contact Information in the Class Data. Prior to mailing of the  
21 Notice Packet, the Settlement Administrator shall perform a search of all Class Member  
22 addresses against the National Change of Address Database and shall update and correct any  
23 addresses before mailing the Notice Packet.

24 53. Notice Packets. All Class Members will be mailed a Notice Packet in English and  
25 Spanish. Each Notice Packet will include without limitation: (1) information regarding the  
26 nature of the Action and relevant time periods at issue; (2) a summary of the Settlement's  
27 principal terms; (3) each Class Member's estimated Individual Settlement Payment and the  
28 formula for calculating Individual Settlement Payments, if they do not request to be excluded;

(4) the Aggrieved Employee's estimated PAGA payment and the formula for calculating the payment; (5) instructions on how to submit valid opt outs or objections; (6) the deadlines by which the Class Member must submit their exclusions or objections to the Settlement; (7) the date for the final approval hearing; and (8) the claims to be released. The Notice Packet will also inform Class Members that in order to receive the Individual Settlement Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses.

54. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or mass search on LexisNexis databases based on set criteria and, if another address is identified, shall mail the Notice Packet to the newly identified address. If no address can be determined by the Settlement Administrator after these efforts, no further efforts to determine an address shall be required. 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.

55. Request for Exclusion Procedures. Any Class Member may opt-out from the class action portion of the Settlement by submitting a written Request for Exclusion to the Settlement Administrator postmarked by the Response Deadline. Such request may be made in English or Spanish. Requests for Exclusion must: (1) contain the name, address, and telephone number of the person requesting exclusion; (2) state that the Class Member does not wish to be included in the Settlement; and (3) 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 number, and be postmarked on or before the Response Deadline. The date of the postmark or fax stamp shall be the exclusive means to determine whether a Request for Exclusion has been timely submitted. By submitting such a Request for Exclusion, a Class Member shall be deemed

1 to have exercised his or her option to opt out of the Action and not be bound by this Agreement,  
2 except as otherwise provided in paragraph 57. Accordingly, a Class Member that timely submits  
3 a valid Request for Exclusion will not be entitled to any payments under this Settlement and will  
4 not be bound by the terms of the Settlement except Class Members who are also Aggrieved  
5 Employees will still release the Released PAGA Claims. Any Class Member who fails to submit  
6 a valid and timely Request for Exclusion on or before the Response Deadline shall be deemed a  
7 Participating Class Member and will be bound by all terms of the Settlement, if the Settlement  
8 is granted final approval by the Court.

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

13 57. No PAGA Opt-Out. The Parties acknowledge and agree that for purposes of the  
14 Settlement, all Aggrieved Employees were allegedly aggrieved in the same manner pursuant to  
15 Labor Code § 2698, *et seq.*, in that each Aggrieved Employee allegedly suffered at least one of  
16 the alleged Labor Code violations asserted in the operative complaint for which the PAGA  
17 provides an available remedy. In light of the binding nature of a PAGA judgment on non-party  
18 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), and *Cardenas v.*  
19 *McLane Foodservice, Inc.*, 2011 WL 379413 at \*3 (C.D. Cal. Jan. 31, 2011), individuals  
20 otherwise meeting the definition of Aggrieved Employees who exclude themselves from the  
21 Settlement, nonetheless shall be bound by the Judgment of the Released PAGA Claims and will  
22 receive their proportionate share of the PAGA Payment. All Aggrieved Employees shall be  
23 bound by the Judgment entered herein and will have released the Released PAGA Claims upon  
24 the final approval of this Settlement and the payment of the Settlement Payment Check.

25 58. Objection Procedures. Any Class Member who does not opt-out of this Settlement  
26 shall be entitled to object to the Settlement. To submit a written objection or Notice of Objection  
27 to the Settlement, a Class Member should return by mail or fax a written statement of objection  
28 to the Settlement Administrator at the specified address or facsimile by the Response Deadline.

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

18 59. Defendants' Right to Rescind. If the number of Class Members opting out of the  
19 Settlement by submitting valid and timely Requests for Exclusion account for more than five  
20 percent (5%) of the total number of Class Members, Defendants have the right in their sole  
21 discretion to elect to rescind the Parties' Settlement. The Parties agree that they will not  
22 encourage any Class Member to object or to opt out. If either Defendant exercises the option to  
23 rescind, that Defendant shall: (a) provide written notice to Class Counsel at least ten (10)  
24 business days prior to the final approval hearing, and (b) pay all Settlement Administration Costs  
25 incurred by the Settlement Administrator up to the date of that Defendant's notice to rescind. In  
26 the event the Settlement is terminated, the Parties shall proceed in all respects as if this  
27 Agreement had not been executed.

28 60. Escalation Clause. In the event that the total number of workweeks worked by

the Class Members during the Class Period increases to more than 10,116 total workweeks, the Parties agree to meet and confer to adjust the close of the Class Period to a date that will render the total workweeks during the Class Period not greater than 10,116. Should this event occur, the Parties also agree they will adjust the close of the PAGA Period to match the close of the Class Period.

61. Certification Reports Regarding Individual Settlement Payment Calculations.

The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for all Parties any updated reports regarding the administration of the Settlement as needed or requested.

62. Distribution Timing of Individual Settlement Payments. Within seven (7)

calendar days of Defendants fully funding the Gross Settlement Amount, the Settlement Administrator shall issue respective payments to (1) Participating Class Members, including Aggrieved Employees; (2) the Labor and Workforce Development Agency; (3) Plaintiff; and (4) Class Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.

63. Uncashed Settlement Payment Checks. Any checks issued by the Settlement

Administrator to Class Members and/or Aggrieved Employees shall be negotiable for not less than one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks shall be distributed to the following *cy pres* beneficiary: Rancho Cielo. In such event, those Class Members and/or Aggrieved Employees will nevertheless remain bound by the Settlement.

64. Certification of Completion. Upon completion of administration of the

Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

65. Administration Costs if Settlement Fails or is Delayed. If an objection to the

Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if

1 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall  
2 be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

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

8 67. Administration of Taxes by the Settlement Administrator. The Settlement  
9 Administrator shall be responsible for issuing to Plaintiff, Participating Class Members,  
10 Aggrieved Employees, and Class Counsel, 1099 forms or other tax forms as may be required by  
11 law for all amounts paid pursuant to this Agreement.

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

21 69. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR  
22 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY  
23 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER  
24 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
25 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN  
26 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR  
27 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR  
28 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX

1 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT  
2 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING  
3 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN,  
4 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX  
5 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO  
6 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY  
7 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT  
8 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY  
9 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY  
10 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO  
11 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION  
12 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR  
13 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS  
14 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF  
15 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING  
16 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

21 71. Release of Claims by Participating Class Members. Upon the Effective Date and  
22 funding of the Gross Settlement Amount, all Participating Class Members hereby do and shall  
23 be deemed to have fully, finally and forever released, settled, compromised, relinquished and  
24 discharged any and all of the Released Parties of and from any and all Released Class Claims  
25 that accrued during the Released Claims Period.

26 72. Release of Claims by Aggrieved Employees. Upon the Effective Date and funding  
27 of the Gross Settlement Amount, all Aggrieved Employees, on behalf of themselves and the  
28 State of California, hereby do and shall be deemed to have fully, finally and forever released,

1 settled, compromised, relinquished and discharged any and all of the Released Parties of and  
2 from any and all Released PAGA Claims that accrued during the PAGA Period.

3 73. Release of Claims by Class Representative. Upon the Effective Date and funding  
4 of the Gross Settlement Amount, Plaintiff shall and does hereby forever release, discharge, and  
5 agree to hold harmless the Released Parties from any and all charges, complaints, claims,  
6 liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action,  
7 suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs),  
8 known or unknown, at law or in equity, which they may now have or may have after the signing  
9 of this Agreement, against the Released Parties including, but not limited to, the Released  
10 Claims, claims that were asserted or could have been asserted in the Complaint, and claims of  
11 any kind related to any and all transactions, occurrences, or matters between the parties  
12 occurring during the Released Claims Period. Without limiting the generality of the foregoing,  
13 this release shall include, but not be limited to, any and all claims under the (a) Americans With  
14 Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the  
15 Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in  
16 Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay  
17 Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated  
18 Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and  
19 Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and  
20 Housing Act; (n) the California Constitution; (o) the California Labor Code; (p) the California  
21 Government Code; (q) the California Civil Code; and (r) any and all other federal, state and  
22 local statutes, ordinances, regulations, rules and other laws, and any and all claims based on  
23 constitutional, statutory, common law or regulatory grounds as well as any other claims based  
24 on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud,  
25 misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional  
26 distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules  
27 or laws. This release is for any and all relief, no matter how denominated, including, but not  
28 limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages,

1 liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and  
2 costs, and Plaintiff hereby forever releases, discharges, and agrees to hold harmless Defendants  
3 and the Released Parties from any and all claims for attorney fees and costs arising out of the  
4 matters released in this Agreement.

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

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

13 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and  
14 benefits he may have under Section 1542 as well as any other statutes or common law principles  
15 of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those  
16 which they now know or believe to be true with respect to the subject matter of all the claims  
17 referenced herein, but stipulate and agree that, upon the Effective Date, they shall and hereby  
18 do fully, finally, and forever settle and release any and all claims against the Released Parties,  
19 known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted  
20 or could have been asserted upon any theory of law or equity without regard to the subsequent  
21 discovery of existence of such different or additional facts. Plaintiff's general release and waiver  
22 of the protections of Civil Code § 1542 explicitly excludes the claims asserted in the action  
23 entitled, *Juan Ramon Torres Reyes v MB Labor Contracting, Inc., et al.*, Monterey County  
Superior Court Case No. 22CV000682.

24 74. Nullification of Settlement. In the event that the Settlement does not become final  
25 for any reason, or should the Court for any reason fail to certify this Class for settlement, then  
26 this Agreement, and any documents generated to bring it into effect, shall be null and void.  
27 Moreover, should either Defendant not fully fund its portion of the Settlement within the  
28 deadlines prescribed in the Agreement, this Agreement will be null and void. Any order or

1 judgment entered by the Court in furtherance of this Agreement shall likewise be treated as void  
2 from the beginning. Moreover, all Parties to this Settlement shall stand in the same position,  
3 without prejudice, as if the Settlement has been neither entered into nor filed with the Court.  
4 The fact that the Parties were willing to stipulate to class certification of all causes of action pled  
5 in the Action as part of the Settlement will have no bearing on, and will not be admissible in  
6 connection with, the issue of whether the Class should be certified by the Court in a non-  
7 settlement context in this Action, or any other action, and in any of those events, Defendants  
8 expressly reserves the right to oppose certification of the Class.

9 75. Invalidation of Settlement. Invalidation of any material portion of this Settlement  
10 shall invalidate the Settlement in its entirety unless the Parties shall subsequently agree in  
11 writing that the remaining provisions shall remain in full force and effect. Without being  
12 construed as words of limitation, the Parties agree that paragraph 60 (escalation clause) is a  
13 material portion of this settlement.

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

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

28 78. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court

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

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

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

25 81. Mutual Non-Disparagement. No Party shall disparage or defame another party to  
26 any third parties with or through any written or oral statement or image (including, but not  
27 limited to, any statements made via websites, blogs, postings to the internet, or emails).

28 82. Exhibits Incorporated by Reference. The terms of this Agreement include the

1 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully  
2 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

3 83. Entire Agreement. This Agreement and any attached Exhibits constitute the  
4 entirety of the Parties' Settlement terms. No other prior or contemporaneous written or oral  
5 agreements may be deemed binding on the Parties. There are no restrictions, promises,  
6 representations, warranties, covenants, or undertakings governing the subject matter of this  
7 Settlement other than those expressly set forth or referred to herein. This Settlement supersedes  
8 all prior agreements, and all understandings among the Parties hereto with respect to the  
9 settlement of the Action, including correspondence between Class Counsel and Defense Counsel  
10 and drafts of prior agreements or proposals.

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

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

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

25 87. California Law Governs. All terms of this Agreement and Exhibits hereto shall  
26 be governed by and interpreted according to the laws of the State of California.

27 88. Execution and Counterparts. This Agreement is subject only to the execution of  
28 all Parties. However, the Agreement may be executed in one or more counterparts, including

1 by electronic scan, .pdf, or DocuSign. All executed counterparts and each of them, including  
2 facsimile and scanned or electronic copies of the signature page, shall be deemed to be one and  
3 the same instrument provided that counsel for the Parties shall exchange among themselves  
4 original signed counterparts.

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

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

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

1 reduction in the Class Counsel's Award below the amount Class Counsel requests, and either  
2 party may appeal any order that materially alters the Agreement's terms.

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

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

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

24 95. Enforcement Actions. Pursuant to California Code of Civil Procedure § 664.6,  
25 the Court shall retain jurisdiction with respect to the interpretation, implementation, and  
26 enforcement of the terms of this Agreement and all orders and judgments entered in connection  
27 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for  
28 purposes of interpreting, implementing, and enforcing the settlement embodied in this

1 Agreement and all orders and judgments entered in connection therewith.

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

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

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

18 99. Plaintiff and his counsel will keep this Agreement confidential through  
19 preliminary approval. Thereafter, Plaintiff and his counsel will further agree to keep this  
20 Agreement confidential, including without limitation no disclosures to current or former  
21 employees of the Defendants, to the media, or on any websites, blogs, social media, and/or  
22 online platforms. Exceptions to the obligation of confidentiality in this section are: (i)  
23 disclosures necessary to comply with the law, judicial process, or for financial planning or tax  
24 preparation purposes; (ii) to obtain and seek approval of this settlement in court and as is  
25 necessary to provide settlement information to Class Members/Aggrieved Employees, and (iii)  
26 if any party seeks to enforce any term or condition of this Agreement against any other party.

27 100. Cooperation and Execution of Necessary Documents. All Parties shall cooperate  
28 in good faith and execute all documents to the extent reasonably necessary to effectuate the

terms of this Agreement.

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

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement Between Plaintiff and Defendants Brothers Harvesting Inc. and D'Arrigo Bros. Co., of California as of the date(s) set forth below:

**READ CAREFULLY BEFORE SIGNING.**

Dated: \_\_\_\_\_, 2024

PLAINTIFF JUAN RAMON TORRES REYES

\_\_\_\_\_  
Juan Ramon Torres Reyes

Dated: \_\_\_\_\_, 2024

DEFENDANT BROTHERS HARVESTING  
INC.

\_\_\_\_\_  
By: Ruben Ortiz

Dated: \_\_\_\_\_, 2024

DEFENDANT D'Arrigo Bros. Co., of California

\_\_\_\_\_  
By: John Culligan  
Chief Operating Officer

**APPROVED AS TO FORM**

Dated: \_\_\_\_\_, 2024

FITZPATRICK & SWANSTON

By: \_\_\_\_\_  
B. James Fitzpatrick  
Attorneys for Plaintiff,  
JUAN RAMON TORRES REYES

Dated: \_\_\_\_\_, 2024

DIVERSITY LAW GROUP, P.C.

By: \_\_\_\_\_  
Larry W. Lee  
Attorneys for Plaintiff,  
JUAN RAMON TORRES REYES

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Dated: \_\_\_\_\_, 2024

PATANE GUMBERG AVILA, LLP

By: \_\_\_\_\_

Anais Mora  
Attorneys for Defendant,  
BROTHERS HARVESTING INC.

Dated: \_\_\_\_\_, 2024

LAW OFFICES OF GEOFFREY F. GEGA

By: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2024

LITTLER MENDELSON, PC

By: \_\_\_\_\_

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

## **EXHIBIT A**

TORRES REYES v. BROTHERS HARVESTING, INC., ET AL.  
SETTLEMENT ADMINISTRATOR  
[INSERT SETTLEMENT ADMINISTRATOR]

IMPORTANT LEGAL MATERIALS

\*Barcode39\* - <<SequenceNo>>

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

<<Address1>>

<<Address2>>

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY  
**TORRES REYES v. BROTHERS HARVESTING, INC., Case No. 22CV000658**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**If you were employed by Brothers Harvesting, Inc. and were assigned to work for D'Arrigo Bros. Co., of California in California at any time from March 9, 2018, to August 4, 2022, you may be eligible to receive compensation from a class action settlement.**

- A former employee of Brothers Harvesting, Inc. filed a wage-and-hour class and Private Attorneys General Act ("PAGA") action on behalf all other similarly situated employees against Brothers Harvesting, Inc. and D'Arrigo Bros. Co., of California (this "Action"). Brothers Harvesting 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.<br>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 Brothers Harvesting, Inc. business records reflect that you worked, or continue to work, as a non-exempt employee for Brothers Harvesting, Inc. and were assigned to perform work for D'Arrigo Bros. Co., of California in California between March 9, 2018, to August 4, 2022.

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 Brothers Harvesting, Inc., claims that Brothers Harvesting, Inc. (“Brothers Harvesting”) and D’Arrigo Bros. Co., of California (“D’Arrigo Bros.”) 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. Brothers Harvesting, 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 Brothers Harvesting, Inc. who were assigned to work for Defendant D’Arrigo Bros. Co., of California in California, at any time from January 12, 2021, through August 4, 2022 (the “PAGA Period”).

## **4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

All current and former non-exempt employees of Defendant Brothers Harvesting, Inc. that were assigned to perform work for Defendant D’Arrigo Bros. in California at any time from March 9, 2018, to August 4, 2022 (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 Brothers Harvesting, Inc. and D’Arrigo Bros. Co., of California, for a maximum total payment of \$174,602.16 (“Gross Settlement Amount”), which includes: (1) anticipated attorneys’ fees of \$58,200.72, which is 1/3 of the maximum total payment, and costs to Class Counsel, which will not exceed \$12,500.00; (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 \$16,000.00; 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 Brothers Harvesting and D’Arrigo Bros. Brothers Harvesting will pay \$74,000.00 in three installments, with the first installment paid within 30 days after service of the Court’s Preliminary Approval Order, and the second and third installments paid within 30 days of each preceding payment. D’Arrigo Bros. will pay the amount of \$100,602.16, within 30 days of the Effective Date. The timing of the payments is dependent on when the Court enters its orders.

Each Participating Class Member’s share of the Net Settlement Amount will be calculated based on the number of workweeks they worked between March 9, 2018, and August 4, 2022 (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?**

Brothers Harvesting, 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 in 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: Brothers Harvesting, 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 in 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 Brothers Harvesting, Inc. and were assigned to work at D'Arrigo Bros. Co., of California in California as a non-exempt employee during the Class Period. If you dispute Brothers Harvesting, 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 Brothers Harvesting, Inc. and were assigned to work at D'Arrigo Bros. Co., of California in California during the Class Period, any payment you receive will be based only on the workweeks stated by Brothers Harvesting, Inc.'s records as indicated above. Brothers Harvesting, 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 Brothers Harvesting, Inc. and D'Arrigo Bros. Co., of California, Class Members who do not exclude themselves from the Settlement will release and fully discharge Defendants Brothers Harvesting, 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 9, 2018, through August 4, 2022). 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. MB Labor Contracting, Inc., et al.*, Monterey County Superior Court Case No. 22CV000682.

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 12, 2021, through August 4, 2022). 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. MB Labor Contracting, Inc., et al.*, Monterey County Superior Court Case No. 22CV000682.

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. BROTHERS HARVESTING, 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. BROTHERS HARVESTING, INC.*, CASE NO. 22CV000658.” 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 class action portion of 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. BROTHERS HARVESTING, 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 \$58,200.72) for their attorneys’ fees, and reimbursement of their litigation costs not to exceed \$12,500.00. 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. Brothers Harvesting, Inc. Class Action Settlement.

TORRES REYES v. BROTHERS HARVESTING, INC.  
SETTLEMENT ADMINISTRATOR  
[REDACTED]

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.