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Attorneys for Plaintiff Brandon Velazquez
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

BRANDON VELAZQUEZ, on behalf of
himself and on behalf of all similarly
situated individuals,

Plaintiff,

v.

PRECISION ALMOND HARVESTING
LLC, a California limited liability
company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: BCV-22-100125

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: February 24, 2023

TIME: 8:30 a.m.

DEPT.: 17

Action Filed: January 14, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Brandon Velazquez (“Velazquez”
4 or “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts
5 set forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
14 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
15 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
16 employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
20 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On January 10, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
23 Code Private Attorneys General Act of 2004 (“PAGA”).

24 7. On or about January 14, 2022, Plaintiff initiated the Action by filing a complaint on
25 behalf of himself and all other class members. The First Amended Complaint was filed on March
26 7, 2022 and asserts class and PAGA representative action claims against Defendant for (1) failure
27 to pay all minimum and overtime wages due (Labor Code §§ 510, 1194, and 1194.2); (2) failure
28 to provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, and

1 1194; IWC Wage Order 4-2001); (3) failure to provide compliant meal periods or compensation
2 in lieu thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001); (4) failure to reimburse
3 expenses (Labor Code § 2802); (5) failure to comply with itemized employee wage statement
4 provisions (Labor Code § 226(a), (e).); (6) failure to timely pay wages due at separation of
5 employment (Labor Code §§ 201-203); (7) violation of Business and Professions Code §§ 17200,
6 *et seq.*; and (8) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code
7 §§ 201-202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "First Amended
8 Complaint").

9 8. Defendant denies any liability or wrongdoing of any kind associated with the claims
10 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
11 purpose other than this settlement. Defendant contends that it has complied at all times with the
12 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
13 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to
14 be litigated, class certification would be inappropriate because Plaintiff is not an adequate class
15 representative, Plaintiff's claims are not typical of putative class members, and individual issues
16 predominate over class issues. The Action, the negotiation and execution of this Settlement
17 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
18 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
19 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
20 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
21 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
22 class certification in the Action or with respect to any other proceeding. The parties further agree
23 that Defendant does not waive any defense to the First Amended Complaint and the PAGA claim
24 contained therein.

25 9. The Class Representative contends that Defendant violated the California Labor
26 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
27 certification.

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1 **Investigation and Settlement Discussions**

2 10. My colleagues and I have conducted a thorough investigation into the facts and law
3 during the prosecution of this class action case, including the exchange of extensive informal
4 discovery and the review and verification of statistical data and other facts and information
5 provided by Defendant. My colleagues and I have investigated the applicable law as applied to the
6 facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the
7 damages and other losses claimed by Plaintiff.

8 11. On November 15, 2022, following their exchange of information and documents
9 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
10 engaged in arm's-length negotiations with the assistance of mediator Thomas Feher, Esq., through
11 which they were able to reach the resolution of the Action set forth herein.

12 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
13 **Litigation:**

14 12. Based on our independent investigation and evaluation, my colleagues and I are of
15 the opinion that settlement for the consideration and on the terms set forth in this Settlement
16 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
17 light of all known facts and circumstances, including the risk of significant delay, the risk the
18 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

19 13. The Parties agree that the Settlement Class described herein may be certified for
20 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
21 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
22 approved, the certification will have no force or effect and will immediately be revoked. The
23 Parties further agree that certification for purposes of the settlement is in no way an admission that
24 class certification is proper under the more stringent standard applied for litigation and that
25 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
26 purpose in this or any other proceeding
27
28

1 14. The parties jointly prepared the Settlement Agreement and Release of Claims
2 ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is
3 attached hereto as **Exhibit B**.

4 15. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members all
5 minimum and overtime wages due, in violation of Labor Code §§ 510, 1194, and 1194.2 when
6 Plaintiff and Class Members worked off-the-clock: they contend that they were not paid for time
7 spent attending orientation training, during which they were under the control of Defendants and
8 entitled to compensation. Plaintiff and Class Members allege that they would clock out from their
9 shifts at 5:30 p.m. but would routinely continue to work an additional 30 to 40 minutes without
10 any compensation. Plaintiff calculates the classwide liability of this claim at \$193,985, with an
11 additional \$61,300 in PAGA civil penalties.

12 16. Plaintiff further contends that Defendant failed to permit or authorize him and Class
13 Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in
14 violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. Plaintiff argues that
15 when employees did receive meal periods, they would typically be late (commencing after the
16 fifth hour of work), short (less than 30 minutes in duration), or employees were prohibited from
17 leaving, and affirmatively required to remain at Defendant's premises, thereby subjecting them
18 to Defendant's control during their meal periods and entitling them to premium meal period wages,
19 which they were not paid. Based on the data provided, Defendant never paid meal period
20 premiums during the Class Period. Plaintiff calculates classwide damages on this claim at
21 \$175,984 and PAGA civil penalties at \$61,300 (based on a 100% violation rate).

22 17. Plaintiff also argues that Defendant failed to pay Class Members premium wages
23 for missed, denied and unauthorized rest periods in violation of Labor Code § 226.7 and IWC
24 Wage Order 4-2001. Plaintiff and Class Members contend that they were denied, and therefore
25 unable to take, 10-minute on-the-clock rest periods for every four hours of work or major fraction
26 thereof, but were not paid premium wages of one hour's pay for each missed, denied and
27 unauthorized rest period. Plaintiff calculates classwide damages on this claim at \$175,984 and
28 PAGA civil penalties at \$61,300 (based on a 100% violation rate).

1 18. Plaintiff contends that Defendant failed to issue Plaintiff and Class Members
2 accurately itemized wage statements. Specifically, Plaintiff and Class Members were not paid all
3 wages due, as alleged above. As a result, the wage statements issued by Defendant to Plaintiff and
4 Class Members fail to accurately state all gross wages earned, in violation of Labor Code §
5 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in
6 violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period
7 and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §
8 226(a)(9). Furthermore, and independent of the above allegations, the wage statements issued to
9 Plaintiff and Class Members allegedly failed to set forth the inclusive dates of the period for which
10 the employee is paid, in violation of Labor Code § 226(a)(6). Plaintiff calculates statutory
11 penalties on this claim at \$54,700, with PAGA civil penalty liability of \$153,250.

12 19. Plaintiff also alleges that Class Members were required to incur expenses in the
13 performance of their job duties for which they are not fully reimbursed, in violation of Labor Code
14 § 2802. Plaintiff and Class Members were required to use their personal cellular phones as part of
15 their work tasks for Defendants and purchase and provide their own gloves and safety glasses
16 needed to carry out their work duties but were not fully reimbursed by Defendants for these
17 expenses. Plaintiff calculates damages on this claim at \$23,454, based off an estimated \$15 of
18 unreimbursed expenses per pay period, and PAGA civil penalties at \$61,300.

19 20. Plaintiff sought penalties for waiting time (Labor Code section 203) predicated on
20 all the claims alleged in the Action. The value of these penalties may approach close to \$331,486.
21 These claims also required a significant compromise at this juncture of the litigation, and the
22 compromise reached is fair given the risk of loss on the merits and as to class certification as to
23 the unpaid wage claims from which they derive.

24 21. The discount negotiated for settlement here is a reasonable compromise, particularly
25 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
26 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
27 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
28 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,

1 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
2 various arguments why class treatment is not appropriate, including but not limited to that
3 individualized inquires among class members predominate over common ones. If Defendant was
4 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
5 most Class Members would likely not file individual claims.

6 22. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible
7 that the Court would agree with Defendant's position that its rest period practices complied with
8 the requirements of California law or could not be certified. In such a case, the value of the
9 majority of Plaintiff's claims would be zero.

10 23. Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty
11 award on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant
12 to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not
13 impose all penalties pursuant to its discretionary power to reduce them.

14 24. Defendant strongly contends that its policies and practices do not violate any laws.
15 It contends that it properly provided for all meal and rest periods and fully compensated its
16 employees for all time worked. It further contends that the wage statements it provides to its
17 employees are fully compliant with California law.

18 25. When the costs and risks of non-certification and loss on the merits are considered,
19 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

20 26. The settlement for each Class Member is fair, reasonable and adequate, given the
21 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
22 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
23 Action.

24 **Class Certification Requirements:**

25 27. To date, no class has been certified. The Stipulation of Settlement contains a
26 provision pursuant to which we stipulate to the Court's provisional certification of the
27 approximately 190-member Settlement Class, but do so for purposes of this settlement only.
28

1 28. In this case, the Class Members are identifiable from Defendant's employment and
2 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
3 According to Defendant's records, the Class comprises approximately 190 employees.

4 29. The Class Members' claims all stem from a common source: members of the
5 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
6 with their employment. All members of the Class seek the same relief under the same California
7 laws (related to unpaid wages, unpaid meal and rest period premiums, unreimbursed business
8 expenses, inaccurate or incomplete wage statements, failure to timely pay wages due upon
9 separation, and derivative claims). Under these circumstances, the commonality requirement is
10 satisfied for purposes of certifying the Settlement Class for settlement purposes.

11 30. In this case, named Plaintiff and proposed Class Representative Brandon Velazquez
12 is a former non-exempt employee who worked for Defendant in the State of California during the
13 Class Period. He contends that Defendant failed to pay all wages due, failed to provide meal and
14 rest periods, failed to reimburse business expenses, failed to comply with itemized employee wage
15 statement provisions, and failed to timely pay wages at the separation of employment, in violation
16 of Labor Code §§ 201-203, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 2698, 2699, and 2802
17 among other Labor Code provisions. He has the same claims as those that the members of the
18 Settlement Class would reasonably be expected to bring based on the course of conduct alleged
19 herein.

20 31. Plaintiff has also demonstrated that he will aggressively and competently assert the
21 interests of the proposed Settlement Class; he has taken an active role in this litigation and has no
22 apparent conflicts with other class members.

23 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

24 32. Concurrently with the filing of this Motion, my office is transmitting the Settlement
25 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
26 2699(1)(2).

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1 I declare, under penalty of perjury, under the laws of the State of California, that the
2 foregoing is true and correct. Executed this 24th day of January, 2023 at Westlake Village,
3 California.

4 *Daniel F. Gaines*
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6 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF KERN**

16 BRANDON VELAZQUEZ, on behalf of
17 himself and on behalf of all similarly
situated individuals,

18 Plaintiff,

19 v.

20 PRECISION ALMOND HARVESTING,
21 LLC, a California limited liability company,
and DOES 1 through 10, inclusive,

22 Defendants.
23

CASE NO: BCV-22-100125

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: January 14, 2022

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement," "Stipulation,"
3 or "Stipulation of Settlement") is made and entered into by and between Plaintiff Brandon
4 Velazquez ("Velazquez" or "Plaintiff" or "Class Representative"), individually and on behalf of
5 the Settlement Class and all others similarly situated, and Defendant Precision Almond Harvesting,
6 LLC ("Defendant"), subject to the terms and conditions herein and the Court's approval.

7 **A. Definitions.**

8 1. Plaintiff, the Settlement Class (as defined below), and Defendant are collectively
9 referred to herein as "the Parties."

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall
12 be designated as "Class Counsel."

13 3. The "Action" means the case entitled *Brandon Velazquez v. Precision Almond*
14 *Harvesting, LLC*, Case No. BCV-22-100125, pending before the Superior Court of the State of
15 California for the County of Kern.

16 4. The "Settlement Class" shall be defined as "all persons who are or were previously
17 employed in California by Defendant as non-exempt employees at any point from January 14, 2018
18 through November 15, 2022 (the "Class Period")." Defendant represents that the Class includes
19 approximately 190 employees who worked approximately 3300 workweeks during the Class
20 Period.

21 5. Members of the Settlement Class shall collectively be referred to as a "Class
22 Member" or "Class Members." Any Class Member who files a timely Request for Exclusion, as
23 detailed below, will be excluded from the final Settlement Class.

24 **B. General.**

25 1. On January 10, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
26 Code Private Attorneys General Act of 2004 ("PAGA").

27 2. On or about January 14, 2022, Plaintiff initiated the Action by filing a class action
28 complaint on behalf of himself and all other class members. The First Amended Complaint was

1 filed on March 7, 2022 and asserts class and PAGA representative action claims against Defendant
2 for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510, 1194, and 1194.2);
3 (2) failure to provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7,
4 510, and 1194; IWC Wage Order 4-2001); (3) failure to provide compliant meal periods or
5 compensation in lieu thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001); (4) failure
6 to reimburse expenses (Labor Code § 2802); (5) failure to comply with itemized employee wage
7 statement provisions (Labor Code § 226(a), (e),); (6) failure to timely pay wages due at separation
8 of employment (Labor Code §§ 201-203); (7) violation of Business and Professions Code §§ 17200,
9 *et seq.*; and (8) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code
10 §§ 201-202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "First Amended Complaint").

11 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
12 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
13 purpose other than this settlement. Defendant contends that it has complied at all times with the
14 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
15 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
16 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
17 representative, Plaintiff's claims are not typical of putative class members, and individual issues
18 predominate over class issues. The Action, the negotiation and execution of this Settlement
19 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
20 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
21 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
22 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
23 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
24 class certification in the Action or with respect to any other proceeding. The Parties also agree that
25 in the event the Court does not grant final approval of the Settlement, the First Amended Complaint
26 shall be deemed withdrawn. The parties further agree that Defendant does not waive any defense
27 to the First Amended Complaint and the PAGA claim contained therein.
28

1 4. The Class Representative contends that Defendant violated the California Labor
2 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
3 certification.

4 5. Class Counsel represent that they have conducted a thorough investigation into the
5 facts and law during the prosecution of this class action case, including the exchange of extensive
6 informal discovery and the review and verification of statistical data and other facts and information
7 provided by Defendant. Counsel for the Parties also represent that they have investigated the
8 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
9 potential defenses thereto, and the damages and other losses claimed by Plaintiff.

10 6. On November 15, 2022, following their exchange of information and documents
11 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
12 engaged in arm's-length negotiations with the assistance of mediator Thomas Fcher, Esq., through
13 which they were able to reach the resolution of the Action set forth herein.

14 7. Based on their own independent investigation and evaluation, Class Counsel are of
15 the opinion (and will so represent to the Court) that settlement for the consideration and on the
16 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
17 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
18 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
19 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
20 that this settlement is fair and in the best interest of the Settlement Class.

21 8. The Parties agree that the Settlement Class described herein may be certified for
22 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
23 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
24 approved, the certification will have no force or effect and will immediately be revoked. The
25 Parties further agree that certification for purposes of the settlement is in no way an admission that
26 class certification is proper under the more stringent standard applied for litigation and that
27 evidence of this limited Stipulation for settlement purposes only will not be admissible for any
28 purpose in this or any other proceeding.

1 **C. Terms of Settlement.**

2 1. The financial terms of the settlement are as follows:

3 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
4 a Maximum Settlement Amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000) (the
5 "Maximum Settlement Amount"), subject to any increase based on the escalator provision in
6 paragraph H(16) herein. The Maximum Settlement Amount includes the attorneys' fees of Class
7 Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs
8 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
9 providing any notices required as part of the settlement, securing Court approval of the settlement,
10 and obtaining judgment in the Action); the Enhancement Payment to the Class Representative, as
11 approved by the Court; the payment to the California Labor and Workforce Development Agency
12 ("LWDA"); and all costs of administration, including, without limitation, settlement administration
13 fees and expenses. All employer payroll tax obligations due on wage payments made from the Net
14 Settlement Proceeds shall be paid by Defendant separate and apart from the Maximum Settlement
15 Amount.

16 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
17 Maximum Settlement Amount less the amounts approved and awarded by the Court for: attorneys'
18 fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the
19 Enhancement Payment to the Class Representative; the payment to the LWDA pursuant to PAGA;
20 and the costs of administering the settlement.

21 (c) **Individual Payment Amounts:** "Individual Payment Amount" means the
22 portion of the Net Settlement Proceeds distributable to each Class Member who participates in the
23 Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment
24 Amounts will be calculated by dividing the Net Settlement Proceeds by the total workdays worked
25 by all participating Class Members in California in a non-exempt position during the Class Period,
26 which will yield the applicable workday rate. The workday rate shall be multiplied by the number
27 of workdays each individual participating Class Member worked for Defendant in California in a
28 non-exempt position during the Class Period to yield their Individual Payment Amount. Each

1 Participating Settlement Class Member who does not opt out will receive an Individual Payment
2 Amount equal to their individual workdays worked in California in a non-exempt position during
3 the Class Period multiplied by the workday rate.

4 i. For tax purposes, each Individual Payment Amount will be
5 apportioned (a) 80% as wages (reported on an IRS Form W-2 and subject to applicable
6 withholdings); and (b) 20% to penalties and interest (reported on an IRS Form 1099, if required by
7 law). All Individual Payment Amounts paid to Class Members will be subject to any applicable
8 wage garnishments, liens, or other legally mandated treatment as required by law.

9 (d) **PAGA Payment:** The Parties agree that Eight Thousand Dollars (\$8,000)
10 shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-
11 Five percent (75%), or Six Thousand Dollars (\$6,000), shall be paid to the LWDA, and the
12 remaining Twenty-Five percent (25%), or Two Thousand Dollars (\$2,000), shall be included in the
13 Net Settlement Proceeds for payment to Class Members.

14 (e) **Enhancement Payment to Class Representative:** The amount awarded to
15 the Class Representative as an Enhancement Payment will be set by the Court in its discretion, not
16 to exceed Ten Thousand Dollars (\$10,000). This amount will be deducted from the Maximum
17 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his
18 Enhancement Payment. Defendant agrees not to dispute or otherwise object to the Enhancement
19 Payment if Plaintiff requests \$10,000 or less.

20 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
21 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
22 account the settlement award that has been made available for the Settlement Class by the efforts
23 of Class Counsel. The amount awarded shall not exceed 35% of the Maximum Settlement Amount
24 (i.e., \$78,750). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
25 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
26 requested by Class Counsel so long as the request does not exceed 35% of the Maximum Settlement
27 Amount.

1 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
2 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
3 pocket litigation costs and expenses, not to exceed Ten Thousand Dollars (\$10,000). An IRS Form
4 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
5 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
6 so long as the request does not exceed \$10,000.

7 (h) **Settlement Administration Costs:** The fees and other charges of the
8 Settlement Administrator to administer the Settlement are expected to total no more than Six
9 Thousand Dollars (\$6,000), and will be paid from the Maximum Settlement Amount. These fees
10 shall include any costs associated with the required tax reporting on any Individual Payment
11 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the
12 Parties have agreed that Phoenix Settlement Administration will serve as a neutral third-party
13 claims' administrator ("Settlement Administrator") to perform all acts related to providing notice
14 to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and
15 distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class
16 Members; (b) administering the settlement; (c) processing exclusions, objections, and field
17 inquiries from Class Members; (d) resolving disputes; (e) calculating the Individual Payment
18 Amount each Participating Class Members is eligible to receive; (f) distributing the Maximum
19 Settlement Amount as directed by the Court and set forth herein; (g) tax reporting; (h) providing
20 necessary weekly status reports; and (i) other duties and responsibilities set forth herein.

21 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
22 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
23 makes no representations regarding tax obligations or consequences, if any, related to this
24 Settlement Agreement.

25 **D. Release of Claims.**

26 1. Upon the Effective Date, and subject to Defendant's full payment of the Maximum
27 Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be
28 deemed to have fully released and discharged Defendant Precision Almond Harvesting, LLC and

1 its respective present and former parents, owners, subsidiaries and any affiliated or related persons
2 or entities and each of their respective officers, directors, employees, partners, shareholders,
3 attorneys and agents and any other successors, assigns or legal representatives ("Released Parties")
4 from any and all Released Claims which arose during their employment in a non-exempt position
5 in California during the Class Period.

6 2. The "Released Claims" include any and all claims for: (i) unpaid overtime or
7 failure to pay minimum wage under Labor Code sections 510, 1194 and 1194.2; (ii) failure to
8 provide meal periods under Labor Code sections 226.7, 510, 512 and 1194; (iii) failure to
9 provide paid rest periods under Labor Code section 226.7; (iv) waiting time penalties under
10 Labor Code sections 201-203; (v) inaccurate wage statements in violation of Labor Code
11 section 226; (vi) failure to reimburse business expenses under Labor Code section 2802; (vii)
12 claims for the above alleged violations under California Business & Professions Code
13 section 17200 et seq.; (viii) associated civil penalties under Labor Code section 2698 et seq.,
14 as well as any and all wage and hour claims that were asserted or could have been asserted
15 based on the factual or legal allegations contained in the First Amended Complaint, including
16 but not limited to additional claims under Labor Code sections 558, 558.1 and 1174(d).

17 3. Upon the Effective Date and subject to Defendant's full payment of the Maximum
18 Settlement Amount, Plaintiff Velazquez shall be deemed to have fully, finally, and forever released
19 the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action,
20 and liabilities against the Released Parties, of whatever kind and nature, character, and description,
21 whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute,
22 ordinance, regulation, common law, or other source of law, whether known or unknown, and
23 whether anticipated or unanticipated, including unknown claims covered by Civil Code Section
24 1542, arising through the date of his signature hereon, for any type of relief, including, without
25 limitation, claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive
26 damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. These claims
27 include, but are not limited to, the Released Claims, as well as any other claims under any provision
28 of the California Labor Code or any applicable California Industrial Welfare Commission Wage

1 Orders, and claims under local, state, or federal discrimination statutes, including, without
2 limitation, the California Fair Employment and Housing Act, California Government Code
3 §§ 12940 et seq.; the Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California
4 Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans
5 with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act
6 of 1974, 29 U.S.C. §§ 1001 et seq.; and all of their implementing regulations and interpretive
7 guidelines. With respect to these Released Claims as described in this Section, Plaintiff Velazquez
8 shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law,
9 the provisions, rights, and benefits he may otherwise have had pursuant to Section 1542 of the
10 California Civil Code, which provides as follows:

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

15 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
16 act as a release of all future claims that may arise from Plaintiff Velazquez's employment or
17 separation from employment with Defendant, or any other matters that existed between Plaintiff
18 Velazquez and the Released Parties up to the date of this Agreement, whether such claims are
19 currently known or unknown, and that Plaintiff intentionally waives any rights he may have under
20 the provisions of Section 1542, as well as under any other statutes or common law principles of
21 similar effect in the State of California or in any other state.

22 **E. Notice and Exclusion Process.**

23 1. Within ten (10) calendar days after entry of the order granting preliminary approval
24 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
25 Members, including their last known addresses, telephone numbers, social security numbers, and
26 their dates of employment in a non-exempt position in California during the Class Period
27 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
28 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All

1 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
2 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
3 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
4 storage, custody, use, and/or dissemination of the confidential information. Such information must
5 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

6 2. A notice of pendency of class action, proposed settlement, and hearing date for
7 Court approval ("Class Notice") in the form attached hereto as **Exhibit 1**, and as approved by the
8 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in
9 English and Spanish, within twenty (20) calendar days after entry of the order granting preliminary
10 approval. Attached to the Class Notice will be a request for exclusion form ("Request for Exclusion
11 Form") in the form attached hereto as **Exhibit 2**.

12 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
13 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
14 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
15 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
16 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
17 notices.

18 4. Each Class Member will be fully advised of the settlement, the ability to object to
19 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
20 inform the Class Members of the Court-established deadlines for filing objections and a Request
21 for Exclusion Form.

22 5. Each Class Notice will contain personalized information setting forth the number of
23 workdays each Class Member worked for Defendant in California in a non-exempt position during
24 the Class Period and their estimated Individual Payment Amount. To the extent a Class Member
25 disputes any of the information listed on his or her Class Notice, the Class Member may produce
26 evidence to the Settlement Administrator showing such information the Class Member contends
27 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
28

1 however, and the Settlement Administrator's decision on these matters will be final. The Class
2 Notice will also set forth IRS W-9 information if required.

3 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
4 to receive an Individual Payment Amount which shall be mailed to them if and when the Effective
5 Date occurs.

6 7. In order to elect not to participate in the Settlement, a Class Member must submit a
7 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
8 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
9 Class Members, unless the Court requires a longer period, in which case the Court ordered
10 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
11 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
12 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
13 next day on which the U.S. Postal Service is open.

14 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
15 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
16 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
17 on which the U.S. Postal Service is open.

18 9. The Settlement Administrator will search for additional addresses on returned mail
19 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
20 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
21 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
22 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
23 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
24 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
25 Settlement Administrator will search using the social security number for a more current address.
26 If no address is found within 10 days, no further action is required.

27 10. The Settlement Administrator will notify the Parties of the total number of valid
28 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the

1 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
2 and Request for Exclusion Forms to Class Members).

3 11. In order to object to the settlement, a Class Member must mail his or her objection
4 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
5 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
6 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
7 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
8 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
9 extended for any reason.

10 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
11 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
12 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
13 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
14 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
15 listing the amount of all payments to be made to each Class Member without names or personal
16 identifying information.

17 13. The Effective Date of this Settlement Agreement ("Effective Date") is the date of
18 the later of: (a) final approval by the Court; or (b) if there are objections to the settlement which are
19 not withdrawn, and if an appeal, review, or writ is not sought from the judgment, the sixty-first
20 (61st) day after service of notice of entry of judgment; or (c) the dismissal or denial of an appeal,
21 review, or writ, if the Judgment is no longer subject to judicial review.

22 14. Class Members must cash each of their Individual Payment Amount checks within
23 one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The
24 value of any checks uncashed more than one hundred eighty (180) days after mailing shall be paid
25 to the California's State Controller's Office to held in trust for such class members pursuant to
26 California's Unpaid Property Law.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;

7 (b) approving as to form and content the proposed Class Notice;

8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;

10 (d) preliminarily certifying the Settlement Class for purposes of settlement;

11 (e) preliminarily approving the PAGA payment of \$6,000 to the LWDA;

12 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;

13 (g) preliminarily setting the enhancement payment to the Class Representative
14 and

15 (h) preliminarily approving Phoenix as the Settlement Administrator and its
16 estimated fees and costs of \$6,000.

17 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
18 of Plaintiff's unopposed motion for preliminary approval of the settlement.

19 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

20 1. In connection with the hearing on final approval of the settlement provided for in
21 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
22 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
23 by the Court):

24 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
25 and adequate, and directing consummation of its terms and provisions;

26 (b) approving Class Counsel's application for an award of attorneys' fees and
27 reimbursement of documented litigation costs and expenses, the Enhancement Payment to the
28

1 Class Representative, the PAGA Payment to the LWDA, and the costs of administering the
2 settlement; and

3 (c) entering judgment in this Action in accordance with this Stipulation,
4 pursuant to Cal. Rules of Court, Rule 3.769(h).

5 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
6 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
7 on final approval (unless otherwise ordered by the Court).

8 3. Defendant shall deposit the Maximum Settlement Amount, plus applicable
9 employer payroll taxes, with the Settlement Administrator as follows:

10 (1) One Hundred Thousand Dollars (\$100,000), plus a proportionate share of
11 employer payroll taxes due, no later than the latter of (i) 15 days after the Effective
12 Date or (ii) May 31, 2023; and

13 (2) One Hundred Twenty-Five Thousand Dollars (\$125,000), plus a proportionate
14 share of employer payroll taxes due, on the earlier of (i) 180 days after the first
15 installment payment is due, or (ii) December 31, 2023

16 4. All installment payments shall be paid into an interest bearing (if possible) trust
17 account created by the Settlement Administrator. The Settlement Administrator will issue pro rata
18 payments for the obligations due for attorneys' fees and costs to Class Counsel, cost of
19 administration, Individual Settlement Payments to Class Members, and the payment to the LWDA
20 promptly after each installment payment by Defendant of the Maximum Settlement Amount. The
21 Enhancement Payment to Plaintiff shall be fully paid from the first installment payment.

22 **H. Miscellaneous Provisions:**

23 1. **Voiding the Agreement.**

24 A failure of the Court to approve any material condition of this Settlement Agreement which
25 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
26 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
27 and unenforceable as to all Parties herein at the option of any Party. Defendant, at its option, may
28 withdraw from the Settlement if 5% or more of the Class Members opt-out of the Settlement. If

1 Defendant chooses to withdraw it will be responsible for all costs incurred by the Settlement
2 Administrator in administering the Settlement up through the date of withdrawal.

3 **2. Parties' Authority.**

4 The signatories hereto represent that they are fully authorized to enter into this Settlement
5 Agreement and bind the Parties hereto to the terms and conditions hereof.

6 **3. Mutual Full Cooperation.**

7 The Parties agree to fully cooperate with each other to accomplish the terms of this
8 Stipulation of Settlement, including but not limited to, execution of such documents and such other
9 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
10 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
11 by this Settlement Agreement and any other efforts that may become necessary by order of the
12 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
13 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
14 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
15 Court's preliminary and final approval of the settlement.

16 **4. No Prior Assignments.**

17 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
18 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
19 entity any portion of any liability, claim, demand, action, cause of action or rights released and
20 discharged by this Stipulation of Settlement.

21 **5. No Admission.**

22 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
23 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
24 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
25 Settlement Agreement with the intention of avoiding further disputes and litigation with the
26 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
27 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
28

and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

6. Construction.

The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or him or its counsel participated in the drafting of this Settlement Agreement.

7. Captions and Interpretations.

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

8. Modification.

This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by each of the Parties hereto on their attorneys.

9. **Integration Clause.**

This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

10. Binding on Assigns.

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.



1 **11. Governing Law.**

2 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
3 according to the laws of the State of California, without giving effect to any conflict of law
4 principles or choice of law principles.

5 **12. Signatures of All Class Members Unnecessary to be Binding.**

6 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
7 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
8 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
9 provided herein and such shall have the same force and effect as if this Settlement Agreement was
10 executed by each Class Member.

11 **13. Counterparts.**

12 This Settlement Agreement may be executed in counterparts, and when each Party has
13 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
14 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
15 Agreement, which shall be binding upon and effective as to all Parties.

16 **14. Confidentiality**

17 Until Plaintiff files his motion for preliminary approval of the class action settlement, the
18 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
19 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
20 agencies, or as otherwise required by law.

21 **15. No Publicity**

22 Plaintiff and his Counsel will not contact the media about the settlement or respond to any
23 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
24 settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any
25 information about the settlement on social media or their firms' websites. Neither Plaintiff
26 Velasquez nor Class Counsel will publicize this settlement by name, i.e., identifying (i) Defendant
27 by name, or (ii) its industry and location in Kern County, whether through a press release, posting
28 on counsel's website, social media or any other public means. Nothing in this provision is intended

1 to prevent Plaintiff from discussing this settlement with his spouse, attorneys or tax advisors.
2 Nothing in this provision is intended to prevent Class Counsel from citing the settlement in this
3 case as evidence supporting their competence as counsel in wage/hour and/or class action matters
4 in public court filings nor affects in any way the ability of Class Counsel to communicate with
5 putative class members in this case or the court in which this action is pending.

6 **16. Representation Regarding Class Size.**

7 Defendant has represented that there are 190 Class Members who worked approximately
8 3300 workweeks during the Class Period. Should either of these numbers increase by more than
9 5%, the Maximum Settlement Amount will increase proportionately above the 5% threshold. For
10 example, if there are 3795 workweeks (i.e., a 15% increase) and 200 Class Members (i.e., a 5%
11 increase), the Maximum Settlement Amount shall increase by 10%.

12 **17. Default; Notice; Cure; Acceleration; Time is of the Essence.**

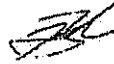
13 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
14 to timely make any payment due hereunder, it shall be in default of its obligations. Plaintiff shall
15 thereafter give notice of default and Defendant must cure said default within five (5) business
16 days thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and be all
17 due and payable together with interest at the legal rate from the date of default.

18 **18. Continuing Jurisdiction.**

19 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
20 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of
21 Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and
22 continuing equity jurisdiction of this Action over all Parties and Class Members to interpret and
23 enforce the terms, conditions and obligation of the Agreement.

24 [SIGNATURES ON FOLLOWING PAGE]
25
26
27
28

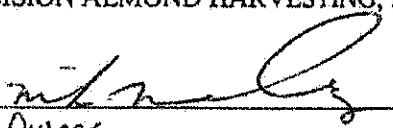
12 / 09 / 2022
Dated: December _____, 2022

By: 

BRANDON VELAZQUEZ
Plaintiff and Class Representative

Dated: December 12TH, 2022

PRECISION ALMOND HARVESTING, LLC

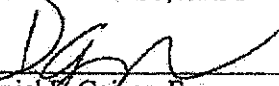
By: 

Its: Owner

APPROVED AS TO FORM AND CONTENT:

Dated: December 9th, 2022

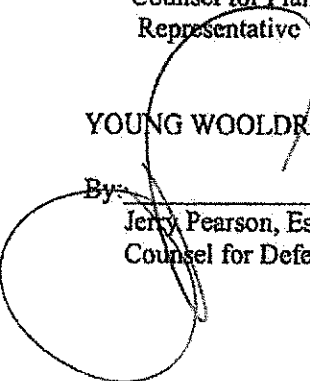
GAINES & GAINES, APLC

By: 

Daniel B. Gaines, Esq.
Alex B. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

Dated: December 30, 2022

YOUNG WOOLDRIDGE, LLP

By: 

Jerry Pearson, Esq.
Counsel for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

BRANDON VELAZQUEZ, on behalf of
himself and on behalf of all similarly situated
individuals,

Plaintiff,

v.

PRECISION ALMOND HARVESTING, LLC,
a California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: BCV-22-100125

Assigned to the Hon. Thomas S. Clark, Dept. 17

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

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

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$225,000 to pay claims to all individuals who worked for Precision Almond Harvest, LLC ("Defendant") as non-exempt employees in California at any time between January 14, 2018 and November 15, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all minimum and overtime wages due; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse all business-related expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$78,750 as attorneys' fees and \$10,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Precision Almond Harvesting, LLC about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On January 14, 2022, Plaintiff Brandon Velazquez ("Plaintiff"), a former employee of Precision Almond Harvesting, LLC, filed this lawsuit in the Kern County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between January 14, 2018 and November 15, 2022 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all minimum and overtime wages due; compliant meal and rest periods or premium compensation in lieu thereof; were not reimbursed all business-related expenses; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, business-related expenses incurred, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Jerry Pearson, Esq.
Young Wooldridge, LLP
1800 30th Street, Fourth Floor
Bakersfield, CA 93301-1087

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Precision Almond Harvesting, LLC as non-exempt employees in California at any time between January 14, 2018 and November 15, 2022.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides that Defendant will pay \$225,000 (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds is the Maximum Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$78,750;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$10,000;

(c) **Enhancement Payment to the Class Representative** in an amount set by the Court, not to exceed \$10,000 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$6,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$8,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$6,000, shall be paid to the California Labor and Workforce Development Agency. The remaining 25% or \$2,000, shall be included in the Net Settlement Proceeds for payment to Class Members

3. **Individual Payment Amount.**

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. **What Are You Giving Up To Get A Payment Or Stay In The Class?**

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant Precision Almond Harvesting, LLC and its respective present and former parents, owners, subsidiaries and any affiliated or related persons or entities and each of their respective officers, directors, employees, partners, shareholders, attorneys and agents and any other successors, assigns or legal representatives ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

The "Released Claims" include any and all claims for: (i) unpaid overtime or failure to pay minimum wage under Labor Code sections 510, 1194 and 1194.2; (ii) failure to provide meal periods under Labor Code sections 226.7, 510, 512 and 1194; (iii) failure to provide paid rest periods under Labor Code section 226.7; (iv) waiting time penalties under Labor Code sections 201-203; (v) inaccurate wage statements in violation of Labor Code section 226; (vi) failure to reimburse business expenses under Labor Code section 2802; (vii) claims for the above alleged violations under California Business & Professions Code section 17200 et seq.; (viii) associated civil penalties under Labor Code section 2698 et seq., as well as any and all wage and hour claims that were asserted or could have been asserted based on the factual or legal allegations contained in the First Amended Complaint, including but not limited to additional claims under Labor Code sections 558, 558.1 and 1174(d).

E. **How Is My Share Of The Settlement Calculated?**

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total workdays worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable workday rate. The workday rate shall be multiplied by the number of workdays each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual workdays worked in California in a non-exempt position during the Class Period multiplied by the workday rate.

For tax purposes, each Individual Payment Amount will be apportioned (a) 80% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 20% to penalties and interest (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] workdays while employed as a non-exempt employee in California from January 14, 2018 and November 15, 2022. Based on these days worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

F. When Will I Be Paid?

After the Court grants approval of the settlement, you will receive your Individual Payment Amount in two installments, which are expected to take place in June 2023 and January 2024.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at 8:30 a.m., in the Courtroom of Judge Thomas S. Clark of the Kern County Superior Court, Department 17, located at [ADDRESS]. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as an enhancement payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Kern County Superior Court, located at [ADDRESS].

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number], or Gaines & Gaines, APLC, Counsel for the Class, at (866) 550-0855.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Brandon Velazquez v. Precision Almond Harvesting, and Does 1 Through 10, Inclusive*, Defendants, Kern County Superior Court, Case No. BCV-22-100125. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant Precision Almond Harvesting, LLC as a non-exempt employee in California between January 14, 2018 and November 15, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [45 days after mailing of Notice]. Send this signed request for exclusion form to the Settlement Administrator:

Precision Almond Harvesting, LLC Claims Administrator
c/o Phoenix Settlement Administration

