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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

29 RENE GARCIA CRUZ and ROBERTO M.
30 PEREZ, individually and on behalf of all
31 others similarly situated,

32 Plaintiffs,

33 v.

34 ALLIED POTATO, INC., a California
35 Corporation; ARRIOLA FARM LABOR,
36 INC., a California Corporation; and DOES 1 to
37 50, inclusive,

38 Defendants.

Case No.: BCV-22-100238

CLASS ACTION

Assigned for All Purposes To:

Hon. Thomas S. Clark

Dept.: 17

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

Original Complaint Filed: January 27, 2022

First Amended Complaint: August 19, 2022

Trial Date: None set

LAW OFFICES OF SCOTT WHEELER

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Attorney for Plaintiff ROBERTO M. PEREZ,
on behalf of himself and others similarly situated

1 This Joint Stipulation of Settlement and Release of Class Action (“Settlement Agreement”) is
2 made and entered into by Plaintiffs RENE GARCIA CRUZ and ROBERTO M. PEREZ (“Plaintiffs”),
3 individually and as representatives of the Settlement Class, as defined below, and Defendants ALLIED
4 POTATO, INC. and ARRIOLA FARM LABOR, INC. (collectively, “Defendants”) (Plaintiffs and
5 Defendants are collectively referred to as “the Parties”). This Settlement Agreement is subject to the
6 approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for
7 the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to
8 the following terms and conditions. As detailed below, in the event the Court does not enter an order
9 granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met
10 for any reason, this Stipulation is void and of no force or effect whatsoever.

11 **I. DEFINITIONS**

12 As used in this Stipulation, the following terms shall have the meanings specified below. To the
13 extent terms or phrases used in this Stipulation are not specifically defined below, but are defined
14 elsewhere in this Stipulation, they are incorporated by reference into this definition section.

15 **1. Actions.** “Action” is defined to encompass the following civil action: *Rene Garcia Cruz,*
16 *et al. v. Allied Potato, Inc., et al.*, Case No. **BCV-22-100238** filed on **January 27, 2022** in the Superior
17 Court of California for the County of Kern (“**Garcia Action**”). The Action also includes the “**Perez**
18 **Action**,” which is the Class and PAGA Representative Action pending in Kern County Superior Court
19 entitled *Roberto M. Perez v. Allied Potato, Inc.*, Case No. BCV-22-100990 (Div. J), which was filed on
20 April 26, 2022. The *Perez* Action will be consolidated with the *Garcia* Action pursuant to this settlement
21 through the filing of a Joint Stipulation for entry of an amended consolidated complaint in the *Garcia*
22 Action. The Action as defined herein thus encompasses both the *Garcia* and *Perez* Actions.

23 **2. Administrative Expenses.** “Administrative Expenses” shall include all costs and
24 expenses associated with and paid to the third party Settlement Administrator, ILYM Group, Inc., which
25 are anticipated not to exceed \$10,000.00.

26 **3. Claims.** “Claims” shall mean the claims asserted in the Action, including any claims
27 asserted in the Plaintiffs’ PAGA notices to the LWDA.
28

1 **4. Class or Settlement Class.** “Class” or “Settlement Class” shall mean *all current and*
2 *former nonexempt employees who were employed by Allied Potato, Inc. as non-exempt, hourly*
3 *agricultural workers and in similar and related positions in California during the Class Period; and*
4 *all current and former non-exempt employees who were employed by Arriola Farm Labor, Inc. and*
5 *assigned to work for Allied Potato, Inc. as non-exempt, hourly agricultural workers and in similar and*
6 *related positions in California during the Class Period.* Defendants represent that the **Class Members**
7 that worked a total of approximately **7,380 workweeks** (5,440 for Allied and 1,940 for Arriola) during
8 the Class Period through signing of the MOU as of January 10, 2023. The terms “Class Member” or
9 “Settlement Class Member” shall mean any person who is a member of the Settlement Class, or, if such
10 person is incompetent or deceased, the person’s legal guardian, executor, heir or successor-in-interest.

11 **5. Class Counsel.** “Class Counsel” shall mean David Yeremian & Associates, Inc. and the
12 Law Offices of Scott Ernest Wheeler.

13 **6. Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean
14 Class Counsel’s attorney fees and expenses as set forth in Section IV, Paragraph 7.

15 **7. Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action Settlement
16 and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise
17 approved by the Court, which is to be mailed to Class Members in both English and Spanish translations
18 which comprise the Notice Packet.

19 **8. Class Participants.** “Class Participants” shall mean any and all Class Members who do
20 not timely Opt-Out of the Class Settlement.

21 **9. Class Period.** “Class Period” shall mean the period from October 1, 2020 through the date
22 Plaintiffs file a motion for preliminary approval of this Settlement.

23 **10. Class Representatives.** “Class Representatives” shall mean Plaintiffs Rene Garcia Cruz
24 and Roberto M. Perez.

25 **11. Class Settlement.** “Class Settlement” shall mean the settlement embodied in this
26 Stipulation, which is subject to Court approval.

27 **12. Complaint.** “Complaint” shall mean the operative Complaint in the Action, which will
28 be the Consolidated Complaint for the *Garcia* and *Perez* Actions when it is entered following stipulation.

1 Until entry of that Consolidated Complaint, the definition of “Complaint” herein will therefore also
2 collectively encompass any claims articulated and alleged in the operative complaints in the *Garcia* and
3 *Perez* actions.

4 **13. Court.** “Court” shall mean the Superior Court of California for Kern County.

5 **14. Defendants.** “Defendants” shall mean Allied Potato, Inc. and Arriola Farm Labor, Inc.

6 **15. Defense Counsel.** “Defense Counsel” shall mean Vanessa Franco Chavez of Klein
7 DeNatale Goldner, on behalf of Defendant Allied Potato, Inc., and Gerardo Hernandez of Littler
8 Mendelson, P.C., on behalf of Defendant Arriola Farm Labor, Inc.

9 **16. Effective Date.** “Effective Date” shall be the date when all of the following events have
10 occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense Counsel;
11 (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Settlement
12 Class Members providing them with an opportunity to Opt-Out of the Class Settlement; (d) the Court has
13 held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Class
14 and approving this Stipulation; (e) notice of final judgment has been given to the Settlement Class
15 Members pursuant to California Rules of Court, rule 3.771(b); and (f) the later of the following events:
16 the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class
17 Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or the
18 dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right
19 to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate order
20 upholding the Court’s final order with no right to pursue further remedies or relief. In the event there is a
21 timely filed motion to set aside judgment or to intervene, the expiration of the period for filing any appeal,
22 writ, or other appellate proceeding opposing the Class Settlement will be based on the later of the court’s
23 ruling or order on any such motion or entry of final order and judgment certifying the Class and approving
24 this Stipulation.

25 **17. Employee’s Taxes and Required Withholding.** “Employee’s Taxes and Required
26 Withholding” shall mean the employee’s share of any and all applicable federal, state or local payroll
27 taxes, including those collected under authority of the Federal Insurance Contributions Act (“FICA”),
28 FUTA and/or SUTA on the portion of any Class Participant’s Individual Settlement Amount that

1 constitutes wages as set forth in section IV, paragraph 3. The Employee's Taxes and Requirement
2 Withholdings will be withheld from the Individual Settlement Payments for the wage allocation portion
3 that are paid out of the Net Settlement Amount.

4 **18. Employer's Taxes.** "Employer's Taxes" shall mean and refer to Defendants' share of
5 payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any Class
6 Participant's Individual Settlement Amount that constitutes wages as set forth in section IV, paragraph
7 3. The Employer's Taxes shall be separately paid by Defendants and shall not be paid from the Gross
8 Settlement Amount or Net Settlement Amount.

9 **19. Final Approval and Fairness Hearing.** "Final Approval and Fairness Hearing" shall
10 mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class
11 Settlement.

12 **20. Gross Settlement Amount.** "Gross Settlement Amount" is the agreed upon non-
13 reversionary settlement amount totaling **\$275,000.00** to be paid by Defendants in full settlement of the
14 Released Claims, including the Administrative Expenses, Employee's Taxes and Required Withholdings,
15 Class Attorney Fees and Expenses, Incentive Awards, and PAGA Payment. Defendants shall separately
16 pay their share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of
17 each Individual Settlement Amount allocated as wages.

18 **21. Hearing on Preliminary Approval.** "Hearing on Preliminary Approval" shall mean the
19 hearing held on the motion for preliminary approval of the Class Settlement.

20 **22. Incentive or Service Award.** "Incentive Award" and "Service Award" shall mean any
21 additional monetary payment provided to the Class Representatives for each of their efforts and risks on
22 behalf of the Settlement Class in this Action.

23 **23. Individual Settlement Amount.** "Individual Settlement Amount" shall mean the amount
24 which is ultimately distributed to each Class Participant, net of any Employee's Taxes and Required
25 Withholdings. The Individual Settlement Amount does not include any portion of the PAGA Payment.

26 **24. Net Settlement Amount.** "Net Settlement Amount" shall mean the Gross Settlement
27 Amount minus Administrative Expenses, Class Attorney Fees and Expenses, 75% of the Private Attorney
28 General Act (PAGA) Payment payable to the California Labor and Workforce Development Agency

1 (“LWDA”), and Plaintiffs’ Incentive Award.

2 **25. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly request
3 exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than
4 the Response Deadline.

5 **26. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor
6 Code sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the
7 Parties have agreed is a reasonable sum to be paid in settlement of the PAGA Released Claims, which is
8 \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
9 and is to be distributed as follows: seventy-five percent (75%) (i.e. \$15,000) to the LWDA and twenty-
10 five percent (25%) (i.e. \$5,000) to the Class Members. Class Counsel shall give timely notice of the Class
11 Settlement to the LWDA under Labor Code section 2699(1)(2).

12 **27. PAGA Period.** “PAGA Period” shall mean the period from January 27, 2021, through the
13 date Plaintiffs file a motion for preliminary approval of this Settlement.

14 **28. PAGA Participants.** “PAGA Participants” shall mean any and all Class
15 Members who worked for Defendants in California during the PAGA Period.

16 **29. Parties.** “Parties” shall mean Plaintiffs and Defendants.

17 **30. Plaintiffs.** “Plaintiffs” shall mean the named Plaintiffs, Rene Garcia Cruz and Roberto M.
18 Perez.

19 **31. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
20 which the Court enters an order preliminarily approving this Stipulation.

21 **32. Released Claims.** “Released Claims” shall mean all claims, debts, liabilities, demands,
22 obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or
23 causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under
24 any legal theory under state law for any alleged failure to pay all business expense reimbursements, wages
25 due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-
26 the clock and rounded time), failure to provide meal and authorize and permit rest periods, short/late meal
27 and rest periods, failure to relieve of all duties during meal and rest periods, failure to provide recovery
28 periods, failure to timely pay wages and final wages and waiting time penalties, failure to furnish accurate

1 wage statements including claims derivative and/or related to these claims, unlawfully collecting or
2 deducting employees' earned wages, failure to indemnify employees for all losses or reimburse all
3 necessary business expenses that were incurred, failure to provide all required notices to employees,
4 failure to provide one day's rest out of seven consecutive work days; failure to provide all required paid
5 sick days; failure to provide COVID-19 supplemental sick leave and pay, liquidated damages, and
6 conversion of wages. This Release shall include claims that were raised, or that reasonably could have
7 been raised based on the facts and allegations in the Complaints or PAGA notice to the LWDA in
8 connection with the Action and Perez Action. This Release shall include all claims and theories arising
9 under the applicable regulations, including but not limited to Labor Code sections 200, 201, 202, 203,
10 204, 210, 218.5, 221, 225.5, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.3, 248.5, 510, 512, 551, 552, 558,
11 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1774, 1775, 2800, 2802,
12 2810.3, 2810.5, 2698, and 2699 and Business & Professions Code 17200 et seq. This release shall apply
13 to all claims arising at any point during the Class Period, and the Release will become effective as of the
14 Effective Date.

15 It is understood and agreed that this Stipulation will not release any person, party or entity from
16 claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any
17 nature, nor does it release any claims, actions, or causes of action which may be possessed by Settlement
18 Class Members under state or federal discrimination statutes, including, without limitation, the Cal. Fair
19 Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act,
20 the Cal. Civil Code §51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42
21 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the
22 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; and all of their
23 implementing regulations and interpretive guidelines.

24 The Parties hereto, including the Class Participants, also stipulate and agree that the consideration
25 paid to the Class Participants pursuant to this Settlement Agreement fully compensates Class Participants
26 for all wages and penalties due to them in connection with the Released Claims, along with all liability
27 for alleged wage statement or pay period violations and any related penalties, including civil penalties
28 under PAGA related to any of the claims asserted by Plaintiffs in the Action (the “**PAGA Released**

1 **Claims**”). Accordingly, Defendants cannot be held liable henceforth for any penalties pursuant to PAGA
2 relating to the Released Claims, and the Parties hereto, and this action will have preclusive effect against
3 any Class Participants bringing individual or representative PAGA claims against Defendants. In addition,
4 the Parties, including the Class Participants, further stipulate and agree that even if any Class Participant
5 is determined to be an “aggrieved employee” for purposes of PAGA as it relates to the Released Claims,
6 said Class Participant waives any potential right to any individual relief or penalty prescribed by PAGA
7 relating to the Released Claims.

8 **33. Released Parties.** “Released Parties” shall mean Defendants, Kirschenmann Farm, Inc.,
9 and each of their past, present and/or future, direct and/or indirect, officers, directors, members,
10 managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders,
11 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns,
12 and joint venturers, and any individual or entity which could be liable for any of the Released Claims.

13 **34. Response Deadline.** “Response Deadline” shall mean the date forty-five (45) days
14 following the date on which the Settlement Administrator first mails Class Notice to the Settlement Class
15 Members and the last day on which Settlement Class Members may submit a request for exclusion and/or
16 objection to Settlement.

17 **35. Settlement.** “Settlement” shall mean the settlement between the Parties, which is
18 memorialized in this Stipulation and subject to approval by the Court.

19 **36. Settlement Administrator.** “Settlement Administrator” shall mean ILYM Group, Inc.,
20 which the Parties have agreed will be responsible for administration of the Settlement and related matters.

21 **37. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of
22 Class Action, including any attached exhibits.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

24 **1. Plaintiffs’ Claims.** On behalf of the Settlement Class, Plaintiffs have alleged the
25 following: **(1)** failure to pay minimum wages and for all hours worked; **(2)** failure to pay wages and
26 overtime, including for all hours worked and at the correct overtime and double time rates; **(3)** failure to
27 provide compliant meal periods and/or pay missed meal period premiums; **(4)** failure to provide compliant
28 recovery periods and/or pay missed recovery period premiums; **(5)** failure to provide all required paid sick

1 pay and COVID-19 supplemental sick leave; (6) improper deductions from wages earned; (7) failure to
2 provide one day's rest out of seven; (8) failure to provide compliant rest periods and/or pay missed rest
3 break premiums; (9) failure to provide complete and accurate wage statements; (10) failure to pay all
4 wages due to former employees upon termination of employment; (11) failure to pay timely wages during
5 employment; (12) unfair business practices based on the foregoing; and (13) PAGA penalties based on
6 the foregoing.

7 **2. Discovery, Investigation, Research, and Mediation.** Class Counsel has conducted
8 significant informal discovery during the prosecution of the Action. This discovery, investigation, and
9 prosecution has included, among other things, (a) conferences with Plaintiff; (b) inspection and analysis
10 of documents and other information produced by Plaintiffs and Defendants; (c) analysis of employment
11 data from all Class Members; (d) an analysis of the legal positions taken by Defendants; (d) investigation
12 into the viability of class treatment of the claims asserted in the Action; (e) analysis of potential class-
13 wide damages, including information sufficient to understand Defendants' potential defenses to Plaintiffs'
14 claims; (f) research of the applicable law with respect to the claims asserted in the Complaint and the
15 potential defenses thereto; and (g) assembling and analyzing of data for calculating damages. Defendants
16 produced policy documents, along with sample wage statements and timekeeping records for Plaintiffs.

17 Plaintiffs' counsel and the Class Representatives have vigorously prosecuted this case, and
18 Defendants have vigorously contested it. The Parties have engaged in sufficient investigation and
19 discovery to assess the relative merits of the claims of the Class Representatives and of Defendants'
20 defenses to them. On January 10, 2023, the Parties attended a full-day mediation with experienced
21 employment law mediator Judge Howard Broadman (Ret.), which culminated in a settlement in principal,
22 the terms of which are elaborated in this Agreement.

23 **3. Allegations of the Class Representative and Benefits of Class Settlement.** The
24 document and data exchange in this matter, as well as discussions between counsel, have been adequate
25 to give the Class Representatives and Class Counsel a sound understanding of the merits of their positions
26 and to evaluate the value of the claims of the Settlement Class. The informal discovery conducted in this
27 Action and the information exchanged by the Parties through pre-mediation discussions are sufficient to
28 reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and

1 equitable basis.

2 Plaintiffs and Class Counsel believe that the claims, causes of action, allegations and contentions
3 asserted in the Action have merit. However, Plaintiffs and Class Counsel recognize and acknowledge the
4 expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendants
5 through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the
6 litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and
7 delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as
8 well as trying the claims of the class. Class Counsel is mindful of the potential problems of proof under,
9 and possible defenses to, the claims alleged in the Action.

10 Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits
11 upon Plaintiffs and the Settlement Class Members and that an independent review of this Stipulation by
12 the Court in the approval process will confirm this conclusion. Based on their own independent
13 investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation
14 is in the best interests of Plaintiffs and the Settlement Class Members.

15 **4. Defendants' Denials of Wrongdoing and Liability.** Defendants have denied and
16 continue to deny each and all allegations, claims, and contentions alleged by Plaintiffs in the Action.
17 Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them
18 arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendants contend
19 that they complied with California and federal wage and hour laws and have dealt legally and fairly with
20 Plaintiffs and Settlement Class Members. Defendants further deny that, for any purpose other than settling
21 this Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendants
22 have concluded that further proceedings in the Action would be protracted and expensive and that it is
23 desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set
24 forth in this Stipulation in order to dispose of burdensome and protracted litigation, to permit the operation
25 of Defendants' respective businesses without further expensive litigation and the distraction and diversion
26 of their personnel with respect to matters at issue in the Action. Defendants have also taken into account
27 the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
28 Defendants have, therefore, determined that it is desirable and beneficial to it that the Action be settled in

the manner and upon the terms and conditions set forth in this Stipulation.

5. Intent of the Class Settlement. The Class Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of Released Parties from liability for any and all of the Released Claims; and (4) discharge of Defendants from liability for any and all claims arising out of the Action.

III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

1. The Settlement Class. For the purposes of this Stipulation and the Class Settlement of this Action only, the Parties stipulate to conditional class certification of the Settlement Class. Defendants counsel believes this conditional certification is appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns. The certification of the Settlement Class for settlement purposes only shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including without limitation, that certification of a class for trial purposes is or would be warranted, appropriate or proper; or that Plaintiffs could establish any of the requisite elements for class treatment of any of the claims in the Action. In the event that the Agreement is not finally approved by the Court, a Final Effective Date is not achieved, or the settlement is rejected, terminated or otherwise rendered null and void as set forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this Action or in any other action which have been, are or can be, satisfied. Further, if the Agreement does not reach a Final Effective Date, Plaintiffs agree that they will not argue, claim, reference or otherwise raise any preliminary approval of the Settlement Class in connection with any later proceeding before the Court

2. Appointment of Class Counsel. For purposes of this Stipulation and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class and the effectuation of the Class Settlement pursuant to this Stipulation.

1 **IV. CLASS SETTLEMENT CONSIDERATION**

2 **1. Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement
3 Amount of \$275,000.00. There shall be no reversion to Defendants. Defendants shall pay the Gross
4 Settlement Amount in full. The Gross Settlement Amount and other actions and forbearances taken by
5 Defendants shall constitute adequate consideration for the Class Settlement and will be made in full and
6 final settlement of: (a) the Released Claims, (b) Class Attorney Fees and Expenses, (c) Administrative
7 Expenses, (d) Incentive Award, (e) PAGA Payment (and any payments to individual PAGA Participants
8 resulting from the PAGA Payment); and (f) any other obligation of Defendants under this Stipulation
9 (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment
10 of wages, which Defendants will pay separately). After the court issues an order preliminarily approving
11 this Class Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class
12 Members, which shall describe the terms of the Class Settlement and procedures to opt out, object or
13 participate in the Class Settlement. The Class Notice will also identify the Settlement Class Member, the
14 number of workweeks worked by each Settlement Class Member ("Workweeks"), as well as the estimated
15 amount of the Individual Settlement Amount the Settlement Class Member can expect to receive once the
16 Class Settlement becomes Effective. Settlement Class Members shall be given the opportunity to
17 challenge their workweeks worked information, and the Class Notice will also explain how to do so.

18 **2. Incentive Award for Plaintiff.** Plaintiffs may petition the Court to approve an Incentive
19 Award in an amount up to \$10,000.00 for each Plaintiff's service and efforts on behalf of the Settlement
20 Class in this Action, including assisting in the investigation and consulting with Class Counsel and
21 providing crucial documents to Class Counsel. Defendants shall not oppose any request by Plaintiffs for
22 an Incentive Award in such an amount. Any Incentive Award approved by the Court shall be paid to
23 Plaintiffs from the Gross Settlement Amount and shall be in addition to any distribution to which he may
24 otherwise be entitled as a Class Participant. The Incentive Award shall not be considered wages, and the
25 Settlement Administrator shall issue each Plaintiff an IRS Form 1099 reflecting such payment. Plaintiffs
26 shall be responsible for the payment of any and all taxes with respect to each of their Incentive Award and
27 shall each hold Defendants harmless from any and all liability with regard thereto.

1 **3. Payment to Class Participants.** Each Class Participant shall be eligible to receive
2 payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on
3 the *pro rata* number of weeks worked by the Settlement Class Members during the Class Period as a
4 proportion of all weeks worked by all Settlement Class Members. The Individual Settlement Amount for
5 each Settlement Class Member shall be calculated in accordance with section VII, paragraph 2. Each Class
6 Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
7 Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendants
8 harmless from any and all liability with regard thereto.

9 **4. Payment to PAGA Participants.** Each PAGA Participant shall be entitled to receive a
10 portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that
11 the Parties have agreed as a reasonable sum to be paid in settlement of the PAGA Released Claims
12 included in the Action, which is \$20,000.00. The PAGA Payment must be approved by the Court pursuant
13 to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e.,
14 \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.
15 The portion of the PAGA Payment allocated to PAGA Participants shall be distributed to the PAGA
16 Participants based on a pro rata number of weeks worked by each particular PAGA Participant during the
17 PAGA Period as a proportion of all pay periods worked by all PAGA Participants.

18 **5. Tax Treatment and Payment.** For the purpose of calculating Employee's Taxes and
19 Required Withholding for the Individual Settlement Amounts for Class Participants (including any
20 payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 20% of
21 each Individual Settlement Amount shall constitute payment in the form of wages (and each Class
22 Participant will be issued an IRS Form W-2 for such payment to him or her), and 80% of each Individual
23 Settlement Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS
24 Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall
25 calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of
26 Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted
27 from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Sum and final
28 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage

1 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendants to
2 separately fund these tax obligations/withholdings. The Parties understand that Plaintiffs and the Class
3 Participants who receive any payment pursuant to this Stipulation shall be solely responsible for any and
4 all other individual tax obligations associated with this Class Settlement.

5 With respect to the PAGA Payment and any payments made to individual PAGA Participants, all
6 such payments shall be treated as payments owing for penalties and interest thereon and shall not be
7 considered wages. The Settlement Administrator shall issue to PAGA Participants an IRS Form 1099
8 reflecting such payment. PAGA Participants shall be solely responsible for the payment of all taxes with
9 respect to any individual PAGA payments made to them.

10 **6. No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts
11 paid under the Class Settlement will modify any previously credited hours, days, or weeks of service under
12 any employee benefit plan, policy or bonus program sponsored by Defendants. Such amounts will not
13 form the basis for additional contributions to, benefits under, or any other monetary entitlement under
14 Defendants' sponsored benefit plans, policies or bonus programs. The payments made under the terms of
15 this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,
16 earnings, wages, or any other form of compensation for the purposes of any of Defendants' benefit plan,
17 policy or bonus program. Defendants retain the right to modify the language of their benefits plans,
18 policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
19 Stipulation are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term
20 as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
21 accrual, or any other purpose, and that additional contributions or benefits are not required by this
22 Stipulation. Defendants do not consider the Class Settlement payments "compensation" for purposes of
23 determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or
24 any other plan sponsored by Defendants.

25 **7. Class Attorney Fees and Expenses.** As part of the motion for final approval of the Class
26 Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and Expenses
27 with the fee portion not to exceed one-third of the Gross Settlement Amount (*i.e.*, \$91,666.67) and the
28 award of costs and expenses of up to an additional \$20,000.00. Fees and costs will be allocated amongst

Class Counsel in accordance with their Joint Prosecution Agreement, which has been approved and signed by the Plaintiffs. Defendants agree not to object to any such fee, cost or expense application in those amounts. As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this Section. Any Class Attorney Fees and Expenses awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net Settlement Amount and shall not constitute payment to any Settlement Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees or Expenses or the Court's award of Class Attorney Fees or Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded.

The Class Attorney Fees and Expenses approved by the Court shall encompass, *inter alia*: (a) all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date and dismissal of the Action, with prejudice.

V. CLAIMS ADMINISTRATION COSTS AND EXPENSES

1. The Settlement Administrator's Costs and Expenses. All costs and expenses due to ILYM Group as the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the PAGA Participants, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed \$10,000.00.

2. Payment by Defendant. Within 15 calendar days after the Effective Date, Defendants shall deposit the Gross Settlement Amount of \$275,000.00 with the Settlement Administrator to pay: (1) the Class Attorney Fees and Expenses, as approved by the Court; (2) the Incentive Award, as approved by the Court, (3) the Administrative Expenses, not to exceed \$10,000; (4) the \$20,000 PAGA Penalties, 75 percent of which is to be paid to the LWDA pursuant to Cal. Labor Code 2699(i); (5) the aggregate of

all Individual Settlement Amounts of Class Participants; and (6) the Employer's Taxes and Required Withholding associated with the Individual Settlement Amounts. Defendants shall separately pay their share of Employer Taxes to the Settlement Administrator prior to the distribution of the Individual Settlement Amounts to Class Participants. In no event shall Defendants be obligated to pay or deposit with the Settlement Administrator more than \$275,000.00 plus Employer Taxes, except where the Escalator Provision is triggered and no adjustment to the beginning or end dates of the Release Period are made.

VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS

1. The Settlement Administrator. ILYM Group as the Settlement Administrator will be responsible for mailing the Class Notice (**Exhibit 1**) to Settlement Class Members, posting notice of entry of final order and judgment certifying the Class and approving this Stipulation, handling inquiries from Settlement Class Members concerning the Class Notice, determination of Individual Settlement Amounts, determining individual payments to PAGA Participants, maintaining the settlement funds in an appropriate interest bearing account, preparing, administering and distributing Individual Settlement Amounts to Class Participants, preparing, administering, and distributing individual payments to PAGA Participants, distributing the portion of the PAGA Payment payable to the LWDA, issuing a final report and performing such other duties as the Parties may direct. Additionally, the Settlement Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel with summary information updating them as to the number of validated and timely objections and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-Outs and objections no later than seven days after their receipt. The Settlement Administrator will inform Defendants within seven days of identifying any Class Notices that have been deemed undeliverable. The Settlement Administrator will provide a Declaration in connection with Final Approval providing the Court and Class Counsel with information regarding the mailing of the Class Notice and the conduct and results of the Settlement administration, which Class Counsel will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing. No later than seven days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with

summary information regarding (a) the total amount of final Individual Settlement Amounts of each Class Participant, without any identifying information, (b) the number of Class Participants to receive such payments, and (c) the final number of Opt-Outs and objections.

Administrative Expenses are not anticipated to exceed \$10,000.00. Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of their services and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts.

2. Notice to Settlement Class Members. Notice shall be provided to Settlement Class Members in the following manner: Within 14 days after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with a list of Class Members containing names, social security numbers, dates of employment or number of workweeks during the Class Period and PAGA Period, last-known addresses and phone numbers (the “Database”). The Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel shall not receive a copy of this list.

Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall determine the number of workweeks for each Settlement Class Member, populate the data for each Class Member accordingly, and send each Settlement Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily understood statement alerting the Class Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement Class Member is releasing and waiving all Released Claims against the Released Parties. At the same time the Class Notices are mailed, the Settlement Administrator will post a copy of the following on their settlement website for at least 60 days: the court’s order granting preliminary approval of the settlement and certifying the class for settlement purposes; the Class Notice; and this Stipulation.

The Class Notice will inform Settlement Class Members of his/her estimated share of the settlement and the number of workweeks he/she worked during the Class Period and PAGA Period, as applicable. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period or PAGA Period than Defendants’ records show by submitting information to the Settlement Administrator no later than 45 days after being mailed the Class Notice by the Settlement Administrator,

1 which is the defined Response Deadline.

2 **3. Opt-Out Procedure.** Settlement Class Members who do not timely Opt-Out of the Class
3 Settlement will be deemed to participate in the Class Settlement and shall become a Class Participant
4 without having to submit a claim form or take any other action. In order to Opt-Out of the Class Settlement,
5 the Settlement Class Member must submit a letter or postcard to the Settlement Administrator by the
6 Response Deadline. The Opt-Out request must state the Settlement Class Member's name, address,
7 telephone number, and signature. The Opt-Out request should state something to the effect of:

8 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CRUZ ET
9 AL. V. ALLIED POTATO, INC., ET AL. LAWSUIT. I UNDERSTAND THAT IF I ASK
10 TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
11 MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT
12 BE RELEASING ANY CLAIMS I MIGHT HAVE."

13 Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. In the event that,
14 prior to the Response Deadline, any Class Notice mailed to a Settlement Class Member is returned as
15 having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip
16 trace search and seek an address correction for such Settlement Class Member(s), and a second Class
17 Notice will be sent to any new or different address obtained. Such Settlement Class Member(s) shall have
18 an additional 14 days in which to Opt-Out.

19 It will be presumed that, if an envelope containing the Class Notice has not been returned within
20 28 days of the mailing, the Settlement Class Member received the Class Notice. At least 30 days prior to
21 the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and
22 Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of
23 the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of
24 Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members
25 to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and
26 objectors. Class Counsel shall file this declaration with the Court.

27 If the Settlement Administrator determines that an Opt-Out request returned by a Settlement Class
28 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a

1 deficiency letter to that Settlement Class Member identifying the problem. If a Settlement Class Member
2 submits both a dispute and an Opt-Out request, the Settlement Administrator shall make reasonable
3 attempts to clarify as if the Opt-Out request were deficient. If the Class Member fails to cure the
4 deficiency, the Opt-Out request shall be disregarded and the claim will be paid, and the Class Member
5 will become bound by the judgment.

6 Those Settlement Class Members who do not timely Opt-Out will be bound by the Release of
7 Released Claims set forth in Section I, Paragraph 29 of this Stipulation.

8 A request to Opt-Out of the Class Settlement shall *not* serve to exclude the Class Member from
9 being a PAGA Participant. Class Members who Opt-Out shall still be entitled to their share of the PAGA
10 Payment and be deemed to have released the PAGA Released Claims. PAGA Participants shall have no
11 right or ability to opt out of the portion of this Settlement Agreement releasing the PAGA Released Claims.

12 **4. Objections.** The Class Notice shall inform the Settlement Class Members of their right to
13 object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class Settlement
14 must submit a written objection to the Settlement Administrator no later than the Response Deadline and
15 must file with the Court, and serve on all parties a written statement of objection. Only Settlement Class
16 Members who do not opt out of the Settlement may object to the Settlement. The objection must include
17 the case name and number and must set forth, in clear and concise terms, a statement of the reasons why
18 the objector believes that the Court should find that the proposed Class Settlement is not in the best interest
19 of the Settlement Class and the reasons why the Class Settlement should not be approved, including the
20 legal and factual arguments supporting the objection. If an objector also wishes to appear at the Final
21 Approval and Fairness Hearing, in person or through an attorney, he or she *must also* file a notice of
22 intention to appear at the same time as the objection is filed. The Settlement Administrator will promptly
23 serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel.
24 Unless otherwise ordered by the Court, Settlement Class Members shall not be entitled to appear and or
25 object at the Final Approval Hearing unless they have submitted a timely written objection and notice of
26 intention to appear pursuant to this Section. Settlement Class Members who have properly and timely
27 submitted objections may appear at the Final Approval Hearing, either in person or through a lawyer
28 retained at their own expense.

1 **5. Notice of Final Judgment.** Within 10 days after the Court has held a Final and Fairness
2 Approval Hearing and entered a final order certifying the Class for settlement purposes only and
3 approving the Class Settlement, the Settlement Administrator will give notice of judgment to Settlement
4 Class Members pursuant to California Rules of Court, rule 3.771(b) by posting a copy of said order and
5 final judgment on its website for the Action at a web address to be included in the Class Notice.

6 **VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

7 **1. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class
8 Members are settled for the Gross Settlement Amount of \$275,000.00, which will be allocated as follows:

- 9 a. The Administrative Expenses, not to exceed \$10,000.00;
- 10 b. The Class Attorney Fees not to exceed \$91,666.67;
- 11 c. The Class Attorney expenses not to exceed \$20,000.00;
- 12 d. The Incentive Award, not to exceed \$10,000.00 per Plaintiff;
- 13 e. PAGA Payment to PAGA Participants of \$5,000; and
- 14 f. PAGA Payment to LWDA of \$15,000.00.

15 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
16 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in
17 Section 1(a-e) prior to sending Notice to the Settlement Class Members. Prior to final distribution, the
18 Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in
19 Section 1 (a-e).

20 **2. Calculation of the Individual Settlement Amounts.** Individual Settlement Amounts to
21 be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net
22 Settlement Amount payable to each Class Participant will be calculated as follows:

23 The Settlement Administrator shall divide the Net Settlement Amount by the total number of
24 workweeks Settlement Class Members were employed during the Class Period, in order to determine the
25 amount each Settlement Class Member is entitled to for each workweek s/he was employed by Defendants
26 (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly Amount by the total
27 number of workweeks that each Settlement Class Member was employed and deduct all Employee’s
28 Taxes and Required Withholding from the portion attributable to wages to arrive at the Individual

Settlement Amount for that Class Member. Defendants will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Settlement Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendants shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiffs and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

3. Calculation of the PAGA Payment for Individual PAGA Participants. Each PAGA Participant shall be entitled to receive a portion of the PAGA Payment. The portion of the PAGA Payment allocated to PAGA Participants shall be distributed to PAGA Participants based on the pro rata number of workweeks worked by each particular PAGA Participant during the PAGA Period as a proportion of all workweeks worked by all PAGA Participants during the PAGA Period. Each PAGA Participant, including the Plaintiffs, shall be responsible for the payment of any taxes with respect to their share of the PAGA Payment and shall hold Defendants harmless from any and all liability with regard thereto.

The PAGA Participants shall be solely responsible for any and all tax obligations associated with their respective shares of the PAGA Payment.

4. Time for Payment of Attorney Fees and Expenses to Class Counsel. The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses approved by the Court to Class Counsel no later than 20 days after the Effective Date.

5. Time for Payment of Incentive Award to Class Representative. The Settlement Administrator shall distribute the Incentive Award approved by the Court to each Plaintiff no later than 20 days after the Effective Date.

1 **6. Time for Payment of PAGA Payment to the LWDA.** The Settlement Administrator
2 shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no
3 later than 20 days after the Effective Date.

4 **7. Time for Payment of Taxes and Required Withholding and Individual Settlement**
5 **Amounts.** The Settlement Administrator shall make every effort to pay the Employee's Taxes and
6 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
7 the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the last-known
8 address no later than 20 days after the Effective Date. If the Settlement Administrator is not able to do so
9 within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide
10 an approximate date by which the Employee's Taxes and Required Withholding shall be paid and the
11 Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator
12 distribute checks to Class Participants until all Individual Settlement Amounts have been considered,
13 calculated, and accounted for, and all of the remaining monetary obligations have been calculated and
14 accounted for. Within 120 days of mailing the Individual Settlement Amounts to Class Participants, the
15 Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of payment.
16 In the event that any Class Participant is deceased, payment shall be made payable to the estate of that
17 Settlement Class Member and delivered to the executor or administrator of that estate, unless the
18 Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101,
19 in which case payment shall be made to the affiant(s) or declarant(s).

20 **8. Non-Cashed Settlement Checks.** Any funds associated with checks that have not been
21 cashed within 120 days, will become void and the Individual Settlement Amount associated with the in-
22 cashed check will be distributed pursuant to Code of Civil Procedure section 384 (a *cy pres* to be selected
23 by Defendants and approved by the Court, such as the Valley's Children's Hospital, Community Action
24 Partnership of Kern, or another mutually agreed-upon beneficiary). For the purposes of determining
25 whether Defendants have met their financial obligation to pay the Individual Settlement Payment,
26 Defendants will be deemed to have fulfilled their obligation upon the mailing of the check to the
27 Settlement Class Member, regardless of whether such Settlement Class member subsequently negotiates
28 the check.

1 **9. Disputes Regarding Settlement Class Member's Workweeks Data or Payment of**
2 **Individual Settlement Share.** Settlement Class Member Workweeks and Weekly Share and
3 corresponding Individual Settlement Amount shall be calculated using the employment and payroll
4 records of Defendants, which presumptively shall be deemed to be full, complete and accurate for
5 purposes of this Settlement. To overcome that presumption, any Settlement Class member objecting to
6 the accuracy of the number of Workweeks, Weekly Share or amount of the Individual Settlement Amount
7 must submit documentary evidence, such as pay stubs or other written employment records, to the
8 Settlement Administrator. Each Settlement Class Member may dispute the number of Workweeks,
9 Weekly Share or estimated Individual Settlement Amount contained on his or her Class Notice
10 ("Workweeks Dispute"). Any such disputes must be mailed or faxed to the Settlement Administrator by
11 the Settlement Class Member, postmarked or fax-stamped on or before the Response Deadline. The
12 Settlement Administrator shall immediately provide copies of all disputes to counsel for Defendants, shall
13 inform Class Counsel of the dispute without disclosing the identity of the Settlement Class Member
14 making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant
15 Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute cannot be
16 resolved, it shall be submitted to the Administrator for its final, non-appealable decision. The Administrator
17 shall use its best efforts to resolve all such disputes prior to the Final Effective Date. However, if a dispute
18 arises or is not resolved until after all of the Settlement Amount has been distributed, the initial calculation
19 shall stand (as Defendants shall be under no obligation to pay *any* amounts in excess of the Settlement
20 Amount under this Agreement).

21 **VIII. NULLIFICATION OF THIS STIPULATION**

22 **1. Non-Approval of the Stipulation.** If (a) the Court should for any reason fail to approve
23 this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a
24 judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment is
25 reversed, modified or declared or rendered void, then the Class Settlement and conditional class
26 certification shall be considered null and void, and neither the Class Settlement, conditional class
27 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all
28 Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class

Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval.

2. **Parties' Rights to Void Class Settlement; Escalator Provision.** If ten percent (10%) or more members of the Settlement Class timely Opt-Out, Defendants shall have the right (but not the obligation) to void this Class Settlement. In the event that the total number of weeks worked in the Class Period exceeds a 15% increase of 7,380 workweeks as of one week before filing the Motion for Preliminary Approval, the Net Settlement Amount shall be increased proportionately for each additional Workweek in excess of 115% of 7,380 during the Class Period (the "Escalator Provision"). Alternatively, in the event that the Escalator Provision is triggered, then Defendants have the option to adjust the beginning and/or end dates of the Release Period so as to have a later start date and/or an earlier end date at the Defendants' discretion in order to limit the amount of covered workweeks to 115% of 7,380.

3. **Invalidation.** Invalidation of any material portion of the Class Settlement shall invalidate the Class Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Class Settlement are to remain in full force and effect.

4. **Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class Settlement and judgment, the judgment shall be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Stipulation until all appeal rights have been exhausted by operation of law.

IX. MOTION FOR COURT APPROVAL

1. **Preliminary Approval.** As soon as practicable after execution of this Stipulation, Class Counsel will submit this Stipulation to the Court along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

2. **Final Approval.** The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiffs shall move the Court for the entry of the final order certifying the Class for settlement purposes only and approving the Class Settlement as being fair, reasonable and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the

Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

X. RELEASES AND WAIVERS

1. Release of Claims by Settlement Class. Upon the Effective Date, each Settlement Class Member who has not submitted a timely Opt-Out request, and Plaintiffs, on their own behalf and as Class Representatives, Plaintiffs and all Persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (Releasing Parties) each releases the Released Parties, and each of them, of and from any and all Released Claims during the Class Period.

It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims.

Each of the Releasing Parties, including the each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

2. Release of Claims by Plaintiff. Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity, shall and does hereby forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints,

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

26 Each Plaintiff specifically acknowledge that he is aware of and familiar with the provisions of
27 California Civil Code Section 1542, which provides as follows:

28 **A general release does not extend to claims which the creditor or**

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

Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits he may have under Section 1542 as well as any other statutes or common law principles of a similar effect. Each Plaintiff may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, each Plaintiff shall and hereby does fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

Plaintiff Rene Garcia Cruz's Initials: _____

Plaintiff Roberto M. Perez's Initials: _____

3. Circular 230 Disclaimer. Each party to this Agreement (for purposes of this section, the "Acknowledging Party"; and each party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon her or its own independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

1 **XI. DUTIES OF THE PARTIES**

2 **1. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
3 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited
4 to, execution of such other documents and the taking of such other actions as may reasonably be necessary
5 to fulfill the terms of this Class Settlement. The Parties shall use their best efforts, including all efforts
6 contemplated by this Stipulation and any other efforts that may become necessary by court order or
7 otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after
8 execution of this Stipulation, Class Counsel, with the cooperation of Defendants and Defense Counsel,
9 shall take all necessary and reasonable steps to secure the Court's final approval of this Stipulation.

10 **2. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of
11 the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use their
12 best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral
13 attack.

14 **3. Duties Prior to Court Approval.** Class Counsel shall promptly submit this Stipulation
15 to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and
16 reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for
17 the entry of a preliminary order, scheduling a hearing on the question of whether the proposed Class
18 Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members,
19 approving as to form and content the proposed Class Notice attached hereto as **Exhibit 1**, and directing
20 the mailing of the Class Notice to Settlement Class Members. While Defendants can reserve their right to
21 object to facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-
22 opposition to the granting of the motion for preliminary approval or join in the motion.

23 **XII. MISCELLANEOUS PROVISIONS**

24 **1. Voiding the Stipulation.** Pending Court approval and other than as provided in Section
25 VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation
26 shall, at the option of either Plaintiffs or Defendants, be ineffective, void, and of no further force and
27 effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any
28 other court or forum. If either Party decides to void the Settlement, then the Settlement and conditional

1 class certification shall be considered void, and neither the Settlement Agreement, conditional class
2 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the
3 Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered
4 into nor filed with the Court. Should any Party choose to void the Class Settlement under this paragraph,
5 such Party shall be responsible for all Settlement Administrator fees and costs actually incurred.

6 **2. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
7 matters expressly represented herein, the facts in relation to the dispute and all claims released by the
8 terms of this Stipulation may turn out to be other than or different from the facts now known by each party
9 and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly
10 assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation
11 shall be in all respects effective and binding despite such difference.

12 **3. No Prior Assignments.** The Parties represent, covenant, and warrant that they have not
13 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
14 any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein
15 released and discharged except as set forth herein.

16 **4. Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an
17 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or
18 any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
19 toward the each other or any other person. Each of the Parties has entered into this Stipulation with the
20 intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and
21 contingencies. Nothing herein shall constitute any admission by Defendants of wrongdoing or liability, or
22 of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by either
23 Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid
24 wages or violations under California and/or federal law. Nothing herein shall constitute an admission by
25 either Defendant that the Action was properly brought as a class or representative action other than for
26 settlement purposes. To the contrary, Defendants have denied and continue to deny each and every
27 material factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation
28 and execution of this Stipulation, and all acts performed or documents executed pursuant to or in

furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

5. Non-Evidentiary Use. Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any individual who requested to be excluded from the Class), Defendants, or its, her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the Agreement's purpose and terms. This Agreement may be used by Defendants and the Released Parties to prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

6. Media or Press. Plaintiffs and Defendants, and their respective counsel, recognize, and accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Class Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media or press.

7. Non-Retaliation. Defendants understand and acknowledge that they each have a legal obligation not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or elects to Opt-Out of the Class Settlement. Defendants will refer any inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage Settlement Class Members who are employees, directly or indirectly, from making claims, opting out or objecting to the Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any Settlement Class Members, directly or indirectly, to opt out of the Class Settlement.

8. Construction. The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Stipulation. If any of the dates in the Stipulation fall

on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

9. Governing Law. This Stipulation is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

10. Notices. Except for Settlement Class Member notices required to be made by the Settlement Administrator, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

11. Captions and Interpretations. Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

12. Modification. This Stipulation may not be changed, altered, or modified, except in writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

13. Integration Clause. This Stipulation contains the entire agreement between the Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, 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 hereby superseded. No rights under this Stipulation may be waived except in writing as provided above.

14. Successors and Assigns. This Stipulation shall be binding upon and inure to the benefit of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

15. Corporate Signatories. Any person executing this Stipulation or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,

for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Stipulation or any such related document.

16. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

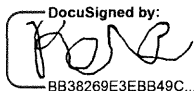
17. Attorney Fees, Costs and Expenses. Except as otherwise specifically provided for herein, each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

18. Action to Enforce Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

Plaintiff Rene Garcia Cruz

Defendant Allied Potato, Inc.

DocuSigned by:


Dated: 6/5/2023

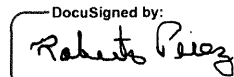
Printed: _____

Title: _____

Dated: _____

Plaintiff Roberto M. Perez

Defendant Arriola Farm Labor, Inc.

DocuSigned by:


Dated: 6/6/2023

Printed: _____

Title: _____

Dated: _____

for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Stipulation or any such related document.

16. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

17. Attorney Fees, Costs and Expenses. Except as otherwise specifically provided for herein, each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

18. Action to Enforce Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

Plaintiff Rene Garcia Cruz

Dated: 6-2-2023

Defendant Allied Potato, Inc.

Printed: Jason Davenport, as
Title: President
Dated: 6-1-2023

Plaintiff Roberto M. Perez

Dated: _____

Defendant Arriola Farm Labor, Inc.

Printed: _____
Title: _____
Dated: _____

APPROVED AS TO FORM:

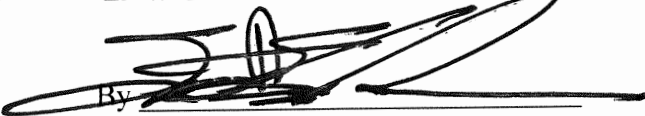
DATED: June 06, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff, RENE GARCIA
CRUZ and all others similarly situated

DATED: 6/6, 2023

LAW OFFICES OF SCOTT WHEELER

By 
Scott E. Wheeler
Attorneys for Plaintiff, ROBERTO M.
PEREZ and all others similarly situated

DATED: June 15, 2023

KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIB & KIMBALL, LLP

By 
Vanessa Franco Chavez
Attorneys for Defendant ALLIED POTATO, INC.

DATED: _____, 2023

LITTLER MENDELSON, P.C.

By _____
Gerardo Hernandez
Attorneys for Defendant ARRIOLA FARM LABOR INC.

for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Stipulation or any such related document.

16. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

17. Attorney Fees, Costs and Expenses. Except as otherwise specifically provided for herein, each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

18. Action to Enforce Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

Plaintiff Rene Garcia Cruz

Defendant Allied Potato, Inc.

Dated: _____

Printed: _____

Title: _____

Dated: _____

Plaintiff Roberto M. Perez

Defendant Arriola Farm Labor, Inc.

Dated: _____


Printed: Enrique Arriola

Title: owner

Dated: 06/14/23

1 **APPROVED AS TO FORM:**

2
3 DATED: _____, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

4
5 By _____

David Yeremian

Alvin B. Lindsay

Attorneys for Plaintiff, RENE GARCIA

CRUZ and all others similarly situated

6
7
8
9 DATED: _____, 2023

LAW OFFICES OF SCOTT WHEELER

10
11 By _____

Scott E. Wheeler

Attorneys for Plaintiff, ROBERTO M.

PEREZ and all others similarly situated

12
13
14
15 DATED: _____, 2023

KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIEB & KIMBALL, LLP

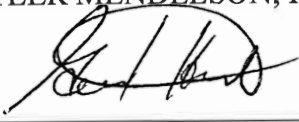
16
17 By _____

Vanessa Franco Chavez

Attorneys for Defendant ALLIED POTATO, INC.

18
19
20
21 DATED: June 14, 2023

LITTLER MENDELSON, P.C.

22
23 By  _____

Gerardo Hernandez

Attorneys for Defendant ARRIOLA FARM LABOR INC.

EXHIBIT 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

You may be eligible to receive a settlement payment. Please read this notice carefully.

A proposed class action settlement agreement (the “Settlement”) has been reached between Plaintiffs Rene Garcia Cruz (“Cruz”) and Roberto M. Perez (“Perez”) (collectively, Cruz and Perez are referred to as the “Plaintiffs”), individually, on behalf of a group of prospective class members defined below, and as private attorney general on behalf of the State of California; and Defendants Allied Potato, Inc. (“Allied”) and Arriola Farm Labor Inc. (“Arriola”) (collectively, Allied and Arriola are referred to as “Defendants”). The Settlement resolves disputed claims against Defendants arising out of its compensation practices during the period from October 1, 2020, through **DATE** (the “Class Period”) as applied to all current and former nonexempt employees who were employed by Allied as non-exempt, hourly agricultural workers and in similar and related positions in California during the Class Period; and all current and former non-exempt employees who were employed by Arriola and assigned to work for Allied as non-exempt, hourly agricultural workers and in similar and related positions in California during the Class Period (“Class Members”).

The Court has granted preliminary approval of the Settlement and ordered this notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above) and received this notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described below.

1. DESCRIPTION OF THE LAWSUIT

On January 27, 2022, Cruz, individually and in his representative capacity on behalf of the Class Members, and as a private attorney general on behalf of the State of California, filed a complaint against Defendants in Kern County Superior Court in the matter of ***Rene Garcia Cruz v. Allied Potato, Inc., et al., Case No. BCV-22-100238*** (the “Cruz Action”). The Cruz Action sought recovery for Defendants’ alleged: (1) failure to pay minimum wage for all hours worked; (2) failure to pay proper overtime wages; (3) failure to provide compliant meal periods and pay missed meal period premiums; (4) failure to provide compliant rest periods and pay missed rest break premiums; (5) failure to maintain accurate employment records; (6) failure to pay all wages due and owing at separation; (7) failure to pay timely wages during employment; (8) waiting time penalties; (9) failure to reimburse expenses; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law; and (11) statutory penalties based on the foregoing pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). On April 26, 2022, Perez, individually and in his representative capacity on behalf of the Class Members, and as a private attorney general on behalf of the State of California, filed a complaint against Allied in Kern County Superior Court in the matter of ***Roberto M. Perez v. Allied Potato, Inc., Case No. BCV-22-100990*** (the “Perez Action”), with substantially the same claims as Cruz. On **DATE**, the Cruz Action and the Perez Action were consolidated under Case No. BCV-22-100990 (the “Action”).

Defendants deny all liability, deny all allegations in the Action, and have raised various defenses to the claims. Defendants assert that they fully complied with all applicable wage and hour laws and contend that civil penalties under PAGA are not warranted. Defendants also deny that the Action is suitable for class certification. Defendants have entered into the Settlement solely for purposes of resolving this dispute to avoid costly, disruptive, and time-consuming litigation and do not admit to any wrongdoing or liability.

The Court has not ruled on the merits in the Action. By approving the Settlement and issuing this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or whether the claims are suitable for class certification. To avoid the additional expense, inconvenience, and risk of continued litigation, however, Plaintiffs and Defendants (the “Parties”) have concluded that it is in their respective best interests and the interests of the Class Members to settle the Action on the terms summarized in this notice. The Settlement was reached after Defendants provided extensive information and documents to Plaintiffs’ counsel, and after lengthy arms-length non-collusive negotiations between the Parties, including mediation with an experienced and well-respected mediator.

Plaintiffs and respective counsel—David Yeremian and Alvin B. Lindsay of David Yeremian & Associates, Inc., and Scott Ernest Wheeler of Law Offices of Scott Ernest Wheeler (together, “Class Counsel”)—support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation. Plaintiffs and Class Counsel believe that the settlement described in this notice is fair, adequate, reasonable, and in the best interests of Plaintiffs and the Class Members.

On **DATE**, the Court preliminarily approved the Settlement and conditionally certified the settlement class. This notice is being sent to you because Defendants’ records indicate that you worked for Defendants during the Class Period and that you meet the definition required to be treated as a Class Member.

2. TERMS OF THE SETTLEMENT

Under the Settlement, the following settlement class will be certified under California law: all current and former nonexempt employees who were employed by Allied Potato, Inc. as non-exempt, hourly agricultural workers and in similar and related positions in California during the Class Period; and all current and former non-exempt employees who were employed by Arriola Farm Labor, Inc. and assigned to work for Allied Potato, Inc. as non-exempt, hourly agricultural workers and in similar and related positions in California during the Class Period. The “Class Period” is defined as the period from October 1, 2020, through **DATE**.

Defendants have agreed to pay \$275,000.00 (the “Gross Settlement Amount”) to resolve the claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

1. **Settlement Administration Costs.** The Court has approved **ILYM Group, Inc.** to act as the “Settlement Administrator,” who is sending this notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$10,000 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.
2. **Attorneys’ Fees and Expenses.** Class Counsel have been prosecuting the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the Parties have aggressively litigated many aspects of the case including investigation, settlement efforts, and a full-day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of one-third of the Gross Settlement Amount (i.e., \$91,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in the Action. Class Counsel also will ask for reimbursement of up to \$20,000.00 for the costs Class Counsel incurred in connection with the Action.
3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide a service payment to Cruz and Perez in the amount of \$10,000.00 to each Plaintiff to compensate them for their efforts on behalf of the Class Members in the Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Plaintiffs also may receive a share of the Settlement as a Class Member.
4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who come within the definition of an “aggrieved employee” for the purposes of the Settlement (i.e., all individuals who are or were Class Members in California during the PAGA Period). The “PAGA Period” is defined for these purposes to mean the period from January 27, 2021, through **DATE**.

After deducting the amounts above, the balance of the settlement amount will form the “Net Settlement Amount” for distribution to the Class Members on a pro rata basis. In exchange for their share of the settlement amount, all participating Class Members will be deemed to have released Defendants from liability as described in this Notice.

3. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS

Each eligible Class Member who does not request exclusion from the Settlement will be deemed a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed pro rata based on the proportional estimated number of weeks worked by each Class Member during the Class Period as a proportion of all estimated weeks worked by all Class Members (the “Individual Settlement Amount”). If any Class Member requests exclusion from the Settlement, his or her share will be distributed to the remaining Class Participants.

Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

Customary deductions will be taken from the Individual Settlement Amount payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form 1099 as income. Class Participants are responsible for the proper income tax treatment of their Individual Settlement Amount. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

The workweeks you worked for Defendants during the Class Period will be calculated based on Defendants’ records.

4. THE RELEASE OF CLAIMS

If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind all Class Participants. The Class Participants will then be barred from bringing any “Released Claims” against the “Released Parties” as those terms are defined below.

The “Released Parties” are Defendants Allied and Arriola, Kirschenmann Farms, Inc., and each of their past, present and/or future direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and any individual or entity which could be liable for any of the Released Claims as defined below.

The “Released Claims” are those claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under state law for any alleged failure to pay all business expense reimbursements, wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock and rounded time), failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to provide recovery periods, failure to timely pay wages and final wages and waiting time penalties, failure to furnish accurate wage statements including claims derivative and/or related to these claims, unlawfully collecting or deducting employees’ earned wages, failure to indemnify employees for all losses or reimburse all necessary business expenses that were incurred, failure to provide all required notices to employees, failure to provide one day’s rest out of seven consecutive work days; failure to provide all required paid sick days; failure to provide COVID-19 supplemental sick leave and pay, liquidated damages, and conversion of wages. This Release shall include claims that were raised, or that reasonably could have been raised based on the facts and allegations in the Complaints or PAGA notice to the LWDA in connection with the Action and Perez Action. This Release shall include all claims and theories arising under the applicable regulations, including but not limited to Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 221, 225.5, 226, 226.3, 226.7, 246, 248.1, 248.2, 248.3, 248.5, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1774, 1775, 2800, 2802, 2810.3, 2810.5, 2698, and 2699 and Business & Professions Code 17200 et seq. This release shall apply to all claims arising at any point during the Class Period.

The Settlement does *not* release Defendants or any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900– 12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

Class Members who do not request exclusion from the Settlement will be deemed to have acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Settlement payments. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

5. YOUR ESTIMATED SETTLEMENT SHARE

According to Defendants’ records, you worked approximately <<workweeks>> workweeks for Defendants during the Class Period, through DATE. Accordingly, your share of the Settlement is currently estimated to be \$<<Est.SetAmt>>, which is an estimate of your allocated portion of the Individual Settlement Amount. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement. The Net Settlement amount to be distributed to all Class Members who do not opt-out of the settlement is currently estimated to be \$_____.

6. YOUR OPTIONS

6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT AS A MEMBER OF THE SETTLEMENT CLASS

If you do nothing, you will be automatically included as a Class Participant in the Settlement and will receive a settlement payment. You do *not* have to take any further action to receive your settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment.

The estimated amount of your settlement payment if you do nothing is \$<<Est.SetAmt>>.

6.2. DISPUTE THE AMOUNT OF YOUR ESTIMATED SETTLEMENT SHARE AND REMAIN A MEMBER OF THE SETTLEMENT CLASS

If you believe the information provided above as to the number of your workweeks is incorrect and if you wish to dispute your estimated settlement share, please contact the Settlement Administrator no later than DATE, at:

ILYM Group, Inc. claims@ilymgroup.com
(888) 250-6810
P.O. Box 2031
Tustin, California 92781

If you dispute the number of workweeks you worked for Defendants and/or your estimated settlement share, the information Defendants provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than DATE.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should be credited. The Settlement Administrator will make the final decision as to how many weeks are credited and report the outcome to the Class Participant. If you are unsatisfied with the decision,

you may submit an objection, which is explained below.

Settlement checks will be mailed to all Class Participants after the Court grants final approval of the Settlement and judgment is entered.

6.3. OBJECT TO THE SETTLEMENT AND REMAIN A MEMBER OF THE SETTLEMENT CLASS

You have the right to object to the terms of the Settlement if you do not request exclusion. If, however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator and the Court a written objection stating your name, address, telephone number, dates of employment with Defendant(s), the case name and number, each specific reason in support of your objection, and any legal support for each objection. Objections in writing must be mailed to the Settlement Administrator—**ILYM Group, Inc., P.O. Box 2031, Tustin, California 92781** by no later than **DATE** to be considered. **Objections that do not include all required information, or that are not timely submitted, might not be considered by the court.**

If you choose to object to the Settlement and submit a timely objection, you may also appear to speak at the final approval and fairness hearing scheduled for **DATE**, at 8:30 a.m. in Department **17** of the Superior Court of California for the County of Kern, located at **1415 Truxtun Ave, Bakersfield, CA 93301**. You have the right to appear at the hearing either in person or through your own attorney retained at your expense.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

6.4. REQUEST EXCLUSION FROM THE SETTLEMENT CLASS AND THE SETTLEMENT

If you do **not** wish to take part in the class action portion of the Settlement (the “Class Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement Administrator a letter or card postmarked no later than **DATE**, that specifically requests exclusion from the Class Settlement in this case. The request for exclusion must include your name, address, telephone number, and signature, and it should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CRUZ ET AL. V. ALLIED POTATO, INC., ET AL. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

Send the request for exclusion directly to the Settlement Administrator at the following address **by no later than DATE:**

**ILYM Group, Inc.
P.O. Box 2031
Tustin, California 92781**

Any person who submits a timely request for exclusion from the Class Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and shall receive no benefits from the class action portion of the Settlement. If you want confirmation of receipt of your request for exclusion, please send it by United States certified mail, return receipt requested, or contact the Settlement Administrator.

Importantly, Class Members who timely and validly request exclusion from the Class Settlement will *not* be excluded from their share of the PAGA Payment or from being bound by the PAGA Settlement. Requesting exclusion from the Class Settlement applies solely to the Class Members' entitlement to the class action portion of the Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class Settlement you will still be entitled to your share, if any, of the PAGA Payment and will be bound by the PAGA Settlement.

7. HOW TO UPDATE OR CHANGE YOUR ADDRESS

If you move after receiving this notice or if it was misaddressed, please contact the Settlement Administrator, **ILYM Group, Inc.**, at **(888) 250-6810** or by email at **claims@ilymgroup.com**, as soon as possible. **This is important to ensure that future notices and the Settlement payment reach you.**

8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED

Within ten (10) days after the Court has held a final and fairness approval hearing and entered a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a copy of that order and final judgment on its website at the following website address:

[INSERT WEBSITE ADDRESS]

9. IF THE SETTLEMENT IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the Settlement may be voided, in which case no money will be paid, and the case will return to litigation. If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was filed.

10. IF YOU ARE STILL EMPLOYED BY EITHER DEFENDANT, THIS SETTLEMENT WILL NOT AFFECT YOUR EMPLOYMENT.

California law strictly prohibits retaliation. Further, Defendants are prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in the Settlement.

11. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: **(888) 250-6810** or by e-mail at **claims@ilymgroup.com**. You may also contact Class Counsel at the addresses or phone numbers listed below. Finally, you may review important case documents relevant to the Settlement at the following case website: **http://www.ilymgroup.**

Lawyers Representing Plaintiff and the Class Members	
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