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8 Ramirez and Brad Smith

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**
12

13 JARED DEEVER, as an individual and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 BLUE DIAMOND GROWERS, a California
corporation; et al,

18 Defendants.

19 AND RELATED CONSOLIDATED CASES.
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Case No. 34-2022-00316490-CU-OE-GDS
(Consolidated with Case Nos. 34-2022-
00319378-CU-OE-GDS and 34-2021-
00304425-CU-OE-GDS)

Assigned to Hon. Lauri A. Damrell, Dept. 22

**DECLARATION OF CHAD SAUNDERS
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 31, 2025
Time: 9:00 a.m.
Dept.: 22

Reservation No.: A-316490-001

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1 I, CHAD SAUNDERS, declare:

2 1. I am an attorney duly licensed to practice in California and before this Court, and I
3 am a partner with Crosner Legal, PC, counsel of record for plaintiff Brad Smith. I make this
4 declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. If
5 called to testify as to the within facts, I would and could competently do so.

6 2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties'
7 Settlement Agreement and Release (the "Settlement Agreement"). Attached hereto as Exhibit 2 is
8 is a true and correct copy of Plaintiff Smith's PAGA Notice letter and proof of submission to the
9 Labor & Workforce Development Agency ("LWDA"). Attached hereto as Exhibit 3 is a true and
10 correct copy of proof of submission and the LWDA's acknowledgment of receipt of the proposed
11 settlement via its online portal.

12 3. I am unaware of any other pending case that overlaps with the claims alleged in this
13 case or that otherwise will be impacted in any way upon approval of the proposed settlement in
14 this matter.

15 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

16 4. Defendant Blue Diamond is a well-known grower and distributor of almonds, nuts,
17 and related products, and is a century old agricultural cooperative and a global consumer packaged
18 goods (CPG) company. Defendant is a global operation and has facilities across various cities and
19 states in the United States, including Sacramento, California; Salida, Colorado; and Turlock,
20 California, and is one of the largest almond producers in the world.

21 5. Plaintiff Ramirez was a non-exempt hourly employee of Defendant whose duties
22 included, but were in no way limited to, security. Mr. Ramirez worked in Defendant's Modesto
23 and Salida locations from February 22, 2021, to approximately April 2022. Plaintiff Smith worked
24 for Defendant as a non-exempt employee in Sacramento. He was employed as a forklift driver and
25 worked for Defendant for 13 years until his termination on or around February 5, 2021. In or
26 around April 2019, Mr. Deaver was hired by Defendant as an hourly non-exempt Machine
27 Operator. On or about February 4, 2022, Mr. Deaver's employment with Defendant ended.

28 6. On July 14, 2021, Mr. Ramirez gave notice to the LWDA and Defendant of Labor

1 Code violations pursuant to PAGA. On July 15, 2021, Mr. Ramirez filed a Class Action
2 Complaint alleging wage and hour violations of the California Labor Code. On October 25, 2021,
3 Mr. Ramirez filed an amended complaint, adding his claims under PAGA. On December 10, 2021,
4 Defendant filed a demurrer to all of Mr. Ramirez's causes of action, which the Court sustained
5 with leave to amend. On June 22, 2022, Mr. Ramirez filed a Second Amended Complaint
6 addressing the Court's rulings on the demurrer. On March 16, 2023, Mr. Ramirez filed a Third
7 Amended Complaint, consolidating his action with Mr. Smith's separate action, which was filed
8 on November 2, 2021. Mr. Smith subsequently dismissed his separate case in April 2023 after
9 being added to the Ramirez matter as a named plaintiff.

10 7. On February 28, 2022, Mr. Deaver filed a PAGA notice with the LWDA alleging
11 Defendant failed to provide accurate, itemized wage statements in violation of California Labor
12 Code section 226. On March 2, 2022, Mr. Deaver filed a Class Action Complaint, and on May 4,
13 2022, he filed a separate complaint alleging a single cause of action for the PAGA underlying the
14 same Labor Code violation. In 2022 and on into early 2023, the Parties in the Deaver Actions
15 engaged in formal written discovery and various related meet and confer efforts. Eventually, on
16 March 24, 2023, Mr. Deaver and Defendant engaged in private mediation with the Honorable Brian
17 C. Walsh (Ret.), which mediation did not result in a settlement.

18 8. Ultimately, the Parties to all matters agreed to a global mediation. The Parties also
19 agreed on a protocol for an exchange of additional documents and information before the mediation
20 to facilitate the settlement discussions. Consequently, Plaintiffs' counsel reviewed payroll records,
21 compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files,
22 and a random of sampling of Class Member paystubs and time records. Plaintiff then had those
23 records analyzed by consulting experts at Berger Consulting Group to look for, inter alia, violation
24 rates for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc.
25 Defendant also provided data regarding the total number of putative class members, the estimated
26 total amount of workweeks and pay periods they worked, average pay rates, and information
27 regarding other non-hourly compensation, among other relevant data.

28 9. The Parties then engaged the Hon. Daniel J. Buckley (Ret.), a respected professional

1 neutral with substantial wage and hour and class action experience. On May 14, 2024, the Parties
2 participated in a full day mediation with Judge Buckley. Throughout the day, the arms-length
3 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
4 their legal and factual positions, and made numerous offers and counter-offers, and ultimately
5 reached agreement on all major issues. The Parties then collaboratively drafted the Settlement
6 Agreement and Release (“Settlement Agreement”) setting forth the settlement terms now before the
7 Court for approval.

8 **THE PROPOSED SETTLEMENT TERMS**

9 10. Under the settlement, Blue Diamond will pay \$5,093,537.50 into a common fund,
10 the Maximum Settlement Amount (“MSA”). Attorney’s fees of up to \$1,782,738.13 (35% of the
11 MSA), litigation costs of up to \$80,000, settlement administration costs of no more than \$23,000, a
12 service award to each Plaintiff of no more than \$10,000 (\$30,000 total), and PAGA civil penalties
13 of \$250,000 (of which 75%, or \$187,500 will go to the LWDA and 25%, or \$62,500, will go to the
14 PAGA Members on a pro rata basis), all will be paid from the MSA. The balance of around
15 \$2,977,799.23 will be allocated pro rata to the Class Members based on their weeks worked during
16 the Class Period. No portion of the MSA will revert to Blue Diamond.

17 11. The settlement provides for conditional certification of a settlement class including
18 all current and former non-exempt California employees employed directly by BDG who worked at
19 any time during the Class Period of July 14, 2017 through August 23, 2024. The Settlement Class
20 consists of about 2,392 individuals.

21 12. As noted, the settlement obligates Blue Diamond to pay \$5,093,537.50 to resolve the
22 Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$2,977,799.23 from the
23 MSA will be distributed to the Participating Class Members. This is a cash settlement that does not
24 require Participating Class Members to submit a claim form to receive their settlement share.
25 Participating Class Members will receive their settlement checks automatically via First Class U.S.
26 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
27 percent will be allocated to penalties and interest, which allocation is consistent with Blue
28 Diamond’s potential liability. Blue Diamond will pay any and all applicable employer-side payroll

1 taxes separately and in addition to the MSA. Subject to the Court's approval, any amounts not
2 claimed (because a class member does not cash their settlement check) will be forwarded to the
3 State Controller's Unclaimed Property Fund.

4 13. Each Participating Class Member will receive a share of the Net Settlement Amount
5 based on his or her total weeks worked in California as a non-exempt employee during the Class
6 Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
7 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
8 missed meal and rest breaks, and potential statutory penalties under applicable law. These methods
9 are intended to ensure each Class Member receives a settlement award corresponding to the relative
10 value of their potential claims. The proposed allocation provides a reasonable way to compensate
11 Class Members based on the amount of time they worked for Blue Diamond in California and the
12 amount unpaid/underpaid overtime, the number of missed or non-compliant meal breaks and rest
13 breaks, etc. I estimate the average class award to be around \$1,245, based on approximately \$6.97
14 per weekly pay period, and I estimate the average PAGA award at about \$32, based on
15 approximately \$0.25 per pay period.

16 14. Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
17 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has significant
18 experience administering class action settlements, including numerous wage and hour matters.
19 Phoenix's fees and costs will not exceed \$23,000. If the Court approves less than the above amount,
20 the difference will remain in the Net Settlement Amount for distribution to the Participating Class
21 Members.

22 15. The proposed Notice of Class Action Settlement (Exhibit A to the Settlement
23 Agreement) sets out information about this case and explains the basic settlement terms in plain
24 language. The Notice also sets forth the individualized information used to calculate Class
25 Members' Individual Settlement Payments and each Class Member's estimated settlement award.
26 The Notice likewise details the procedures for Class Members to dispute their individual
27 information, the procedure for submitting an objection to the Settlement, the procedure to request
28 exclusion, and the fact that any final judgment will bind all class members who do not opt out.

1 Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class Members with
2 the information necessary to evaluate the Settlement and decide to participate in, opt out of, or
3 object to the proposed Settlement, and meets all requirements imposed by the California Rules of
4 Court. Coupled with the notice procedure, the Notice provides the best notice practicable.

5 16. Class Members will have forty-five (45) days to dispute the information in their
6 Notice used to calculate their settlement award, and also have 45 days to submit any objections to
7 the settlement or to request exclusion. If a Class Member disputes their individual information,
8 the Settlement Administrator will review the Class Member's records and any other information
9 submitted, and make a final determination.

10 17. All Participating Class Members will release Blue Diamond from all claims alleged
11 in the operative complaint, or that could have been brought based on the factual allegations in the
12 complaint during the Class Period. The release is limited to the claims that were actually pleaded
13 or could have been pleaded based on the alleged facts in the complaint.

14 18. A modest incentive award for each Plaintiff is appropriate under applicable law as
15 they devoted time and resources to the litigation, provided documents, assisted Class Counsel with
16 investigating the claims asserted and in preparing for the mediations. Defendant will not oppose a
17 request for an enhancement award to Plaintiffs of not more than \$10,000.00 each in recognition of
18 their time spent on this matter, the risks they undertook on behalf of the class, and the benefit
19 conferred to the class, as addressed in their respective declarations filed herewith. If the Court
20 approves less than the above amounts, the difference will remain in the Net Settlement Amount for
21 distribution to the Participating Class Members.

22 19. The terms of the Parties' settlement also allow Plaintiffs' counsel to apply for an
23 award of attorney's fees of up to 35% of the MSA, or \$1,782,738.13 and reimbursement of actual
24 costs and expenses of up to \$80,000.00. Plaintiffs' counsel will submit a request for attorney's
25 fees and actual litigation costs at final approval per the terms of the Settlement Agreement and
26 applicable law, and will provide the Court with appropriate information and evidence regarding
27 hourly rates, tasks performed, and time expended on the case. If the Court approves less than the
28 above amounts, the difference will remain in the Net Settlement Amount for distribution to the

1 Participating Class Members.

2 21. As noted, the Parties allocated \$250,000 to resolution of Plaintiffs' alleged claims
3 under PAGA, and respectfully submit that amount is fair, reasonable and adequate, and consistent
4 with PAGA's underlying purposes. Consistent with PAGA, \$187,500 of that amount will go to
5 the LWDA for the State's share of the civil penalties, while the remaining \$62,500 will be
6 distributed pro rata to eligible PAGA Members. Prior to filing this motion, counsel provided
7 notice of the proposed settlement of the PAGA claims and the approval hearing to the LWDA.

8 **The Proposed Settlement Class Should Be Conditionally Certified**

9 22. In the present matter, conditional certification is proper since this matter satisfies
10 all requirements for class certification under Code of Civil Procedure section 382. First, the class
11 is both sufficiently numerous, consisting of approximately 2,392 individuals, and ascertainable by
12 reference to Defendant's personnel and payroll records.

13 23. Plaintiffs are adequate class representatives, as their claims do not conflict with and
14 are not antagonistic to the claims of other class members. Further, their claims are typical as each
15 is a member of the class and their claims arise from the same employment practices and course of
16 conduct giving rise to the claims of the other class members.

17 24. Common questions of law and fact predominate – particularly for purposes of a
18 settlement class – as the Class Members all were paid via substantially similar company-wide
19 policies that resulting alleged off the clock work, underpaid overtime, missed/non-compliant meal
20 and rest breaks, etc. Since the focus of the claims against Blue Diamond concerns the legality of
21 common policies applied uniformly to the entire class, common issues predominate over
22 individualized inquiries concerning liability. For instance, Blue Diamond's compensation scheme
23 either properly paid the class members for overtime hours worked or it did not. Regardless of that
24 determinations, it will decide liability for all Class Members one way or another.

25 25. Resolving this matter as a class action is superior to other available means for the
26 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)
27 individual joinder of all members of the class is impractical, (b) class action treatment will permit
28 a large number of similarly situated persons to resolve their common claims in a single forum

1 simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c) the
2 damages suffered by many of the individual class members are relatively small and the expenses
3 and burden of individual litigation would make it difficult or impossible for them to seek redress
4 on their own.

5 **The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of**
6 **Reasonableness**

7 26. Prior to mediation, the parties engaged in extensive formal informal discovery to
8 facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information
9 regarding Blue Diamond's payroll practices, pay stubs and time records for a sampling of class
10 members, meal and rest break policies, etc., and information from Defendant regarding class size
11 and breakdown of job positions, work weeks, rates of pay, and other information used to formulate
12 a damages model. This extensive information then was analyzed by a consulting expert to look for
13 meal and rest break violation rates, time spent working off the clock, etc., and other issues relevant
14 to liability and damages. Plaintiffs' counsel are confident they obtained sufficient information to
15 enable them to understand the law and facts of this case and make an informed decision regarding
16 the proposed settlement and whether it is in the best interests of the class.

17 27. Using that data, Plaintiff ran various calculations and estimated Blue Diamond's
18 likely maximum exposure on the class claims at approximately \$77,369,080, including about
19 \$2,146,415 on the off the clock/unpaid wage claims, around \$341,460 on the regular rate claims,
20 approximately \$12,493,475 on the meal period claims, about \$47,568,280 on the rest period
21 claims, about \$2,135,520 on the expense reimbursement claims, around \$6,884,000 on the wage
22 statement claims, and \$5,799,930 on the waiting time penalty claims.

23 28. We calculated these amounts as follows:

24 **Off the Clock Violations**

25 $1,943,925 \text{ shifts} * 5 \text{ OTC minutes/shift} * \$13.25/\text{hr. avg. min. wage} = \$2,146,415$

26 **Underpaid Overtime/Vacation Pay**

27 \$341,460 as calculated by Plaintiffs' experts

28 **Meal Period Violations**

1 505,604 violations * \$24.71/hr avg. regular rate = \$12,493,475

2 **Rest Period Violations**

3 1,925,062 eligible shifts * 100% violation rate * \$24.71/hr avg. regular rate = \$47,568,280

4 **Expense Reimbursement**

5 427,104 work weeks * \$5/week = \$2,135,520

6 **Wage Statement Violations**

7 1,721 employees (in limitations period) * \$4,000/employee = \$6,884,000

8 **Waiting Time Penalties**

9 978 former employees (in limitations period) * (240 hours * \$24.71/hr) = \$5,799,930

10 29. The unpaid wage claims focus primarily on Blue Diamond’s alleged failure to pay
11 Class Members at least minimum wages and/ or overtime wages for all of their hours worked.
12 Plaintiffs allege, for example, they regularly performed pre-shift and post-shift work off the clock,
13 such as unlocking gates and doors of the building they were working in, being asked by
14 supervisors to check on various projects and areas in the production zone, etc. all before clocking
15 in. Plaintiffs also claim employees would wait in line to clock in/out partly because of the sheer
16 volume of employees clocking in at the same time, as well as having to perform a long “attestation
17 process” when clocking in or out, before their time punch would be accepted by the time-keeping
18 system. For example, when clocking out, employees would be asked whether they took a rest
19 break and meal break, and would have to choose one of 18 different scenarios regarding their
20 breaks. Per Plaintiffs, all of this pre- and post-shift off the clock work resulted in the loss of
21 several minutes of compensable time per shift.

22 30. Plaintiffs also allege Defendants failed to incorporate all forms of compensation
23 into their regular rate of pay calculations when paying overtime as required by Alvarado v. Dart
24 Container Corp. (2018) 4 Cal.5th 542. Here, Plaintiffs allege class members regularly received
25 various non-discretionary bonuses and other payments and that Blue Diamond failed to pay the
26 required overtime on those payments. For the same reasons, Plaintiffs also allege Blue Diamond
27 underpaid employees for their vacation time.

28 31. In response, Blue Diamond argued its payroll policies are fully compliant, that it

1 properly tracked and paid for all hours worked at the appropriate hourly wage. Defendant also
2 argued that, if any class members failed to record and report time it was in violation of company
3 policy and would have occurred on a haphazard and individual basis. Accordingly Defendant
4 argued the issue would not be certifiable since it would require individualized inquiries whether
5 any compensable “off the clock” work occurred and why it was or was not documented and paid
6 for.

7 32. On the meal and rest break claims, Plaintiffs contend Blue Diamond’s written
8 policies are not fully compliant, and regardless the time and pay records show substantial “de
9 facto” violations for non-compliant meal breaks. For example, Plaintiffs’ argued Defendant’s own
10 records show large numbers of missed first and second meal periods, as well as untimely meal
11 periods that started after the fifth hour of work. Plaintiffs additionally allege their meal breaks
12 frequently were interrupted by supervisors, and that their lunches effectively were cut short
13 because they had to get in line to clock out well before the end of their 30 minute break. Overall,
14 Plaintiffs allege their expert’s analysis showed over 500,000 shifts with a unique meal period
15 violation.

16 33. In response, Blue Diamond argued its written policies are fully compliant,
17 particularly and that it provided employees with the opportunity to receive all required meal
18 breaks and thereby met its obligations under the Labor Code and applicable Wage Order. Further,
19 Defendant argued to the extent employees missed a break or took a non-compliant break, any such
20 discrepancies were aberrational and against company policy and a myriad of individual issues
21 would be required to determine whether the potential violation resulted from employee choice or
22 some other reason. Consequently, per Defendant, individualized inquiries would dominate on this
23 issue and render class certification of the meal break claim inappropriate. Defendant also
24 emphasized it paid thousands of dollars in meal period premiums for documented violations and
25 per its compliant policies.

26 34. For rest breaks, Plaintiffs again argued that there were numerous “de facto”
27 violations where class members didn’t receive a break (especially third breaks), or didn’t receive a
28 compliant break/had their breaks interrupted by supervisors. As with meal breaks, Defendant

1 argued the applicable rest break policies complied with California law, and that it authorized and
2 permitted employees to take all required breaks. Defendant further contended that, in light of the
3 fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize
4 rest periods and/or discouragement from taking rest periods would be purely anecdotal and
5 individual issues would predominate on liability. This arguably would once again make class
6 certification and a trial unmanageable since the number of instances an employee missed a rest
7 break, or had a break interrupted, would have to be tested on a case by case basis to determine
8 compliance.

9 35. Plaintiffs also allege they had to use their personal cell phones for work purposes
10 without any reimbursement. As such, employees are entitled to unreimbursed costs for the use of
11 their cell phones. Defendant on the other hand argued that any use of personal mobile devices was
12 unnecessary to perform the job and therefore was purely for personal convenience. If so, then the
13 expense was neither reasonable nor necessary, and therefore no reimbursement was required.
14 Labor Code § 2802.

15 36. The claims under Labor Code section 226 allege that Defendant's wage statements
16 improperly list redundant hours worked, such that an employee cannot simply add the hours listed
17 on the wage statement and arrive at the correct total. For instance, Defendant's wage statements
18 might include a listing for 40 hours of "Swing Shift Differential" wages **that are** redundant of
19 other hours worked. Since wage statements did not provide a total hours worked figure, if an
20 employee added up the hours listed then he or she would arrive at the incorrect total. The claims
21 under Labor Code sections 201, et seq. and 226 also are derivative of the primary unpaid wage
22 claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed
23 by the need to take into account the discretionary nature of such awards and the "good faith" and
24 other defenses available to Defendant. Thus, while these claims largely are derivative of the
25 unpaid wage claim, they also are subject to additional defenses.

26 37. As far as potential PAGA liability, the allegedly aggrieved employees theoretically
27 are entitled to penalties totaling around \$76 million in civil penalties should Plaintiffs prevail on all
28 claims and establish violations of the multiple Labor Code sections for every single pay period at

1 issue, and recover the maximum allowable penalties. As with the class claims, Plaintiffs discounted
2 the potential PAGA penalties based on Defendant's various defenses on the merits and also
3 accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties
4 at all. Accordingly, the Parties allocated \$250,000 to PAGA penalties, and Plaintiffs submit this
5 amount is reasonable under the circumstances and in line with comparable settlements in other wage
6 and hour class actions in California. Additionally, the LWDA has been informed of the terms of the
7 PAGA portion of the settlement, and will be able to weigh in as necessary.

8 38. The settlement obviates the significant risk that this Court may find any kind of
9 class or representative resolution unachievable or deny certification of all or some of Plaintiffs'
10 claims. Furthermore, even if Plaintiffs obtained certification of all or some of the claims,
11 continued litigation would be lengthy and expensive as the parties pursued merits discovery, a
12 probable motion to decertify, as well as trial and possible appeals, and would further and
13 substantially delay any recovery by the class with no assurance of recovering significantly more
14 than the proposed settlement. While Plaintiffs are confident in the merits of these claims,
15 legitimate controversies exist regarding each one of them. Plaintiffs also recognize proving the
16 amount of wages and penalties due each Class Member would be an expensive, time-consuming,
17 and uncertain proposition.

18 39. Plaintiffs and counsel discounted the value of the class claims consistent with the
19 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
20 greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very
21 real and substantial risks – settlement on the proposed terms and without prolonged and costly
22 litigation was in the best interests of the class, and the overall \$5,093,537.50 recovery represents a
23 significant percentage of Defendant's potential exposure. Given these risks, a total recovery for
24 the class of \$5,093,537.50, which will result in average award of some \$1,245 per class member,
25 is a significant result well within the range of reasonableness considering all potential outcomes,
26 and it will provide direct monetary awards to all Class Members without further delay.

27 30. I received a Bachelor of Arts in Philosophy from the University of Maryland
28 Baltimore County in 2001 and a Juris Doctor from New College of California School of Law in

1 2008. While a law student, I completed 600 hours of public interest law apprenticeship, at Legal
2 Services for Children, Disability Rights California, and as a Certified Legal Intern with the Bay
3 Area Legal Aid Housing Clinic. I have been a member of the California Bar since 2008. Since
4 2009, I have been a class action attorney, practicing mainly in the area of California wage and hour
5 law, with the firms of Hoffman & Lazear, Kralowec Law P.C., Sundeen Salinas & Pyle, and Hunter
6 Pyle Law. I joined Crosner Legal in May 2021 as a Senior Associate Attorney. In this role I
7 routinely draft complaints and discovery, brief motions, appear before California courts for law
8 and motion and settlement hearings, lead mediation negotiations, and draft settlement approval
9 documents. I also regularly communicate with class members, co-counsel, and opposing counsel.
10 I have represented thousands of employees in both state and federal courts, involving class actions
11 and PAGA claims, and I have assisted in obtaining millions of dollars for employees during my
12 years of practice.

13 41. I have been approved as Class Counsel by numerous courts throughout California,
14 including in the following cases: *Alonzo, et al. v. First Transit, Inc.* (Los Angeles Superior Court
15 case no. BC433932; settled for \$2 million); *Sadiq v. Greatwide Dedicated Transport II, LLC*
16 (Alameda County Superior Court case no. RG15789114; settled for \$762,500); *Kostyuk v.*
17 *Golden State Overnight Delivery Service, Inc.* (Alameda County Superior Court case no.
18 RG14727191; settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda
19 County Superior Court case no. RG16815734; settled for \$750,000); *Hooper v. URS Midwest,*
20 *Inc.*, (San Bernardino Superior Court Case No. CIV DS1607489; settled for approximately \$3
21 million); *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court case no. CGC-16-
22 554398; settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (Northern District of California,
23 case number 16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM Industries, Inc.,*
24 *et al.* (Northern District of California, case number 17-cv-03026-YGR; settled for \$5.4 million);
25 *Benton v. Northern California InAlliance* (Sacramento County Superior Court, case number 34-
26 2021-00293036; settled for \$650,000); *French v. Lonza, Inc.* (Los Angeles County Superior
27 Court, case number 21STCV08097; settled for \$556,500); *McKinnie v. Iron Mountain Secure*
28 *Shredding, Inc., et al.* (Los Angeles Superior County Superior Court, case number
21STCV05707; settled for \$1.5 million); and *Bland v. Marin Airporter* (Marin County Superior

1 Court, case number CIV 2003640; settled for \$450,000).

2 42. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
3 some 13 years of experience as a practicing attorney, all of which have focused on litigation of
4 employment, labor law, consumer, and class action claims. Following graduation, he immediately
5 began working for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where
6 he had the fortune of working directly with past presidents of the consumer attorneys and
7 recipients of trial attorneys of the year awards. He also worked for former CAALA and CLAY
8 trial attorney of the year recipient, attorney Conal Doyle, as his sole associate attorney. During
9 his tenure at these firms, he focused on advocating for the rights of consumers and employees in
10 class action litigation, civil rights and employment litigation, catastrophic injuries, insurance bad
11 faith and appellate litigation.

12 43. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its
13 inception has focused almost exclusively on wage and hour class actions and other labor and
14 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his practice
15 is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner Legal is
16 currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty (50) wage
17 and hour class actions and/or PAGA representative actions in both federal and state courts
18 throughout California.

19 44. Mr. Crosner currently is an executive board member of the Wage and Hour
20 Committee and the Legislative Committee for the California Employment Lawyers Association;
21 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
22 Wage and Hour Committee member and Class Action Committee member for the National Trial
23 Lawyers; a member of the American Association for Justice; and member of the Pound Civil
24 Justice Institute. He was selected for 2018-20 by Super Lawyers as a "Southern California Rising
25 Star" for employment and labor law.

26 45. Brandon Brouillette is a graduate of Loyola Law School, Los Angeles, from which
27 he received a *juris doctorate* degree in 2009. Prior to attending law school, he attended the
28

1 University of Southern California, from which he received a bachelors of science in Business
2 Administration in 2006.

3 46. Mr. Brouillette has been a Partner at Crosner Legal since February 1, 2023. Prior to
4 joining Crosner Legal, he was a Senior Associate and Team Director of a Wage and Hour Litigation
5 Team at Capstone Law APC, which he originally joined as an associate attorney in May 2016.

6 47. Since being admitted to the California State Bar in 2010, his entire legal career has
7 been dedicated to protecting employee and consumer rights through the prosecution of class action
8 and representative actions filed on behalf of plaintiffs in class actions and statewide representative
9 actions. Throughout my career he have managed or co-managed more than 100 class action and
10 PAGA representative cases, from initial filing of the complaint through final resolution.

11 48. In particular, he has served as class counsel in several certified class action cases,
12 including:

- 13 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
14 exempt hourly employees who worked for Defendants in California)
- 15 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No. BC501521
16 (class counsel for certified class of last-mile delivery drivers who were alleged to be
17 misclassified as independent contractors)
- 18 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
19 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt hourly
20 employees who worked for Defendants in California)
- 21 d. *Jones v. LA Live* , Los Angeles County Case No. BC687908 (class counsel for certified
22 issue classes consisting of hourly employees who worked at Staples Center and Nokia
23 Theater)

24 49. The following is a representative sample of settlements in wage and hour class
25 action and PAGA representative cases in which Mr. Brouillette was listed as an attorney of record
26 and either managed, or co-managed with attorneys at my firm and other co-counsel:

- 27 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15 million
28

- 1 global PAGA settlement on behalf of hourly employees statewide for alleged Labor
2 Code violations.)
- 3 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
4 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
5 Labor Code violations.)
- 6 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
7 million class and PAGA settlement on behalf of class of non-hourly employees for
8 Labor Code violations.)
- 9 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
10 employees who worked at concert venues in California for alleged Labor Code
11 violations)
- 12 i. *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M
13 class settlement on behalf of group of hourly employees who worked at Oakland
14 Coliseum for alleged Labor Code violations)
- 15 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
16 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
17 employees who worked at Honda center in Anaheim California for alleged Labor Code
18 violations)
- 19 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No. CIVDS1931455
20 (\$3.125M class and PAGA settlement on behalf of hourly employees statewide for
21 alleged Labor Code violations)
- 22 l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-
23 OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide
24 for alleged Labor Code violations)
- 25 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on
26 behalf of hourly employees statewide for alleged Labor Code violations)
- 27 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
28 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of

- 1 independent contractor last-mile delivery drivers alleged to be misclassified)
- 2 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class
- 3 and PAGA settlement on behalf of statewide group of hourly employees for alleged
- 4 Labor Code violations)
- 5 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983 (\$2M
- 6 class and PAGA settlement on behalf of statewide group of hourly employees who
- 7 worked at retail stores in California for alleged Labor Code violations)
- 8 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-
- 9 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly
- 10 employees who worked at Defendant's McDonald's franchises in California for alleged
- 11 Labor Code violations).
- 12 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No. 19STCV22184
- 13 (\$2.25 class and PAGA settlement on behalf of statewide group of hourly employees
- 14 who worked at Defendant's McDonald's franchises in California for alleged Labor
- 15 Code violations).
- 16 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977
- 17 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly employees
- 18 who worked at Defendant's restaurants in California for alleged Labor Code violations)
- 19 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
- 20 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly employees
- 21 for alleged Labor Code violations).

22 50. In addition, below are settlements in consumer class action cases in which Mr.

23 Brouillette was listed as an attorney of record and either managed, or co-managed with attorneys

24 at my firm:

- 25 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
- 26 settlement on half of thousands of borrowers in California, Florida, and Texas for UCL
- 27 violations premised on improper late fee collections)
- 28 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in

1 landmark case that established the ‘McGill rule’ precluding the waiver of public
2 injunctive relief in pre-dispute arbitration agreements, negotiated confidential
3 settlement on behalf of consumer who sued for damages and class injunctive relief
4 stemming from marketing of credit protector plan)

5 51. Finally, Mr. Brouillette has been selected as a Super Lawyers ‘Rising Star’ every
6 year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active lawyers
7 practicing within the State of California

8 52. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
9 action settlements while serving as lead class counsel in recent years, including but not limited to a
10 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
11 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
12 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
13 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
14 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
15 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
16 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
17 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
18 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
19 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
20 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
21 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
22 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
23 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
24 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
25 settlement in 2021 (*Valencia v. The Original Mowbray’s Tree Service, Inc.*, Case No.
26 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
27 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
28 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*

1 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and
2 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
3 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
4 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
5 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
6 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
7 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
8 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
9 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
10 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
11 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement
12 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
13 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
14 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

15 53. For all the foregoing reasons, I respectfully request that the Court approve the
16 settlement in all particulars.

17 54. Pursuant to Local Rule 2.99.05, I have reviewed the checklist for approval of class action
18 settlement for the Complex Litigation Department and believe that the Settlement Agreement complies
19 with the same.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed this 8th day of January 2025, at Berkly, California.

22
23 

24 Declarant

EXHIBIT

1

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Attorneys for Defendant
BLUE DIAMOND GROWERS

[Additional Counsel on Next Page]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JARED DEEVER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

BLUE DIAMOND GROWERS, a California
corporation; et al,

Defendants.

Case No. 34-2022-00316490-CU-OE-GDS
(Consolidated with Case Nos. 34-2022-
00319378-CU-OE-GDS and 34-2021-
00304425-CU-OE-GDS)

Assigned to Hon. Lauri A. Damrell, Dept. 22

**SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: March 9, 2022
Trial Date: None yet

AND RELATED CONSOLIDATED CASES.

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27 Attorneys for Plaintiff Jared Deaver and the Class

28

1 This Settlement Agreement and Release ("Settlement Agreement" or "Settlement" or
2 "Agreement") is made and entered into by and between Plaintiffs JARED DEEVER, DANIEL
3 RAMIREZ and BRAD SMITH (collectively "Plaintiffs"), individually and on behalf of others
4 similarly situated, and Defendant BLUE DIAMOND GROWERS ("Defendant" or "BDG").

5 **PRELIMINARY TERMS AND DEFINITIONS**

6 The following definitions are applicable to this Settlement Agreement. Definitions
7 contained elsewhere in this Settlement Agreement will also be effective:

8 1. "Action" means:

- 9 a. *Daniel Ramirez v. Blue Diamond Growers*, Case No. 34-2021-
10 00304425 (filed on July 15, 2021, consolidated for all purposes with
11 Case No. 34-2022-00316490);
- 12 b. *Brad Smith v. Blue Diamond Growers*, Case No. 34-2021-00310576
13 (filed on November 2, 2021, dismissed on April 19, 2023 and Plaintiff
14 Smith added as a named plaintiff to *Ramirez v. Blue Diamond Growers*
15 referenced in Section (1)(a) above);
- 16 c. *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00316490
17 (filed on March 9, 2022, consolidated for all purposes with Case No. 34-
18 2021-00304425);
- 19 d. *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00319378
20 (filed on May 9, 2022, consolidated for all purposes with Case No. Case
21 No. 34-2022-00316490).

22 2. "Attorneys' Fees and Costs" means reasonable attorney's fees for Class Counsel,
23 defined below, and all reasonable costs incurred and to be incurred by Class Counsel, including
24 but not limited to, costs associated with documenting the Settlement, securing the Court's approval
25 of the Settlement, administering the Settlement (separate and apart from Settlement
26 Administration Costs, defined below), obtaining entry of an Order and Judgment approving the
27 Settlement, as approved by the Court. Class Counsel will request not more than thirty-five percent
28 (35%) of the Gross Settlement Fund or One Million, Seven Hundred and Eighty-Two Thousand,

1 Seven Hundred and Thirty-Eight Dollars and Thirteen Cents (\$1,782,738.13) in attorneys' fees,
2 and not more than Eighty Thousand Dollars and No Cents (\$80,000.00) in reasonable actual
3 litigation costs and expenses. Defendant has agreed not to oppose Class Counsel's request for
4 attorney's fees and costs and expenses as set forth above.

5 3. "Class Counsel" shall mean Diversity Law Group, P.C., Polaris Law Group, Law
6 Offices of Choi & Associates, Bibiyan Law Group, P.C., and Crosner Legal PC.

7 4. "Court" means the Superior Court of the State of California for the County of
8 Sacramento.

9 5. "Class Data" means Class Member and PAGA Member identifying information in
10 Defendants' custody, possession, or control, including the Class Member's (1) name; (2) last
11 known address(es); (3) last known telephone number(s); (4) Social Security Number(s); (5) the
12 dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)),
13 and Pay Period during the Class Period and PAGA Period for every Class Member and PAGA
14 Member.

15 6. "Class Period" shall mean July 14, 2017 through August 23, 2024.

16 7. "Class Members" or "Settlement Class" shall mean all current and former non-
17 exempt California employees employed directly by BDG who worked at any time during the Class
18 Period.

19 8. "Class Notice" shall mean the Notice of Settlement approved by the Court.

20 9. "Effective Date" means the date when all of the following events have occurred: (1)
21 the Settlement Agreement has been executed by all Parties; (2) the Court has given preliminary
22 approval to the Settlement Agreement; (3) the Class Notice has been given to the Settlement
23 Class, providing Class Members with an opportunity to object to the terms of the Settlement or to
24 opt out of the Released Class Claims, defined below; (4) the Court has held a formal fairness
25 hearing and entered a final order and judgment approving the Settlement Agreement, and entering
26 judgment on the Settlement Agreement (the "Final Order and Judgment"); and (5) in the event
27 there are written objections filed prior to the final fairness hearing which are not later withdrawn
28 or denied, the later of the following events: (a) the period for filing any appeal, writ or other

1 appellate proceeding opposing the Court's Final Order and Judgment approving the Settlement
2 Agreement has elapsed without any appeal, writ or other appellate proceeding having been filed;
3 or, (b) if any appeal, writ or other appellate proceeding opposing the Court's Final Order and
4 Judgment approving the Settlement Agreement has been filed, five (5) business days after any
5 appeal, writ or other appellate proceedings opposing the Settlement Agreement has been finally
6 and conclusively dismissed with no right to pursue further remedies or relief.

7 10. "Employer Tax Portion" means the amount required to pay all employer-side
8 payroll taxes required by law, including the employer-side FICA, FUTA, and SDI contributions.

9 11. "Final Approval" means the Court's Order granting final approval of the Settlement
10 and entering judgment thereon.

11 12. "Gross Settlement Fund" means the Maximum Settlement Amount, defined below.
12 The Gross Settlement Fund is an all-in common fund settlement. There will be no reversion of any
13 portion of the Gross Settlement Fund to Defendant.

14 13. "Individual Settlement Payment" means each Participating Class Member's, defined
15 below, respective share of the Net Settlement Amount, defined below. The Individual Settlement
16 Payment includes the PAGA Payment.

17 14. "Labor & Workforce Development Agency Payment" means the payment of One
18 Hundred and Eighty-Seven Thousand, Five Hundred Dollars and No Cents (\$187,500.00) from the
19 PAGA Settlement, defined below, to the California Labor & Workforce Development Agency for
20 its portion of the civil penalties paid under the Private Attorneys General Act of 2004, California
21 Labor Code section 2698, *et seq.* ("PAGA").

22 15. "LWDA Letters" mean collectively each of the letters sent by Plaintiffs Smith,
23 Ramirez, and Deaver to the Labor & Workforce Development Agency alleging violations of
24 PAGA by Defendant.

25 16. "Maximum Settlement Amount" means the amount of Five Million, Ninety-Three
26 Thousand, Five Hundred and Thirty-Seven Dollars and Fifty Cents (\$5,093,537.50), to be paid by
27 Defendant which is inclusive of Attorneys' Fees and Costs, Plaintiff Enhancement Payments, the
28 PAGA Settlement, and the Settlement Administration Costs. The Employer Tax Portion

(including but not limited to FICA and FUTA) shall be paid by Defendant separately and in addition to the Maximum Settlement Amount.

17. "Net Settlement Amount" means the portion of the Gross Settlement Fund remaining after deducting the Plaintiffs' Enhancement Payment, Attorneys' Fees and Costs, the PAGA Settlement, and the Settlement Administration Costs, from the Gross Settlement Fund. The entire Net Settlement Amount will be distributed to the Participating Class Members, defined below. There will be no reversion of any portion of the Net Settlement Amount to Defendant.

18. "Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For an Objection to be valid, it must include: (i) the objector's full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of papers, briefs, or other documents upon which the objection is based, if any; and (vi) be postmarked on or before the Response Deadline, defined below. Alternatively, any Class Member may object by appearing at the Final Approval Hearing either with or without submitting a written Objection.

19. "Operative Complaints" means the Third Amended Class and Representative Action Complaint in *Daniel Ramirez, et al. v. Blue Diamond Growers*, Case No. 34-2021-00304425; and the Representative Action Complaint Under the Private Attorneys General Act of 2004 and the Class Action Complaint for Damages in *Jared Deaver v. Blue Diamond Growers*, Consolidated Case No. 34-2022-00316490.

20. "PAGA Members" means all current and former non-exempt California employees employed directly by BDG who worked at any time during the PAGA Period, defined below.

21. "PAGA Payment" means the payment of Sixty-Two Thousand Five Hundred Dollars and No Cents (\$62,500.00) from the PAGA Settlement, defined below, to be distributed to the PAGA Members for civil penalties under the PAGA.

22. "PAGA Period" means the period from July 14, 2020, through August 23, 2024.

23. "PAGA Settlement" means the amount of Two Hundred And Fifty Thousand Dollars and No Cents (\$250,000.00) payable from the Gross Settlement Fund for civil penalties under PAGA, which includes the Labor & Workforce Development Agency Payment and PAGA

1 Payment.

2 24. "Pay Period" means any weekly pay period during which a Class Member or
3 PAGA Member was paid by and received a wage statement from Defendant. .

4 25. "Participating Class Member" means any Class Member who does not submit a
5 timely and valid Request for Exclusion, defined below.

6 26. "Parties" means Plaintiffs and Defendant collectively.

7 27. "Plaintiffs' Enhancement Payment" means the payment to Plaintiffs in exchange for
8 a general release, as approved by the Court. Plaintiffs' Enhancement Payment will be paid from
9 the Gross Settlement Fund. Any funds allocated to Plaintiffs' Enhancement Payment but not
10 awarded by the Court will be included in the Net Settlement Amount and distributed pro rata to
11 the Participating Class Members. Plaintiffs will be solely responsible to pay any and all
12 applicable taxes on the payment made pursuant to this paragraph, and the Settlement
13 Administrator will issue IRS Forms 1099 to Plaintiffs for Plaintiffs' Enhancement Payment.

14 28. "Preliminary Approval" means the Court Order granting preliminary approval of
15 the Settlement.

16 29. "Released Class Claims" means all claims during the Class Period alleged or that
17 could have been alleged in the Action, including without limitation all claims during the Class
18 Period alleged in the Operative Complaints, all claims during the Class Period that could have
19 been alleged based on the factual allegations contained in the Operative Complaints, including but
20 not limited to all of the following claims for relief during the Class Period: (a) all claims for
21 failure to pay earned wages; (b) all claims for failure to pay minimum wages; (c) all claims for
22 failure to pay overtime wages; (d) all claims for failure to provide compliant meal and rest periods
23 or compensation in lieu thereof; (e) all claims for failure to timely pay all wages due upon
24 termination or resignation; (f) all claims for non-compliant wage statements; (g) all claims for
25 failure to reimburse business expenses; (h) all claims for violations of California Labor Code §
26 227.3; (i) all claims asserted through California Business & Professions Code § 17200 et seq.
27 arising out of the Labor Code violations referenced in the Operative Complaints; and (j) all claims
28 for injunctive relief, liquidated damages, penalties of any nature, interest, fees, including without

1 limitation fees under California Labor Code and California Code of Civil Procedure § 1021.5, and
2 costs. The Released Class Claims include, all of the following claims for relief during the Class
3 Period: violations of California Labor Code §§ 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210, 221,
4 223, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233-234, 245 et seq., 246 et seq., 256, 432, 510,
5 512, 558, 558.1, 1174, 1174.5, 1181.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198,
6 1198.5, 1199, 2802, 2810.5, 6401, 6402, 6403, 6409.6, and the applicable Wage Order(s).

7 30. "Released PAGA Claims" means as follows:

- 8 a. All claims for civil penalties under the Private Attorneys General Act of
9 2004 (California Labor Code § 2698 et seq.), during the PAGA Period
10 known and unknown under the Private Attorneys General Act of 2004
11 (California Labor Code § 2698 et seq.) arising out of the California
12 Labor Code violations alleged or that could have been alleged in the
13 Action, including, without limitation in the Operative Complaints and
14 LWDA Letters or that could have been alleged based on the factual
15 allegations contained in the Operative Complaints and LWDA Letters.
16 For avoidance of doubt, the PAGA claims being released by the LWDA
17 and PAGA Members are claims **that were or could have been brought**
18 **under PAGA**, based on the allegations in Plaintiffs' Operative
19 Complaints and LWDA Letters.
- 20 b. Waiver of Rights under California Civil Code Section 1542. The PAGA
21 Members' Released PAGA Claims include all such respective claims,
22 whether known or unknown by the releasing party. Thus, even if a
23 PAGA Member (including Plaintiffs) discovers facts in addition to or
24 different from those that they now know or believe to be true with
25 respect to the subject matter of the PAGA Members' Released PAGA
26 Claims, e.g. the claims brought in Plaintiffs' Operative Complaints or
27 LWDA Letters or that could have been brought based on the facts
28 therein, those claims will remain released and forever barred. Therefore,

1 with respect to those respective Released PAGA Claims, Plaintiffs and
2 the PAGA Members expressly waive and relinquish the provisions,
3 rights and benefits of California Civil Code section 1542, which reads:
4 **A general release does not extend to claims that the creditor or**
5 **releasing party does not know or suspect to exist in his or her favor**
6 **at the time of executing the release and that, if known by him or her,**
7 **would have materially affected his or her settlement with the debtor**
8 **or released party.**

9 31. "Released Parties" means Defendant Blue Diamond Growers and each of its
10 respective present and former parent companies, subsidiaries (including without limitation Blue
11 Diamond Growers Services and Blue Diamond Almond Growers), divisions, shareholders,
12 members, principals, officers, directors, exempt employees, agents, attorneys, insurers, successors
13 and assigns, and any individual or entity which could be liable for any of the Released Class
14 Claims as a joint employer, and Defendant's counsel of record. The Released Parties expressly
15 excludes all staffing agencies and professional employer organizations that placed employees at
16 Defendant's workplace.

17 32. "Request for Exclusion" means a timely letter submitted by a Class Member
18 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
19 forth the name, address, telephone number and last four digits of the Social Security Number of
20 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
21 the Settlement Administrator; (iv) state that the Class Member does not wish to be included in the
22 Settlement; and (v) be postmarked on or before the Response Deadline, defined below.

23 33. "Response Deadline" means the deadline by which Class Members must postmark
24 to the Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
25 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
26 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday
27 or Federal holiday, in which case the Response Deadline will be extended to the next day on
28 which the U.S. Postal Service is open.

17 TERMS OF SETTLEMENT

24 37. Funding of the Maximum Settlement Amount. Defendant will deposit the
25 Maximum Settlement Amount, via wire transfer into a Qualified Settlement Account ("QSA") to
26 be established by the Settlement Administrator within thirty (30) calendar days of the Effective
27 Date.

10

1 motion by Class Counsel for Attorneys' Fees and Costs, to be approved by the Court. Class
2 Counsel will seek an award of attorneys' fees not to exceed thirty-five percent (35%) of the
3 Maximum Settlement Amount, or One Million, Seven Hundred and Eighty-Two Thousand, Seven
4 Hundred and Thirty-Eight Dollars, and Thirteen Cents (\$1,782,738.13), and actual and reasonable
5 litigation costs and expenses not to exceed Eighty Thousand Dollars and No Cents (\$80,000.00).
6 The payment of Class Counsel's Attorneys' Fees and Costs shall be made from the Maximum
7 Settlement Amount. Any funds allocated to Attorneys' Fees and Costs but not awarded by the
8 Court will be included in the Net Settlement Amount and distributed pro rata to the Participating
9 Class Members. The Settlement Administrator will issue IRS forms 1099 to Class Counsel for
10 Attorneys' Fees and Costs. The Settlement Administrator shall issue payment of the attorneys'
11 fees and costs to Class Counsel no later than ten (10) calendar days after receipt of the Maximum
12 Settlement Amount.

13 39. To the extent any attorneys or law firm other than Class Counsel seek to recover
14 attorneys' fees and/or costs in the Action, such dispute shall be adjudicated by the judge deciding
15 preliminary and/or final approval of the Settlement Agreement. The attorneys' fees and costs
16 incurred, if any, in such a dispute will be borne by Class Counsel, and Defendant will have no
17 obligation to pay any amount to resolve any such dispute. The amount (if any) awarded to said
18 other attorneys or law firms shall be paid out of the amount allocated by the Court for Class
19 Counsel's Attorneys' Fees and Costs. In no event shall Defendant be responsible for paying any
20 amounts above the Maximum Settlement Amount for any disputed attorneys' fees and/or costs
21 between any attorneys. In other words, the Maximum Settlement Amount will not change due to
22 any additional attorneys' fees and/or costs claim or as a result of any dispute between any
23 attorneys.

24 40. Plaintiffs' Enhancement Payment. In exchange for a general release, Defendant
25 agrees not to oppose Class Counsel's application or motion for Plaintiffs' Enhancement Payment
26 of Ten Thousand Dollars and No Cents (\$10,000.00) to each Plaintiff, for a total of Thirty
27 Thousand Dollars and No Cents (\$30,000.00). The payment of Plaintiffs' Enhancement Payment
28 shall be made from the Gross Settlement Fund. Any funds allocated to Plaintiffs' Enhancement

1 Payment but not awarded by the Court will be included in the Net Settlement Amount and
2 distributed pro rata to the Participating Class Members. Plaintiffs will be solely responsible to pay
3 any and all applicable taxes on the payments made pursuant to this paragraph and the Settlement
4 Administrator shall issue IRS Forms 1099 to Plaintiffs for Plaintiffs' Enhancement Payment. The
5 Settlement Administrator shall issue Plaintiffs' Enhancement Payment directly to Plaintiffs no later
6 than ten (10) calendar days after receipt of the Gross Settlement Fund.

7 41. Settlement Administration Costs. The Settlement Administrator will be paid for
8 the reasonable costs of administration of the Settlement and distribution of payments from the
9 Gross Settlement Fund, which Settlement Administration Costs shall not exceed. These costs, will
10 include, *inter alia*, the required tax reporting on the Individual Settlement Payments and
11 Individual PAGA Payments, the issuing of 1099 and W-2 IRS Forms, distributing Class Notices,
12 creating and maintaining a web site and toll-free telephone number, calculating Individual
13 Settlement Payments and Individual PAGA Payments, and distributing the Gross Settlement Fund
14 as set forth herein, and providing necessary reports and declarations. These costs shall be paid
15 from the Gross Settlement Fund. Any funds allocated to Settlement Administration Costs but not
16 incurred by or otherwise paid to the Settlement Administrator will be included in the Net
17 Settlement Amount and distributed pro rata to the Participating Class Members.

18 42. The Parties agree that after deducting Class Counsels' Attorneys' Fees and Costs,
19 Plaintiffs' Enhancement Payments, PAGA Member Payments, Labor & Workforce Development
20 Agency Payment, and the Settlement Administration Costs from the Maximum Settlement
21 Amount, the remaining amount shall represent the "Net Settlement Amount." The Net Settlement
22 Amount shall be distributed pro rata to Class Members who do not submit a valid and timely
23 Request for Exclusion based on the number of Pay Periods each Class Member worked during the
24 Class Period ("Individual Settlement Payments"). The Settlement Administrator shall issue the
25 Individual Settlement Payments directly to the Class Members no later than ten (10) calendar days
26 after receipt of the Maximum Settlement Amount.

27 43. Class Size: Defendant represents that there are approximately 2,392 Class Members
28 working approximately 427,104 total Pay Periods during the Class Period. This is a material

1 representation for Plaintiffs to enter into this Settlement Agreement.

2 **SETTLEMENT PAYMENT CALCULATION**

3 44. The Net Settlement Amount shall be determined by deducting the following
4 amounts from the Maximum Settlement Amount of \$5,093,537.50: (1) Class Counsel's Attorneys'
5 Fees and Costs, approved by the Court; (2) the Settlement Administration Costs; (4) Plaintiffs'
6 Enhancement Payment; (5) the PAGA Member Payments; and (6) the Labor & Workforce
7 Development Agency Payment.

8 45. Each Individual Settlement Payment shall be calculated by dividing the Class
9 Member's total number of Pay Period(s) during the Class Period by the total number of Pay
10 Period(s) for all Class Members during the Class Period. The resulting number shall be multiplied
11 by the Net Settlement Amount to arrive at each Individual Settlement Payment.

12 46. Each Individual Settlement Payment will be allocated twenty percent (20%) wages,
13 for which an IRS Form W-2 shall be issued and traditional payroll taxes and withholdings will be
14 made, and eighty percent (80%) penalties and interest, for which an IRS Form 1099 shall be
15 issued and no withholdings will be made. Class Members shall be solely responsible for any
16 personal income taxes owed on the amounts they receive. The Settlement Administrator shall
17 issue appropriate tax forms with each Individual Settlement Payment.

18 47. The PAGA Payment of \$62,500.00 shall be distributed pro rata to PAGA Members
19 based on the number of Pay Periods worked by each PAGA Member during the PAGA Period
20 ("PAGA Member Payment"). Each PAGA Member Payment shall be calculated by dividing the
21 PAGA Member's total number of Pay Periods during the PAGA Period as reflected in Defendant's
22 records by the total number of Pay Periods for all PAGA Members during the PAGA Period. The
23 resulting number shall be multiplied by the PAGA Payment to arrive at each PAGA Member
24 Payment. One hundred percent of each PAGA Member Payment will be allocated penalties for
25 which an IRS Form 1099 shall be issued and no withholdings will be made.

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

1 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
2 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
3 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
4 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
5 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
6 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
7 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
8 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
9 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
10 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
11 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
12 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
13 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
14 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
15 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
16 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
17 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
18 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
19 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
20 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
21 AGREEMENT.

22 49. No Credit to Benefit Plans. Each Individual Settlement Payment paid to Class
23 Members under this Settlement Agreement, as well as any other payments made pursuant to this
24 Settlement Agreement, shall be excluded from and will not be utilized or considered to calculate
25 any additional benefits under any benefit plans to which any Class Member may be eligible,
26 including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
27 vacation plans, sick leave plans, PTO plans, pension plans, and any other benefit plan. Rather, it
28 is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or

50. The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for Exclusion from Class Members, the Settlement Administrator shall not include Pay Periods attributable to such individuals as part of the calculation of the total class-wide qualifying Pay Periods for all Participating Class Members under paragraph 45 above, so that the amount available to the Participating Class Members equals 100% of the Net Settlement Amount. In other words, any amount attributed to Class Members who have opted out shall be returned to the Net Settlement Amount to be distributed to the Participating Class Members.

51. Class Members shall have one hundred and eighty (180) days to cash Individual Settlement Payments. Any Settlement checks not cashed after 180 days from the date of mailing of Individual Settlement Payments shall be sent to the State of California Unclaimed Property Fund in the Class Members' or PAGA Members' name.

52. Phoenix Settlement Administrators [“Settlement Administrator”] confirmed that it maintains a Commercial Cyber Insurance Policy that covers data breaches and that it has added Defendant as a third-party beneficiary to that policy for purposes of administering this Settlement only. Provided that the Settlement Administrator maintains Defendant as a third-party beneficiary of its Commercial Cyber Insurance Policy and such coverage is confirmed, within five (5) calendar days after the Court's entry of an order granting preliminary approval of this Settlement Agreement, Defendant shall provide to the Settlement Administrator the Class Data. The Settlement Administrator shall ensure that all information provided shall be kept confidential and shall not be disclosed, either in writing or orally, by the Settlement Administrator, except that the Settlement Administrator shall be permitted to confirm redacted information as reflected in the Class Data with Class Counsel and Defendant's counsel. The Settlement Administrator shall ensure that that it uses due care with respect to the storage, custody, use, and/or dissemination of the confidential information. The Settlement Administrator shall ensure that such information must be stored in a secure fashion and all persons who access the data must agree to keep it

1 confidential.

2 53. Within ten (10) calendar days of receipt of the Class Data, the Settlement
3 Administrator shall confirm the total number of Class Members and total number of aggregate Pay
4 Periods as reflected in the Class Data with Class Counsel and Defendant's counsel.

5 54. Within fifteen (15) calendar days after receipt of the Class Data, the Settlement
6 Administrator shall send the Notice substantially in the form attached hereto as Exhibit A and as
7 approved by the Court to the Class Members.

8 55. The Settlement Administrator will use the United States Postal Service National
9 Change of Address ("NCOA") List to verify the accuracy of all addresses on the Class Data before
10 the initial mailing date to ensure that the Notice is sent to all Class Members at the addresses most
11 likely to result in immediate receipt of the claim documents. It will be conclusively presumed
12 that, if an envelope so mailed has not been returned within thirty (30) calendar days of the mailing,
13 the Class Member received the Notice. With respect to any returned envelopes, the Settlement
14 Administrator will perform a routine skip trace procedure to obtain a current address and, if an
15 updated address is located, shall then re-mail the envelope to such address within three (3) court
16 days of the receipt of the returned envelope.

17 56. Certification Reports. The Settlement Administrator will provide all counsel with a
18 weekly report that certifies the number of Class Members who have submitted a valid Request for
19 Exclusion, Objection, and whether any Class Member submitted a challenge to any information
20 contained in the Class Notice. Additionally, the Settlement Administrator will provide to counsel
21 for the Parties any updated reports regarding the administration of the Settlement Agreement as
22 needed or requested.

23 57. Certification of Completion. Upon completion of administration of the Settlement,
24 the Settlement Administrator will provide a written declaration under oath to certify such
25 completion to the Court and counsel for all Parties.

26 **DISPUTE, REQUEST FOR EXCLUSION, AND OBJECTION PROCESS**

27 58. Each Class Member's unique Notice will state his or her total number of Pay
28 Periods and Individual Settlement Payment prior to tax withholdings. Class Members will have

1 forty-five (45) calendar days from the mailing of the Notice ("Response Deadline") to dispute his
2 or her total number of Pay Periods by submitting documentary evidence to the contrary to the
3 Settlement Administrator. No Pay Period dispute documentation will be considered if postmarked
4 after the 45 calendar-day period. Any disputes regarding a Class Member's total Pay Periods will
5 be resolved and decided by the Settlement Administrator prior to the date of mailing the Individual
6 Settlement Payments, and the Settlement Administrator's decision will be final, binding, and non-
7 appealable.

8 59. Defendant has the option to rescind this Settlement Agreement if more than Seven
9 and a Half Percent (7.5%) of the Class Members timely and validly submit a Request for
10 Exclusion. If Defendant rescinds this Settlement Agreement pursuant to this provision, Defendant
11 shall be solely responsible for all Settlement administration costs incurred by the Settlement
12 Administrator up to the date of rescission.

13 60. Class Members may submit a Request for Exclusion by following the directions in
14 the Notice. Any Request for Exclusion must be postmarked not more than forty-five (45) calendar
15 days after the date the Notice is mailed to the Class Members (or not more than ten (10) calendar
16 days after the date the Notice is re-mailed, in the circumstance described above). Requests for
17 Exclusion that do not include all required information, or that are not submitted on a timely basis,
18 will be deemed null, void, and ineffective. Persons who are eligible to, and do, submit valid and
19 timely Requests for Exclusion will not participate in the Settlement, nor will they be bound by the
20 terms of the proposed Settlement, if it is approved, or the final judgment.

21 61. Objections to the Settlement must be submitted to the Settlement Administrator and
22 postmarked not more than forty-five (45) calendar days after the date the Notice is mailed to the
23 Class Members (or not more than ten (10) calendar days after the date the Notice is re-mailed, in
24 the circumstance described above). The Settlement Administrator shall promptly forward any
25 Objections received to counsel for the Parties. Class Counsel and Counsel for Defendant shall file
26 any responses to Objections no later than five (5) court days before the date of the final fairness
27 and approval hearing. The Class Notice shall include specific instructions to Class Members for
28 submitting Objections. A Class Member who wishes to object but who fails to comply with the

1 instructions set forth in the Class Notice shall be deemed not to have objected.

2 **RELEASE OF CLAIMS**

3 62. **Release by Class Members.** Upon the Settlement Administrator's receipt of the
4 Maximum Settlement Amount, and the Employer Tax Portion, all Class Members who do not
5 timely submit a Request for Exclusion fully release the Released Parties, defined above, for the
6 duration of the Class Period.

7 63. **Release by PAGA Members.** Upon the Settlement Administrator's receipt of the
8 Maximum Settlement Amount, and the Employer Tax Portion, all PAGA Members fully release
9 the Released Parties, defined above, for the duration of the PAGA Period.

10 64. **General Release by Plaintiffs.** In consideration and upon payment of Plaintiffs'
11 Enhancement Payment, Plaintiffs Smith, Ramirez, and Deaver and their respective heirs, agents,
12 successors, and assigns hereby releases and forever discharges the Released Parties from all rights,
13 claims, demands, liabilities, actions, damages, causes of action, charges of whatever nature, that
14 Plaintiffs have or could have against the Released Parties, whether legal, equitable, statutory,
15 contract, tort, or otherwise (including any claims arising under or based on common law), arising
16 from or in any way related to each Plaintiffs' employment with BDG, relating to any matter arising
17 or accruing up to and including the date of entry of a Court order granting final approval of this
18 Settlement, whether known or unknown. Such claims include any and all known and unknown
19 claims for violation of the California Labor Code, the California Government Code, the California
20 Business and Professions Code, the Private Attorneys General Act, the applicable Industrial
21 Welfare Commission Orders or any similar state or federal law, whether for economic damages,
22 non-economic damages, liquidated damages, punitive damages, restitution, penalties, alleged
23 unpaid wages, interest, other monies, or other relief based on any facts, circumstances,
24 transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to
25 act that have been asserted or could have been asserted based on the facts alleged in this litigation
26 through the date of entry of a Court order granting final approval of this Settlement, including any
27 and all claims that Plaintiffs have arising out of or relating directly or indirectly in any manner
28 whatsoever to the facts alleged or which could have been alleged or asserted in the Operative

1 Complaints in the Action, including but not limited to any and all claims under PAGA and
2 California Labor Code Sections 200-204, 210, 216, 218, 218.5, 218.6, 225.5, 226, 226.3, 226.6
3 226.7, 500, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197.1, 1198, and 2698, *et. seq.*,
4 California Code of Civil Procedure sections 382 and 1021.5, and applicable Wage Order(s), based
5 on the facts alleged in the Action through the date of entry of a Court order granting approval of
6 this Settlement. Plaintiffs hereby execute a general release of all claims and a waiver of rights
7 under Code of Civil Procedure Section 1542, including but not limited to a release of any and all
8 claims under the Age Discrimination in Employment Act, the Americans with Disabilities Act, the
9 Family Medical Leave Act, Title VII of the Civil Rights Act, the California Fair Employment and
10 Housing Act and the California Family Rights Act. Plaintiffs shall waive the right to participate in,
11 or to receive recovery from, any other representative action, class action or PAGA action brought
12 by any other employee against any Released Party.

13 65. It being the intent of Plaintiffs and Defendant to fully and finally compromise and
14 settle all matters of any nature that have arisen up to and including the date of this Settlement
15 Agreement, Plaintiffs waive all rights and benefits afforded under California Civil Code section
16 1542, which provides:

17 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
19 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
20 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
21 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
22 **DEBTOR OR RELEASED PARTY."**

23 66. Settlement Terms Bind All Class Members Who Do Not Submit A Request for
24 Exclusion. Any Class Member who does not submit a timely and valid Request for Exclusion will
25 be bound by its terms, including those pertaining to the Released Class Claims, as well as any
26 Judgment entered by the Court if it grants final approval of the Settlement.

27 **SETTLEMENT APPROVAL PROCESS**

28 67. Class Counsel shall be responsible for preparing the Motion for Preliminary
Approval and the Motion for Final Approval. Class Counsel agree to file Plaintiffs' Motion as
soon as practicable after full execution of this Agreement and to be heard as soon as feasible on

1 the Court's calendar. Class Counsel agree to provide Defendant's counsel with a draft of Plaintiffs'
2 Motion for Preliminary Approval and Plaintiffs' Motion for Final Approval, along with all
3 supporting documents for the motions, respectively, at least five (5) business days prior to filing
4 each motion.

5 68. Class Counsel agrees to provide a copy of this Settlement Agreement to the Labor
6 & Workforce Development Agency at the same time they submit it to the Court.

7 69. Plaintiffs will file the Motion for Final Approval of this Settlement Agreement per
8 Code prior to the final approval hearing, unless otherwise ordered by the Court.

9 70. Other than filing Plaintiffs' motions for preliminary and final approval of the
10 Settlement, Plaintiffs and Class Counsel agree that they will not publicize the Settlement in any
11 way, including on Class Counsels' or any other website. Plaintiffs and Class Counsel also agree
12 not to disclose or make any comments to the media or any persons about the Settlement of the
13 Action, other than in response to inquiries from Class Members. However, Class Counsel may
14 add the Maximum Settlement Amount to any aggregate verdict and Settlement count without
15 naming or referencing the Action in any way. Furthermore, nothing herein shall prohibit Class
16 Counsel from exercising their ethical duties in assisting Class Members with this Settlement.

17 **NO ADMISSION**

18 71. Nothing contained herein, nor the consummation of this Settlement Agreement, is
19 to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
20 part of Defendant, and Defendant expressly denies any such liability. The Parties hereto have
21 entered into this Settlement Agreement with the intention of avoiding further disputes and
22 litigation with the attendant inconvenience and expenses.

23 **PARTIES' AUTHORITY**

24 72. The signatories hereto hereby represent that they are fully authorized to enter into
25 this stipulation and bind the Parties hereto to the terms and conditions hereof.

26 **MUTUAL FULL COOPERATION/RETURN TO STATUS QUO**

27 73. The Parties agree to fully cooperate with each other to accomplish the terms of this
28 Settlement Agreement, including, but not limited to, execution of such documents and to take such

1 other action as may reasonably be necessary to implement the terms of this Settlement Agreement.
2 The Parties shall use their best efforts, including all efforts contemplated by this Settlement
3 Agreement and any other efforts that may become necessary by order of the Court, or otherwise,
4 to effectuate this Settlement Agreement and the terms set forth herein, including any amendments
5 to this Settlement Agreement. If for any reason the Settlement is not approved, including without
6 limitation, at the preliminary or final approval stage, the Parties agree to address any concerns
7 raised by the Court using best efforts and working together in good faith to obtain approval;
8 among other things, if the Court does not grant Plaintiffs' motion(s) for preliminary and/or final
9 approval, Plaintiffs agree that they will file further motions for approval if necessary. If, however,
10 the Parties are unable to obtain final approval, they agree that this case shall return to the status
11 quo pre execution of the Mediator's Proposal on May 14, 2024, the Settlement Agreement shall be
12 considered void *ab initio* and shall be of no force or effect whatsoever and shall not be referred to
13 or utilized for any purposes whatsoever by any Parties.

14 **MUTUAL PREPARATION**

15 74. The Parties have had a full opportunity to negotiate the terms and conditions of this
16 Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more
17 strictly against one party than another merely by virtue of the fact that it may have been prepared
18 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
19 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

20 **MODIFICATION**

21 75. This Settlement Agreement may not be changed, altered, amended or modified,
22 except in writing and signed by the Parties, and approved by the Court. This Settlement
23 Agreement may not be discharged except by performance in accordance with its terms or by a
24 writing signed by the Parties.

25 **ENTIRE AGREEMENT**

26 76. This Settlement Agreement contains the entire agreement between the Parties
27 relating to the proposed Settlement and transaction contemplated herein, and all prior or
28 contemporaneous agreements, understandings, representations, and statements, whether oral or

1 written and whether by a party or such party's legal counsel, are merged herein. No rights
2 hereunder may be waived except in writing.

3 **BINDING ON ASSIGNS**

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

7 **COUNTERPARTS**

8 78. This Settlement Agreement may be executed in counterparts, and when each party
9 has signed and delivered at least one such counterpart, each counterpart shall be deemed an
10 original, and, when taken together with other signed counterparts, shall constitute one Settlement
11 Agreement, which shall be binding upon and effective as to the Parties. For purposes of this
12 Settlement Agreement, a facsimile signature shall be as valid and enforceable as an original.

13 **COURT'S CONTINUING JURISDICTION**

14 79. The parties consent to the Superior Court of the State of California for the County
15 of Sacramento, and to the Judge who approves the Settlement Agreement (or other Judge as may
16 in the future be assigned) to retain jurisdiction over this case and this Settlement Agreement in
17 order to enforce, construe, and interpret this Settlement Agreement and the settlement, to supervise
18 all notices, the administration of the settlement and this Agreement and distribution of the
19 Maximum Settlement Amount, and to hear, adjudicate, and resolve any disputes arising from or
20 related to the Settlement and/or this Agreement, pursuant to California Code of Civil Procedure
21 section 664.6.

22 **INTERIM STAY OF PROCEEDINGS**

23 80. The Parties agree to hold all proceedings in this case, except such proceedings
24 necessary to implement and complete the Settlement, in abeyance pending approval of this
25 Settlement Agreement, including the deadline for Plaintiffs to bring this action to trial pursuant to
26 California Code of Civil Procedure section 583.310.

27 **PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND**
28 **RELEASE INCLUDES A RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS BY**

1 **PLAINTIFFS.**

3 **IT IS SO STIPULATED AND AGREED:**

4 Date: _____, 2024

Plaintiff Jared Deaver

6 Date: _____, 2024

Plaintiff Daniel Ramirez

8 Date: _____, 2024

Plaintiff Brad Smith

10 Date: December 9, 2024

Defendant Blue Diamond Growers

12 **IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS
APPLICABLE TO COUNSEL.**

14 DATED: December 10, 2024

HANSON BRIDGETT LLP

By:

Raymond F. Lynch
RAYMOND F. LYNCH
EMILY J. LEAHY

Attorneys for Defendant
BLUE DIAMOND GROWERS

19 DATED: _____, 2024

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee
Shalom Christine Choo
Attorneys for Plaintiff JARED DEEVER and the
Class

PLAINTIFFS.

IT IS SO STIPULATED AND AGREED:

Date: 12/10/2024, 2024

DocuSigned by:

Jared Deaver

Plaintiff Jared Deaver

Date: _____, 2024

Plaintiff Daniel Ramirez

Date: _____, 2024

Plaintiff Brad Smith

Date: _____, 2024

Defendant Blue Diamond Growers

IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS APPLICABLE TO COUNSEL.

DATED: _____, 2024

HANSON BRIDGETT LLP

By: _____

RAYMOND F. LYNCH

EMILY J. LEAHY

Attorneys for Defendant

BLUE DIAMOND GROWERS

DATED: December 10, 2024

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Shalom Christine Choo

Attorneys for Plaintiff JARED DEEVER and the Class

1 DATED: December 10, 2024

POLARIS LAW GROUP

2
3 By: 

4 William L. Marder
5 Attorneys for Plaintiff Plaintiff JARED DEEVER
6 and the Class

7
8 DATED: December 10, 2024

LAW OFFICES OF CHOI & ASSOCIATES

9
10 By: 

11 Edward W. Choi
12 Attorneys for Plaintiff JARED DEEVER and the
13 Class

14
15 DATED: _____, 2024

BIBIYAN LAW GROUP, P.C.

16
17 By: _____

18 David D. Bibiyan
19 Vedang J. Patel
20 Attorneys for Plaintiffs DANIEL RAMIREZ and
21 BRAD SMITH

22
23 DATED: _____, 2024

CROSNER LEGAL, P.C.

24
25 By: _____

26 Chad Saunders
27 Attorneys for Plaintiffs DANIEL RAMIREZ and
28 BRAD SMITH

1 **PLAINTIFFS.**

3 **IT IS SO STIPULATED AND AGREED:**

4 Date: 12/10/2024, 2024

DocuSigned by:



Plaintiff Jared Deaver

6 Date: _____, 2024

Plaintiff Daniel Ramirez

8 Date: _____, 2024



Plaintiff Brad Smith

10 Date: _____, 2024

Defendant Blue Diamond Growers

12 **IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS
13 APPLICABLE TO COUNSEL.**

14 DATED: _____, 2024

HANSON BRIDGETT LLP

16 By: _____

RAYMOND F. LYNCH

EMILY J. LEAHY

Attorneys for Defendant

BLUE DIAMOND GROWERS

19 DATED: December 10, 2024

DIVERSITY LAW GROUP, P.C.

21 By: 

Larry W. Lee

Shalom Christine Choo

Attorneys for Plaintiff JARED DEEVER and the
Class

1 DATED: December 10, 2024

POLARIS LAW GROUP

2
3 By: 

4 William L. Marder
5 Attorneys for Plaintiff Plaintiff JARED DEEVER
6 and the Class

7
8 DATED: December 10, 2024

LAW OFFICES OF CHOI & ASSOCIATES

9
10 By: 

11 Edward W. Choi
12 Attorneys for Plaintiff JARED DEEVER and the
13 Class

14
15 DATED: _____, 2024

BIBIYAN LAW GROUP, P.C.

16
17 By: _____

18 David D. Bibiyan
19 Vedang J. Patel
20 Attorneys for Plaintiffs DANIEL RAMIREZ and
21 BRAD SMITH

22
23 DATED: December 11,, 2024

CROSNER LEGAL, P.C.

24
25 By: 

26 Chad Saunders
27 Attorneys for Plaintiffs DANIEL RAMIREZ and
28 BRAD SMITH

1 **PLAINTIFFS.**

2

3 **IT IS SO STIPULATED AND AGREED:**

4 Date: _____, 2024

Plaintiff Jared Deaver

5

6 Date: **Dec 11, 2024**, 2024


[Daniel Ramirez \(Dec 11, 2024 16:53 PST\)](#)

Plaintiff Daniel Ramirez

7

8 Date: _____, 2024

Plaintiff Brad Smith

9

10 Date: _____, 2024

Defendant Blue Diamond Growers

11

12 **IT IS AGREED AS TO FORM AND AS TO CONTENT AS TO THOSE PROVISIONS**
13 **APPLICABLE TO COUNSEL.**

13

14 DATED: _____, 2024

HANSON BRIDGETT LLP

14

15

By: _____

16

RAYMOND F. LYNCH

17

EMILY J. LEAHY

18

Attorneys for Defendant

BLUE DIAMOND GROWERS

19

20 DATED: _____, 2024

DIVERSITY LAW GROUP, P.C.

21

By: _____

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Larry W. Lee

23

Shalom Christine Choo

Attorneys for Plaintiff JARED DEEVER and the
Class

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1 DATED: _____, 2024

POLARIS LAW GROUP

2
3 By: _____

William L. Marder

Attorneys for Plaintiff Plaintiff JARED DEEVER
and the Class

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6 DATED: _____, 2024

LAW OFFICES OF CHOI & ASSOCIATES

7
8 By: _____

Edward W. Choi

Attorneys for Plaintiff JARED DEEVER and the
Class

9
10
11 DATED: 12/12 _____, 2024

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

12
13 By: _____

David D. Bibiyan

Vedang J. Patel

Attorneys for Plaintiffs DANIEL RAMIREZ and
BRAD SMITH

14
15
16
17 DATED: _____, 2024

CROSNER LEGAL, P.C.

18
19 By: _____

Chad Saunders

Attorneys for Plaintiffs DANIEL RAMIREZ and
BRAD SMITH

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EXHIBIT A

Sacramento Superior Court
Jared Deaver v. Blue Diamond Growers, Case No. 34-2022-00316490
Consolidated with:
Daniel Ramirez v. Blue Diamond Growers, Case No. 34-2021-00304425
Brad Smith v. Blue Diamond Growers, Case No. 34-2021-00310576
Jared Deaver v. Blue Diamond Growers, Case No. 34-2022-00319378

Notice of Class and PAGA Action Settlement

You are not being sued. This notice affects your rights. Please read it carefully
A California Court authorized this Notice. This is not a solicitation from a lawyer.

To: “Class Member” which means all current and former non-exempt California employees employed directly by Blue Diamond Growers (“BDG” or “Defendant”) who worked at any time from July 14, 2017 through August 23, 2024 (the “Class Period”).

“PAGA Members” means all current and former non-exempt employees employed directly by BDG who worked at any time from July 14, 2020 through August 23, 2024, for certain California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) claims. These definitions are for settlement purposes only and are not an admission of any wrongdoing by Defendant.

You have received this Notice because Defendant’s records indicate that you are a Class Member and/or PAGA Member and are entitled to a settlement payment.

YOUR ESTIMATED CLASS AND PAGA PAYMENTS

According to Defendant’s records, you worked a total of ____ Pay Periods during the Class Period and your estimated gross Individual Settlement Payment is approximately \$____.

According to Defendant’s records, you worked a total of ____ Pay Periods during the PAGA Period your estimated PAGA Member Payment \$____.

Based on the above, your total estimated gross payment from the Settlement is approximately \$____.

On _____, 2024, the Honorable Lauri A. Damrell of the Sacramento County Superior Court granted preliminary approval of this class action and PAGA settlement. **Unless you choose to opt out of the Class Settlement by following the procedures described below, you will be deemed a Participating Class Member. If the Court grants final approval of the settlement, Participating Class Members and all PAGA Members will be mailed a check for their share of the Net Settlement Amount.** The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _____.m. on [INSERT DATE] in Department 22 of the Sacramento County Superior Court located at 720 9th Street, Sacramento, California 95814.

The Final Approval Hearing may be rescheduled by the Court to another date and/or time. Please check with the Settlement Administrator or Class Counsel for any scheduling changes. Contact information is provided below. As discussed below, you may also review the Court's online records at <https://www.saccourt.ca.gov>.

If you move, you must send the Settlement Administrator your new address; otherwise, you may not receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

On July 15, 2021, Plaintiff Daniel Ramirez filed a class action against BDG entitled *Daniel Ramirez v. Blue Diamond Growers*, Case No. 34-2021-00304425 ("Ramirez Action"). On November 2, 2021, Plaintiff Brad Smith filed a class action against BDG entitled *Brad Smith v. Blue Diamond Growers*, Case No. 34-2021-00310576 ("Smith Action"). On April 19, 2023, Plaintiff Brad Smith was dismissed and added as a named plaintiff to *Ramirez v. Blue Diamond Growers* action. On March 9, 2022, Plaintiff Jared Deaver filed a class action against BDG entitled *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00316490 ("Deaver Class Action"). On May 9, 2022, Plaintiff Jared Deaver filed a representative Private Attorney General Act ("PAGA") action against BDG entitled *Jared Deaver v. Blue Diamond Growers*, Case No. 34-2022-00319378 ("Deaver PAGA Action"). All of the foregoing lawsuits were consolidated into a single lawsuit.

On May 14, 2024, the Parties participated in a mediation with Honorable Daniel Buckley (ret.), a neutral, experienced, and well-respected class action mediator. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. With Judge Buckley's guidance, the Parties were able to negotiate a complete settlement of Plaintiffs' claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi & Associates, Bibiyan Law Group, P.C., and Crosner Legal PC (collectively, "Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement.

Defendant has denied, and continues to deny, the factual and legal allegations in the case, and believes that it has valid defenses to Plaintiffs' claims. By agreeing to settle, Defendant is not admitting liability on any of the factual or legal allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Maximum Settlement Amount of \$5,093,537.50. This amount is inclusive of (1) Individual Settlement Payments; (2) Attorneys' Fees of up to 35% in the amount of \$1,782,738.13; (3) Costs up to \$80,000.00; (4) Plaintiff Enhancement Payments of \$10,000 each (\$30,000 total); (5) the PAGA Settlement of \$250,000; and (6) the Settlement Administration Costs of up to \$22,000. After

deducting the above payments, a total of approximately \$2,991,299.38 (the “Net Settlement Amount”) will be allocated to Class Members who do not opt out of the Settlement (“Participating Class Members”) Additionally, all PAGA Members will receive a proportional share of the \$62,500.00 PAGA PAGA Member Payment, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Amount are based on Pay Periods Issued to Each Participating Class

Member. “Pay Periods” means the number Pay Periods worked by the Class Members during the Class Period. To determine each Participating Class Member’s estimated gross share of the Net Settlement Amount, the Settlement Administrator will use the following formula: Each Participating Class Members shall be entitled to receive a pro rata portion of the Net Settlement Amount (their “Individual Settlement Payment”), calculated based upon the number of Pay Periods worked during the Class Period, divided by the total number of Pay Periods worked by all Participating Class Members during the Class Period. The Settlement Administrator will calculate the number of Pay Periods worked to Participating Class Members, the amount to be paid per Pay Periods, and the Individual Settlement Payment to be paid to each Participating Class Member.

According to Defendant’s records, you worked a total of ____ Pay Periods during the Class Period and your estimated gross Individual Settlement is approximately \$ ____.

Payments from PAGA Payment. “PAGA Member Payments” shall mean each PAGA Member’s share of 25% of the PAGA Amount. To determine each Participating Class Member’s estimated gross share of the PAGA Member Payment, the Settlement Administrator will use the following formula: Each PAGA Member shall be entitled to receive a pro rata portion of the PAGA Member Payment, calculated based upon the number of Pay Periods worked during from July 14, 2020, through August 23, 2024 (the “PAGA Period”), divided by the total number of Pay Periods worked by all PAGA Members during the PAGA Period. The Settlement Administrator will calculate the number of Pay Periods worked by PAGA Members, the amount to be paid per Pay Period, and the PAGA Member Payment to be paid to each PAGA Member. A Request for Exclusion does not exclude an PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and all PAGA Members will receive their portion of the PAGA Amount even if he or she submits a valid Request for Exclusion.

According to Defendant’s records, you worked a total of ____ Pay Periods during the PAGA Period your estimated Individual PAGA Payment \$ ____.

Your Total Estimated Gross Payment: Based on the above, your total estimated gross payment from the Settlement is approximately \$ _____. If you believe the pay period information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs). All disputes must be postmarked on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o Phoenix Settlement Administrators

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

Timing of Payment. The Court will hold a Final Approval Hearing on _____, 2025 to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. If there are appeals, it is uncertain whether they will be resolved and when. Resolving appeals can take time, often more than a year. You can check on the progress of the case by contacting the Settlement Administrator or as discussed below by visiting the Court's website, or going in person to the Clerk's office. *Please be patient.*

Taxes on Settlement Payments. Participating Class Members' Individual Settlement Payment will be allocated twenty percent (20%) wages, for which an IRS Form W-2 shall be issued and traditional payroll taxes and withholdings will be made, and eighty percent (80%) penalties and interest, for which an IRS Form 1099 shall be issued and no withholdings will be made. One hundred percent of each PAGA Member Payment will be allocated penalties for which an IRS Form 1099 shall be issued and no withholdings will be made.

Fee and Cost Award for Class Counsel. Class Counsel will request attorneys' fees in the amount of up to 35% which is currently estimated at \$1,782,738.13 of the Maximum Settlement Amount. Class Counsel will also request reimbursement of reasonable and actual litigation expenses incurred in prosecuting this Action, not to exceed \$80,000. The Court will not determine the amount of fees and costs until the Final Approval Hearing. If any portion of the amounts requested for attorneys' fees and costs are not awarded by the Court, that portion will be included in the Net Settlement Amount for distribution to Participating Class Members. These attorneys' fees and costs shall compensate Class Counsel for the work they have performed and the expenses they have incurred in this Action. Class Members are not personally responsible for any of Class Counsel's attorneys' fees and costs.

Incentive Award and General Release Payment to the Class Representative. Class Counsel will also seek Incentive Award of no more than \$10,000 for each Plaintiff for acting as representative plaintiffs on behalf of the Class and signing a general release of all claims. This payment will be in addition to whatever payment Plaintiffs are otherwise entitled to as a Class Member. If approved by the Court, this amount will be paid from the Maximum Settlement Amount for their risk and services on behalf of the Class, which included, among other things, reviewing documents, providing written statements, participating in meetings with Class Counsel, and performing other services of that nature, as well as their general release of all claims against Defendant.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically be issued a payment of your share of the Settlement if and when the Settlement receives final approval by the Court.

If the Court grants final approval of the Settlement, you will be mailed a check for your share of the Net Settlement Amount and be deemed to have released or waived the Class Released Claims. If you are an PAGA Member, your check will include your share of the PAGA Member Payment and you will be deemed to have released or waived the PAGA Released Claims:

"Released Class Claims" means all claims during the Class Period alleged or that could have been alleged in the Action, including without limitation all claims during the Class Period alleged in the Operative Complaints, all claims during the Class Period that could

1 have been alleged based on the factual allegations contained in the Operative Complaints,
2 including but not limited to all of the following claims for relief during the Class Period: (a)
3 all claims for failure to pay earned wages; (b) all claims for failure to pay minimum wages;
4 (c) all claims for failure to pay overtime wages; (d) all claims for failure to provide compliant
5 meal and rest periods or compensation in lieu thereof; (e) all claims for failure to timely pay
6 all wages due upon termination or resignation; (f) all claims for non-compliant wage
7 statements; (g) all claims for failure to reimburse business expenses; (h) all claims for
8 violations of California Labor Code § 227.3; (i) all claims asserted through California
9 Business & Professions Code § 17200 et seq. arising out of the Labor Code violations
10 referenced in the Operative Complaints; and (j) all claims for injunctive relief, liquidated
11 damages, penalties of any nature, interest, fees, including without limitation fees under
California Labor Code and California Code of Civil Procedure § 1021.5, and costs. The
Released Class Claims include, all of the following claims for relief during the Class Period:
violations of California Labor Code §§ 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210, 221,
223, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233-234, 245 et seq., 246 et seq., 256, 432,
510, 512, 558, 558.1, 1174, 1174.5, 1181.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5,
1198, 1198.5, 1199, 2802, 2810.5, 6401, 6402, 6403, 6409.6, and the applicable Wage
Order(s). This release does not include the PAGA released claims.

12 **"Released PAGA Claims"** means All claims for civil penalties under the Private Attorneys
13 General Act of 2004 (California Labor Code § 2698 et seq.), during the PAGA Period known
14 and unknown under the Private Attorneys General Act of 2004 (California Labor Code §
15 2698 et seq.) arising out of the California Labor Code violations alleged or that could have
16 been alleged in the Action, including, without limitation in the Operative Complaints and
17 LWDA Letters or that could have been alleged based on the factual allegations contained in
18 the Operative Complaints and LWDA Letters. For avoidance of doubt, the PAGA claims
19 being released by the LWDA and PAGA Members are claims that were or could have been
20 brought under PAGA, based on the allegations in Plaintiffs' Operative Complaints and
21 LWDA Letters. This release does not include the Class Released Claims. b. Waiver
22 of Rights under California Civil Code Section 1542. The PAGA Members' Released PAGA
23 Claims include all such respective claims, whether known or unknown by the releasing party.
24 Thus, even if a PAGA Member (including Plaintiffs) discovers facts in addition to or
25 different from those that they now know or believe to be true with respect to the subject
26 matter of the PAGA Members' Released PAGA Claims, e.g. the claims brought in Plaintiffs'
27 Operative Complaints or LWDA Letters or that could have been brought based on the facts
28 therein, those claims will remain released and forever barred. Therefore, with respect to
those respective Released PAGA Claims, Plaintiffs and the PAGA Members expressly
waive and relinquish the provisions, rights and benefits of California Civil Code section
1542, which reads:

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

There shall be no right for any PAGA Member to opt out or otherwise exclude himself or
herself from the release of PAGA claims. The Final Approval Order and the Judgment
entered as a result of this Settlement shall have res judicata and preclusive effect to the fullest
extent allowed by law.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Class Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator. Your request for exclusion must: (i) set forth your name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by you; (iii) be returned to the Settlement Administrator; (iv) clearly state that you do not wish to be included in the Settlement; and (v) be faxed or postmarked on or before _____, 2025. Sign, date, and mail the request for exclusion by First Class U.S. Mail to the address below.

Settlement Administrator
c/o Phoenix Settlement Administrators

The Request for Exclusion must be postmarked no later than _____, 2025 [insert Response Deadline]. If you receive a re-mailed Notice, you will be provided a ten (10) day extension to mail a Request for Exclusion. If you submit an untimely Request for Exclusion, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive an Individual Settlement Payment from the Net Settlement Amount.
- Not release the Class Released Claims.
- If you are an PAGA Member, you will still release the PAGA Released Claims and receive and Individual PAGA Payment.

Option 3 – Object to the Settlement

You may object to the proposed Settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must: (i) contain your full name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and be postmarked by _____, 2025.

All written objections must be mailed to the Settlement Administrator and postmarked no later than _____ 2025 [insert Response Deadline]. By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the Settlement, you must follow the directions described above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only. In the event that you submit both a Request for Exclusion and an Objection, the Request for Exclusion will be valid and Objection will be invalid.

Even if you do not submit a written objection, you may also appear at the Final Approval Hearing set for _____, 2025 at _____ .m. in Department 22 of the Sacramento Superior Court located at 720 9th Street, Sacramento, California 95814 and discuss any objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. Whether or not the Court overrules your objection, you are deemed bound to the Settlement and to have released the Released Claims, and, if you are an PAGA Member, the Released PAGA Claims.

Additional Information

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement. You can get a copy of the Settlement Agreement and other case documents by calling 1-8xx-xxx-xxxx, or by writing to the Settlement Administrator at [insert address]. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Sacramento's Electronic Filing and Service Website at <https://www.saccourt.ca.gov>, or (b) in person at Superior Court of California, County of Sacramento, 720 9th Street, Sacramento, California 95814, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

This notice is also available in Urdu, Punjabi, Farsi, and Mandarin using the links below:

اس نوٹس کے اردو میں ترجمہ کے لیے جائیں۔ [INSERT PHOENIX WEBSITE URL FOR URDU]

ਇਸ ਨੋਟਿਸ ਦੇ ਪੰਜਾਬੀ ਵਿੱਚ ਅਨੁਵਾਦ ਲਈ ਇੱਥੇ ਜਾਓ [INSERT PHOENIX WEBSITE URL FOR PUNJABI]

برای ترجمہ فارسی این اطلاعیه به ادامه مطلب بروید [INSERT PHOENIX WEBSITE URL FOR FARSI]

如需本通知的中文翻译，请访问 [INSERT PHOENIX WEBSITE URL FOR MANDARIN]

Notice of Final Judgment. Should the Court granted final approval of this Settlement, a copy of the Final Order and Judgment will be available at [INSERT PHOENIX WEBSITE URL]

You also can contact Class Counsel:

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david@tomorrowlaw.com

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3 [om](mailto:edward.choi@choiandassociates.com)

4 **LAW OFFICES OF CHOI &**
5 **ASSOCIATES**

6 515 S. Figueroa St., Suite 1250
7 Los Angeles, CA 90071
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9 Facsimile: (213) 465-4885

William L. Marder
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POLARIS LAW GROUP

501 San Benito Street, Suite
200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

**PLEASE DO NOT CALL THE COURT WITH ANY QUESTIONS RELATED TO THE
SETTLEMENT.**

EXHIBIT

2



Zachary Crosner, Esq.
 Managing Attorney
 Los Angeles Office
 9440 Santa Monica Blvd.
 #301
 Beverly Hills, CA 90210

zach@crosnerlegal.com
 office: (310) 496-5818
 fax: (310) 510-6429

February 23, 2021

VIA ONLINE FILING ONLY:

California Labor & Workforce
 Development Agency
 ATTN: PAGA Administrator
 455 Golden Gate Avenue, 9th Floor
 San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL:

C T Corporation System,
 Agent for Service of Process for Blue Diamond Growers
 ATTN to the following employees authorized to accept service: Amanda Garcia, Vivian
 Imperial, Gladys Aguilera, Carlos Paz, Gabriela Sanchez, Daisy Montenegro, Beatrice Casarez-
 Barrientez, Jessie Gastelum, Peter Cayetano and Alberto Damonte
 818 West Seventh Street, Suite 930
 Los Angeles, CA 90017

C T Corporation System,
 Agent for Service of Process for Blue Diamond Almond Growers
 ATTN to the following employees authorized to accept service: Amanda Garcia, Vivian
 Imperial, Gladys Aguilera, Carlos Paz, Gabriela Sanchez, Daisy Montenegro, Beatrice Casarez-
 Barrientez, Jessie Gastelum, Peter Cayetano and Alberto Damonte
 818 West Seventh Street, Suite 930
 Los Angeles, CA 90017

C T Corporation System,
 Agent for Service of Process for Blue Diamond Growers Services

ATTN to the following employees authorized to accept service: Amanda Garcia, Vivian Imperial, Gladys Aguilera, Carlos Paz, Gabriela Sanchez, Daisy Montenegro, Beatrice Casarez-Barrientez, Jessie Gastelum, Peter Cayetano and Alberto Damonte
 818 West Seventh Street, Suite 930
 Los Angeles, CA 90017

Subject: *Brad Smith, on behalf of himself and all similarly aggrieved employees v. Blue Diamond Growers, et al.*, **Cal. Labor Code Sections 2699.3 and 2699.5 Notice of Labor Code Violations**

To the California Labor and Workforce Development Agency and above-named entities:

This office represents Complainant Brad Smith (hereinafter “Complainant”) in connection with his claims under the California Labor Code. Complainant was, at all relevant times herein mentioned, an employee of the above-named entities (hereinafter to be collectively referred to as “Employer”).

Employer may be contacted directly at the above addresses. Pursuant to California Labor Code sections 2699.3 and 2699.5, Complainant, on behalf of himself, and on behalf of similarly situated aggrieved current and former employees of Employer, hereby gives written notice (“Notice”) of their claims against Employer. This Notice is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and Employer via Employer’s principal executive office and via its Agent(s) for Service of Process (to the extent provided the California Secretary of State). This Notice also serves to demonstrate Complainant’s reasonable attempt at settlement with Employer. If Employer is interested in settling this matter before a lawsuit is filed, Employer may contact Crosner Legal, P.C. at the address listed at the close of this notice. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice.

Consequently, Employer is on notice that Complainant continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which Complainant will base his claims, Complainant requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include but are not limited to California Labor Code sections 201-202, 203, 204, 226, 226.7, 216, 223, 233-234, 245-248.5, 510 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810, 2810.5, and 2699. These violations subject Employer to civil penalties as set forth in (1) the foregoing statutes, (2) Labor Code sections 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and all applicable IWC Wage Orders, section 20.

The Named Entities Are Joint Employers of Complainants and Aggrieved Employees

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and hereon asserts that Employer and unknown entities must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted Complainant to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant and similarly aggrieved employees, they are each liable for civil penalties for violation of the California Labor Code as to Complainant and similarly aggrieved employees.

Individual Liability Under Labor Code Section 558.1

Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” Labor code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant and similarly aggrieved employees’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “*a natural person* who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California’s punitive damages statute. (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, and 1194 as further described in detail below.

Complainant intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. Complainant will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Complainant asks and demands that Employer put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Complainant also offers to Employer to place those individuals on notice if Employer voluntarily provides their contact information.

The Employer; Summary of Labor Code Violations

Employer owns, operates, or otherwise manages an almond-processing company. While Employer may be a successful company/may have a noble mission, it does not comply with California labor law.

Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay Complainant and similarly aggrieved employees for all hours worked; failed/fails to pay Complainant and similarly aggrieved employees at least the minimum wage for all hours worked; failed/fails to pay all overtime wages; failed/fails to provide proper meal and rest periods and/or compensate with an additional hour of premium pay for each missed/improper meal and rest period; failed/fails to pay all wages earned on at least semimonthly paydays; refused/refuses to make and/or falsely denied the amount of payments due; failed/fails to provide accurate itemized wage statements; failed/fails to pay proper sick leave benefits; failed/fails to provide proper notices regarding sick pay; and failed/fails to pay all earned and unpaid wages upon separation of employment within the time limits prescribed by law. Further descriptions of the above-mentioned violations and others are explained below.

Complainant and similarly aggrieved employees

Complainant, Brad Smith, worked for Employer as a non-exempt forklift driver, for approximately thirteen years until his date of termination, on or about February 5, 2021. Complainant typically worked ten-plus hour shifts, or fifty-five to sixty hours per week. Complainant was paid an hourly rate for hours counted by employer as time worked.

At all relevant times, Complainant was an aggrieved employee as defined in Labor Code section 2699(c) (“any person who was employed by the alleged violator and against whom one or more of the violations was committed”). Complainant seeks recovery for the Labor Code violations set forth herein on behalf of himself and other current and former employees, including but not limited to: non-exempt employees, and similarly aggrieved employees who were employed by Employer in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and IWC Wage Order violations as Complainant.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time and pay records. Employer has failed/fails to keep accurate and complete records showing total hours worked by each employee at the proper pay rate. Furthermore, upon information and belief, Employer failed to keep accurate and complete records of the start and stop times of all owed meal periods.

Employer's failure to keep "accurate and complete" payroll records for Complainant and similarly aggrieved employees violates Labor Code sections 1174, 1198, 1199, and section 7 of all applicable IWC Wage Orders. These violations subject Employer to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty-minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512; Sections 11 (A) and (C) of all applicable IWC Wage Orders; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Id.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Id.*

Employers covered by all Industrial Welfare Commission ("IWC") Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above) and a second meal period for shifts over ten hours, *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. Section 7(A)(3) of all applicable IWC Wage Orders ("Meal periods . . . shall also be recorded"); *Brinker*, 53 Cal.4th at 1052-1053, *citing* Wage Order section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

¹ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper meal period. Lab. Code section 226.7; section 11(B) of all applicable IWC Wage Orders ("If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"). *Brinker*, 53 Cal.4th at 1018.

Employer failed to maintain a company meal period policy compliant with California law. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. The fact that employees may legally waive meal periods does not affect this result. *Brinker*, 53 Cal.4th at 1053.

Employer did not provide Complainant and similarly aggrieved employees with proper meal periods. Complainant and similarly aggrieved employees were routinely denied a meal period before the end of the fifth hour of work as well as a second meal period before the end of the tenth hour of work when working shifts of more than ten (10) hours. Complainant and similarly aggrieved employees were forced to work through their meal periods or any purported meal periods would be interrupted/cut short due to their workloads/commentary from supervisors pressuring Complainant and similarly aggrieved employees to take improper meal periods or no meal periods at all. Notably, second meal periods were rarely if ever provided for those shifts that Complainant worked more than ten (10) hours. Employer did not execute written on-duty meal period waiver agreements with Complainant and similarly aggrieved employees. Notably, Employer required Complainant and similarly aggrieved employees to clock out for meal periods not provided. For example, Employer required Complainant and similarly aggrieved employees to spend time during meal periods suiting up and or removing their work gear which said time they were not compensated for. Despite not providing its employees with the meal periods to which they were legally entitled, Employer would not pay proper premiums for all improper and missed meal periods in violation of California law. *Brinker*, *supra*, 53 Cal.4th 1004.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and sections 11(A) and (C) of all applicable IWC Wage Orders. These violations subject Employer to civil penalties under Labor Code sections 558 and 2699, and section 20 of all applicable IWC Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² Employer's

² Labor Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period");

failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately resulted/results in further violations, such as violation of Labor Code section 1174 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. Section 12 (A) of all applicable IWC Wage Orders. The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. Accordingly, an employer cannot require employees to stay on the work premises nor may an employer require employees to monitor their cell phones and/or radios and/or other dispatch equipment during their rest periods as “one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to *particular locations* or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods. [emphasis added].” *Id* at 269. Employers must pay employees an additional hour of wages at the employee’s regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code section 226.7; section 12(B) of all applicable IWC Wage Orders (“If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided”).

Complainant and similarly aggrieved employees were often required to work through all or part of their rest periods due to their workloads/commentary from supervisors pressuring Complainant and similarly aggrieved employees to take improper rest periods or skip rest periods completely. Based on information and belief, Complainant and similarly aggrieved employees were required to remain on the work premises during any rest periods and thus remained under employer control during any rest periods, thereby rendering said rest periods improper.

Given Complainant and similarly aggrieved employees’ work schedules, Complainant and similarly aggrieved employees were typically entitled to at least two (2) ten-minute paid duty-free rest periods per shift. However, Complainant and similarly aggrieved employees were not provided proper rest periods. Employer did not maintain a company rest period policy and/or practice compliant with California law, and Employer did not properly authorize and provide Complainant and similarly aggrieved employees with appropriate rest periods in compliance with the law. Per Employer’s illegal rest period policy, Complainant and similarly aggrieved

employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take, proper rest periods. Notably, Employer did not authorize nor permit Complainant and similarly aggrieved employees to take any version of a third rest period for shifts lasting over ten hours. Despite not receiving proper rest periods, Employer failed to compensate Complainant and similarly aggrieved employees with an additional hour of pay at Complainant's and similarly aggrieved employees' regular rates of pay for each missed or improper rest period. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and sections 12(A) and (B) of all applicable IWC Wage Orders. These violations subject Employer to civil penalties under Labor Code section 2699, and section 20 of all applicable IWC Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Employer failed to compensate Complainant and similarly aggrieved employees for all hours worked by, among other things, requiring Complainant and similarly aggrieved employees to work through meal periods they were not paid for and by requiring them to perform pre-shift and/or post-shift work for which they were not compensated. For example, Complainant and similarly aggrieved employees were required to spend time suiting up in/removing their gear before/after their shifts and/or at the beginning and end of meal periods. This off-the-clock work resulted in violations of California's minimum wage laws.

These violations subject employer to civil penalties under Labor Code sections 1197.1 and section 20 of all applicable IWC Wage Orders. Each violation of each Labor Code section and

³ Labor Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); section 20 of all applicable IWC Wage Orders (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid") (emphasis added).

Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; and section 3 of all applicable IWC Wage Orders. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Id.*

Employer violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by Complainant and similarly aggrieved employees and not paying proper overtime rates for all overtime worked. For example, Complainant and similarly aggrieved employees were required to spend time suiting up in/removing their gear before/after their shifts and/or at the beginning and end of meal periods. They were not compensated for this time. Based on Complainant and similarly aggrieved employees' regular work schedules, this resulted in a significant of uncompensated overtime worked per pay period. Moreover, upon information and belief, Complainant and similarly aggrieved employees regularly worked seven (7) consecutive days but were not compensated at the appropriate premium wage rate(s) for those hours worked on the seventh day.

This conduct results in violations of Labor Code sections 510, 1198-1199, and section 12(A) of all applicable IWC Wage Order. These violations subject employer to civil penalties under Labor Code sections 558.1, 218.5, and 2699, and section 20 of all applicable IWC Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Sick Leave Pay Violations: An employer is required to provide paid sick days in accordance

⁴ Labor Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); section 20 of all applicable IWC Wage Orders (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid") (Emphasis added).

⁵ Labor Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period");

with the provisions of Labor Code sections 245 through 248.5. An employer is also required to provide a Labor Code section 2810.5 notice, demonstrating all of the following:

- (1) An employee is entitled to accrue, request, and use paid sick days.
- (2) The amount of sick days provided for by this article.
- (3) The terms of use of paid sick days.
- (4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

On information and belief, Employer improperly accrued the amounts of sick leave pay owed to Complainant and similarly aggrieved employees. On further information and belief, Employer failed to put Complainant and similarly aggrieved employees on notice of their paid sick leave rights by failing to include their entitlement to sick leave in a Labor Code Section 2810.5 notice upon hire. Furthermore, throughout their respective employments, Employer failed to provide notice of the correct sick leave amount balance left for Complainant and similarly aggrieved employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure, Complainant and similarly aggrieved employees would have used their paid sick leave prior to their respective termination dates and were entitled to use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick leave is unlawful, and Complainant seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of himself and all aggrieved employees.

Moreover, in violation of Labor Code Section 247.5, Employer failed to maintain records documenting the hours worked and paid sick days accrued and used by employee, permitting the presumption that Complainant and similarly aggrieved employees were entitled to the maximum number of hours accruable under this article at the time of their respective termination dates. Employer further failed to comply with Labor Code section 246, that is, providing its employees with a 226 statement or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays its period wages and provides a Labor Code section 226 statement.

Adding further to injury, Employer unlawfully retained and continues to retain paid sick leave that should have been paid and was not as a result of its failure to properly institute a paid sick leave program. On information and belief, Complainant alleges that all these practices were experienced and continue to be experienced by similarly aggrieved employees.

Employer's violations of the Labor Code with respect to sick leave pay as described above

entitle Complainant and similarly aggrieved employees to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Complainant requests all relief pursuant to the aforementioned code provisions, including but not limited to, Labor Code sections 233 and 234, which incorporates the paid sick leave requirements. As noted, pursuant to the PAGA, each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. Employer violated this section by failing to pay aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by failing to compensate aggrieved employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject Employer to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁶

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and similarly aggrieved employees minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. Employer acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, Employer paid Complainant and similarly aggrieved employees lower wages than those they were entitled to while purporting that Complainant and similarly aggrieved employees were properly paid. Complainant and similarly aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay aggrieved employees for all hours worked at the proper wage rate and by failing to pay aggrieved employees an additional hour of pay for each

⁶ Labor Code section 210 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

meal/rest period not provided/that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Lab. Code section 226.

Employer failed to provide accurate and itemized statements containing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Employer's wage statements provided to Complainant and aggrieved employees failed to indicate the "total hours worked" by the employees. In addition, because of the violations detailed above, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest period premiums, Employer has violated California Labor Code section 226 by willfully failing to furnish Complainant and aggrieved employees with accurate, itemized wage statements. As a result, the wage statements provided to Complainant and aggrieved employees were not accurate and did not include all of the statutorily required information. These violations subject Employer to civil penalties under Labor Code section 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁸

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,

⁷ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

⁸ Labor Code section 226.3 (establishing that the civil penalty is "per employee per violation").

Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Employer's violations with respect to meal periods, rest periods, recordkeeping provisions, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code section 202 requires an Employer to pay all earned and unpaid wages within 72 hours of quitting unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her earned wages immediately upon quitting. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge, in that Employer has not paid for: (1) time during which meal periods were not provided/valid, (2) an additional hour of pay for meal and rest periods not provided/valid, (3) unpaid minimum and (4) overtime wages. These violations subject Employer to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁹

Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Complainant and similarly aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and file an online claim to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699,

⁹ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainants will seek these penalties in a civil action, on behalf of himself and all other similarly situated California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Ashley Gutierrez <agutierrez@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "zach@crosnerlegal.com" <zach@crosnerlegal.com>

Tue, Feb 23, 2021 at 12:28 PM

2/23/2021

LWDA Case No. LWDA-CM-822507-21
Law Firm : Crosner Legal PC
Plaintiff Name : Brad Smith
Employer: Blue Diamond Growers, et al.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

3

Thank you for your Proposed Settlement Submission

External Inbox

**DIR PAGA Unit** <no-reply@formassembly.com>

to me

5:29 PM

01/08/2025 05:27:33 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of

Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm