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Attorneys for Defendant KINGS RIVER FARMING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

RAUL GRANADOS DELGADO, individually,
and on behalf of all others similarly situated,

Plaintiff,

vs.

KINGS RIVER FARMING, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No. 22CECG00736

PAGA REPRESENTATIVE ACTION

**JOINT STIPULATION APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004**

Action Filed: March 10, 2022

Trial Date: Not Set

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1. Pursuant to PAGA, by letter dated February 19, 2022, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of various provisions of the California Labor Code that Defendant allegedly violated, including the facts and theories to support the alleged violations. Specifically, Plaintiff alleged that Defendant had failed to compensate him and the Aggrieved Employees¹ for all hours worked, including minimum, regular, and overtime hours worked, failed to provide the waiting time penalties, failed to provide her and the Aggrieved Employees with legally mandated rest periods and meal breaks, failed to reimburse necessary business expenses and failed to provide her and the Aggrieved Employees with accurate itemized wage statements. Attached hereto as **Exhibit 1** is a true and correct copy of the notice letter Plaintiff sent to the LWDA (“LWDA Notice”).

3. Plaintiff, a former employee of Defendant, filed this action on March 10, 2022. This matter was originally filed as a class action; however, due to the existence of an arbitration agreement with a class action waiver, Plaintiff filed a request for dismissal of his class and individual allegations so that he could proceed with his PAGA cause of action only (“the Action”).

1

STIPULATION OF SETTLEMENT AND ORDER APPROVING SETTLEMENT OF PAGA CLAIM

1 The Court signed the order dismissing class and individual claims on or about May 6, 2022.
2 Defendant disputes that it has engaged in the Labor Code violations as alleged and denies that
3 it has engaged in any unlawful conduct.

4 4. The First Amended Complaint alleges civil penalties under PAGA for alleged
5 violations of California Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 510, 512,
6 1174, 1194, 1198 and 2802. Defendant denies, and continues to deny, all of the allegations
7 made by Plaintiff or that it is liable for any of the damages and/or civil penalties as alleged in
8 the Action and/or LWDA Notice.

9 5. The Parties recognize that the issues presented in the Action are likely only to be
10 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
11 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
12 maximum potential benefits to the PAGA Settlement Members and Plaintiff from continued
13 litigation.

14 6. On July 28, 2022, the Parties participated in a full-day mediation with neutral
15 mediator Steven Rottman, Esq., an experienced wage and hour mediator. Prior to participating in
16 mediation, the Parties engaged in extensive informal discovery, including production of
17 documents and information. Prior to mediation, Defendant also provided data to Plaintiff's
18 counsel to evaluate the potential value of Plaintiff's civil penalty claims. Thereafter, the Parties
19 engaged in extensive, arm's length negotiations and reached a settlement of the Action that is
20 memorialized in the Agreement. During the mediation, the Parties agreed to a settlement, which
21 was negotiated in light of all known facts and circumstances, including the difficulty of proving
22 some of Plaintiff's claims, potential defenses asserted by Defendant, the uncertainty associated
23 with litigation, the risks of significant delay, and numerous potential appellate issues. It was not
24 easy for the Parties to reach this settlement, which was possible with the skilled guidance and input
25 of mediator, Steven Rottman, Esq. Attached hereto as **Exhibit 2** is the fully executed PAGA
26 Settlement Agreement ("Settlement," "Settlement Agreement," or "Agreement") setting forth
27 the terms of the settlement.
28

1 7. The Settlement Agreement attached as **Exhibit 2** to Joint Stipulation Approving
2 Settlement of Plaintiff’s Claims Brought Pursuant to the Private Attorney General’s Act of 2004
3 (“PAGA”) was submitted to the LWDA. A true and correct copy of the submission receipt is
4 attached to this stipulation as **Exhibit 3**.

5 8. The Parties conducted investigation of the facts and law. Counsel for the Parties
6 have further investigated the applicable law as applied to the facts discovered regarding
7 Plaintiff’s claims, the defenses thereto, and the Labor Code violations claimed by Plaintiff.
8 Based on their own independent investigations and evaluations, Plaintiff and his counsel are of
9 the opinion that the settlement for the consideration and on the terms set forth in the Settlement
10 Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff and the
11 Aggrieved Employees in light of all known facts and circumstances and the risks inherent in
12 litigation, including the potential appellate issues. Further, Plaintiff’s counsel believes that the
13 settlement amount entered into is in the best interests of Plaintiff and the Aggrieved Employees
14 and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given
15 the inherent risk of litigation.

16 9. The full terms of the settlement are in the Agreement. The key material terms are
17 as follows:

- 18 a. The Aggrieved Employees: The Aggrieved Employees (also known as the “PAGA
19 Members”) are: “All non-exempt employees who are or were employed by
20 Defendant within the State of California from February 19, 2021 through the date of
21 entry of order for PAGA settlement approval.” It is estimated that there are
22 approximately 42,000 pay periods. (Agreement, ¶ 7.)
- 23 b. No Reversion: The Settlement is **non-reversionary**. (Agreement, ¶ 4.)
- 24 c. Gross Settlement Amount: Defendant agrees to pay the maximum sum of
25 **\$517,500.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for
26 settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s
27 Counsel attorney’s fees and costs and the settlement administrator’s fees and costs.
28 (Agreement, ¶ 4.)

- d. Net Settlement Amount: At least **\$317,860.24** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$238,395.18** under the Agreement, and Aggrieved Employees will receive at least **\$79,465.06**. (Agreement, ¶ 4.c.)
- e. Attorney's Fees: Plaintiff's Counsel request an award of attorney's fees in the amount of **\$172,500.00**, which is one third of the GSA. (Agreement, ¶ 4.a.)
- f. Litigation Costs: Plaintiff's Counsel's litigation costs are capped to a maximum amount of \$20,000. Those actual costs are \$17, 464.76 which include the future motion filing fee and future approval motion remote appearance fees. Therefore, **\$17, 464.76** is requested, by Plaintiff. (Agreement, ¶¶ 4.a, 10.b)
- g. Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Administrator duties for a flat fee not to exceed **\$9,675.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 11)
- h. General Release by Plaintiff: The Parties have entered into a separate agreement for the general release of Plaintiff's individual claims against Defendant. Upon approval of this PAGA settlement Plaintiff will receive \$7,500.00 as a consideration for general release of his claims which shall be paid by Defendant in addition to the GSA. (Agreement, ¶ 10.b.)
- i. Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund or like fund. (Agreement, ¶ 10.c.)
- j. Release: In exchange for the above settlement consideration, Defendant shall be entitled to a release from the LWDA and each and every Aggrieved Employee,

including Plaintiff.² (Agreement, ¶ 2)

- k. Notice to LWDA: **Exhibit 3** confirms that notice was provided to the LWDA and attaches the confirmatory submission documents.

10. The settlement in this action provides \$317,860.24 to the allegedly Aggrieved Employees and the LWDA in exchange for a release of claims under PAGA only.³ The Settlement Agreement and Release of PAGA Claims provides, in pertinent part:

It is expressly understood and agreed that this settlement only includes a full release of the PAGA claims asserted in the Lawsuit and both of Plaintiff's Complaint and/or PAGA Notice filed with the LWDA attached as Exhibit 1, including any and all claims during the time period of February 19, 2021 through the date that the Court grants approval of the settlement, arising out of the PAGA claims asserted in the operative complaint and/or the LWDA letter based upon the following: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime or minimum wages (including alleged off-the-clock work, miscalculation of the regular rate of pay for overtime and paid sick leave), 4) failure to pay all wages due to discharged and quitting employees, 5) failure to furnish accurate itemized wage statements, and 6) failure to reimburse for necessary business expenses (the "Released Claims").

"Covered Period" means the period of time from February 19, 2021 through the date that the Court grants approval of the settlement.

"Released Parties" means Defendant and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof.

"PAGA Settlement Group Members" means all current and former hourly-paid or non-exempt employees of Defendant in the State of California who worked for Kings River Farming Inc. at any time during the Covered Period.

11. The Parties estimate that there are approximately 42,000 pay periods from February

² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

³ \$317,860.24 is the net amount available to the aggrieved employees and the LWDA from the \$517,500.00 total settlement amount following deduction for Plaintiff's attorney's fees of \$172,500.00 (1/3 of the total settlement amount), Plaintiff's counsel's actual litigation costs of \$17,464.76, and third-party administration costs of \$9,675.00.

19, 2021 to July 28, 2022. The Parties have agreed and therefore stipulate that if 15% more than the estimated compensable pay periods are identified on the date of the entry of the order for PAGA settlement approval, the Gross Settlement Amount will be increased on a pro rata basis according to the number of additional compensable pay periods identified (i.e., all compensable pay periods beyond the 15% increase).

12. The Parties request that the Court approve the arm's length settlement reached between the Parties pertaining to penalties under PAGA, and the release of PAGA claims.

NOW THEREFORE, in return for the mutual commitments and consideration detailed in the PAGA Settlement Agreement attached hereto as **Exhibit 2**, the Parties stipulate as follows:

1. The Parties stipulate and jointly propose that the Court review and approve the terms contained in the Parties' Settlement Agreement, attached as **Exhibit 2**, in full.

2. The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise reached through arm's length negotiations and considers the risks, complexity, and expense of further litigation.

3. The settlement terms reached through mediation provide for a gross payment by Defendant of Five Hundred Seventeen Thousand and Five Hundred Dollars and Zero Cents (\$517,500; "Gross Settlement Amount"). The Gross Settlement Amount, which shall cover distribution to the LWDA and the allegedly aggrieved employees, Plaintiff's counsel's costs and fees, and costs of administration of the settlement, as follows:

Description	Amount
Attorneys' Fees (1/3 of total settlement)	\$172,500
Plaintiff's Counsel's Costs (not to exceed amount \$20,000)	\$17,464.76 ⁴
Third-Party Administration Cost	\$9,675.00

⁴ The Settlement authorizes reimbursement of actual costs not to exceed \$20,000, at this time, actual out of pocket costs, including the cost of submitting this Stipulation total \$17,464.6 which include the future motion filing fee and future approval motion remote appearance fees. A true and correct copy of a ledger of Plaintiff's counsel's costs are attached hereto as **Exhibit 4**.

1
2 4. Should the Court approve a lesser amount for attorneys’ fees, costs, or costs of third-
3 party administration, the difference shall be allocated as follows: 25% to the allegedly aggrieved
4 employees and 75% to the LWDA.

5 5. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to
6 Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The
7 Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID
8 Number and calculate all settlement checks and withholdings required under law based on
9 information that will be confidentially furnished by Defendant. There are no payroll deductions
10 to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

11 6. “PAGA Settlement Group Members” (also referred to herein as the “allegedly
12 aggrieved employees”) means all current and former hourly-paid or non-exempt employees of
13 Defendant in the State of California who worked for Kings River Farming Inc. at any time from
14 February 19, 2021 through the date of entry of order for PAGA settlement approval.

15 7. Upon the Court’s approval of the Settlement Agreement, it is agreed that the entire
16 Action will be dismissed, with prejudice.

17 8. Upon the date of entry of an order by the Court in this Action approving this
18 Settlement, and payment of all funds due under this Settlement, the LWDA and PAGA
19 Settlement Group Members, including Plaintiff, fully release and forever discharge the Released
20 Parties from any and all Released Claims as defined in **Exhibit 2**. As a result of this release,
21 the PAGA Settlement Members will be unable to bring a claim under, or recover in any other
22 claim brought under, the California Private Attorneys General Act, California Labor Code §
23 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

24 9. Under California law, no notice to the allegedly aggrieved employees is required for
25 the resolution of an action under PAGA. *Arias v. Superior Court*, (2009) 46 Cal.4th 969, 977. The
26 Parties have nevertheless agreed to provide an explanatory letter to the allegedly aggrieved
27 employees to accompany the PAGA penalty checks. Attached to the PAGA Settlement Agreement
28 as Exhibit A is the proposed letter to the allegedly aggrieved employees that would accompany the

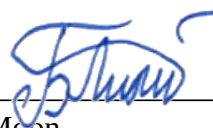
checks.

10. The Parties further expressly agree that the Court will retain jurisdiction under Code of Civil Procedure section 664.6 to resolve any disputes arising from the settlement of the above-described action.

IT IS SO STIPULATED.

Dated: December 21, 2022

MOON & YANG, APC

By: 

Kane Moon

Lilit Tunyan

Attorneys for Plaintiff

RAUL GRANADOS DELGADO

Dated: December 21, 2022

MCCORMICK BARSTOW LLP

By: 

Christina Cusimano Tillman

Attorneys for Defendant KINGS RIVER FARMING, INC.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On December 22, 2022, I served the foregoing document
8 described as:

9 **JOINT STIPULATION APPROVING SETTLEMENT OF CLAIMS BROUGHT**
10 **PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004**

11 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
12 addressed as follows:

13 Christina Tillman
14 Jessica Dominguez
15 Christina Cusimano Tillman
16 **CHAIR, LABOR & EMPLOYMENT LAW GROUP**
17 McCormick Barstow LLP
18 7647 North Fresno Street
19 Fresno, CA 93720
20 jessica.dominguez@mccormickbarstow.com
21 Christina.Tillman@mccormickbarstow.com
22 Justin.Donner@mccormickbarstow.com

23 *Agent for Service of Process for Defendant*

24 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
25 California, by e-mail delivery on the parties listed herein at their most recent known
26 e-mail address or e-mail of record in this action.

27 X (State) I declare under penalty of perjury under the laws of the State of
28 California that the above is true and correct.

Executed on December 22, 2022, at Los Angeles, California.

23 Jessica Reyes Flores

24 Name

23 
24 Signature