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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF MONTEREY**

NATALIA G. CRUZ, on behalf of herself  
and all similarly aggrieved employees,

Plaintiff,

v.

VASVISION BERRY FARMS, LLC; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV001734

**DECLARATION OF KRISTEN M.  
AGNEW IN SUPPORT OF PLAINTIFF'S  
MOTION TO APPROVE SETTLEMENT  
AGREEMENT PURSUANT TO THE  
PRIVATE ATTORNEYS GENERAL ACT**

Date: November 3, 2023

Time: 8:30 a.m.

Dept: 15

Complaint Filed: June 17, 2022

Trial Date: None

1 I, Kristen M. Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of  
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff  
4 Natalia G. Cruz (“Plaintiff”). I have personal knowledge of the facts set forth below and if  
5 called to testify I could and would do so competently.

6 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Plaintiff’s Counsel has zealously represented the  
8 interests of the Aggrieved Employees.

9 3. On April 12, 2022, Plaintiff submitted written notice under Labor Code section  
10 2699.3 to the California Labor and Workforce Development Agency (“LWDA”) and  
11 Defendant, alleging that Defendant violated Labor Code sections 201-204, 208, 216, 218,  
12 218.5, 218.6, 225.5, 226, 226.2, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699  
13 (the “PAGA Notice”). Attached hereto as **Exhibit A** is a true and correct copy of the PAGA  
14 Notice.

15 4. On June 17, 2022, Plaintiff filed a putative class, representative, individual  
16 action against Defendant in the matter of *Natalia G. Cruz v. Vasvision Berry Farms, LLC*,  
17 Monterey County Superior Court Case No. 22CV001734 (the “Action”).

18 5. Counsel for Defendant informed me that Plaintiff was bound by an arbitration  
19 agreement that contained a class action waiver and provided a copy of the arbitration  
20 agreement, which I reviewed. In light of the arbitration agreement, Plaintiff agreed to the  
21 dismissal of the class claims without prejudice and to proceed on a representative basis only.  
22 On August 17, 2023, the Court dismissed the class claims without prejudice.

23 6. As set forth in the Complaint, Plaintiff asserts a cause of action for violation of  
24 PAGA predicated on the alleged Labor Code violations set forth in the PAGA Notice. Plaintiff  
25 seeks civil penalties under PAGA, as well as attorneys’ fees, and costs. Plaintiff also alleged  
26 individual claims for discrimination based on national origin, hostile work environment based  
27 on national origin, retaliation based on national origin, discrimination based on religious creed,  
28 and failure to investigate and prevent harassment and discrimination in the workplace.

1           7.     On or about October 14, 2022, Defendant filed a General Denial in the Action.  
2 Defendant disputes and denies Plaintiff's allegations and claims asserted in the operative  
3 Complaint.

4                                   **DISCOVERY & INVESTIGATION**

5           8.     On November 1, 2022, Plaintiffs propounded written discovery, including  
6 Special Interrogatories (Set One), Requests for Production of Documents (Set One), and Form  
7 Interrogatories – Employment Law (Set One). As relevant to the PAGA claim, the discovery  
8 required Defendant to produce the time and payroll records for Plaintiff and other alleged  
9 aggrieved employees, as well as Defendant's policies regarding meal and rest periods, the  
10 calculation of hours worked (including whether time spent attend pre-shift meetings is  
11 compensable), the calculation of the regular rate of pay for purposes of computing overtime  
12 wages, meal/rest period premiums and sick pay, the payment of final wages to separating  
13 employees, and the format of wage statements provided to Plaintiff and other alleged  
14 aggrieved employees (including the display of all hourly rates and hours worked).

15           9.     The discovery further required Defendant to provide information relevant to the  
16 number of alleged aggrieved employees (including the subset of employees who earned piece-  
17 rate wages), the aggregate number of pay periods worked by alleged aggrieved employees, the  
18 number of pay periods in which alleged aggrieved employees worked at least one workweek in  
19 which he or she earned both non-discretionary incentive pay and overtime wages, sick pay  
20 and/or meal/rest period premiums, and the number of pay periods in which alleged aggrieved  
21 employees worked at least one meal and/or rest period eligible shift.

22           10.    Shortly after Plaintiff served initial round of written discovery, the Parties agreed  
23 to redirect their efforts towards an early resolution of the Action and agreed to participate in  
24 private mediation. In lieu of formal discovery responses, Defendant produced data points  
25 relating to: (1) the number of aggrieved employees; (2) the number of aggrieved employees  
26 who earned piece-rate wages; (3) the number of pay periods worked by aggrieved employees;  
27 (4) the number of pay periods in which aggrieved employees earned both piece-rate wages and  
28 meal/rest period premiums, overtime, and/or sick pay wages during the same workweek; (5)

1 the number of pay periods in which aggrieved employees worked at least one meal/rest period  
2 eligible shift; and (6) the number of aggrieved employees who separated employment.

3 11. Based on the information provided by Defendant, I conducted a full penalties  
4 analysis as to the value of the PAGA claims. I also investigated the applicable law as applied  
5 to the facts discovered regarding Plaintiff's alleged claims and potential defenses thereto.  
6 Thus, I entered mediation with a clear understanding of Defendant's maximum exposure.

### 7 SETTLEMENT NEGOTIATIONS

8 12. On June 22, 2023, the Parties engaged in a full-day mediation with Christopher  
9 E. Panetta. As a result of the mediation, Plaintiff and Defendant reached the present  
10 settlement, memorialized by a written Memorandum of Understanding ("MOU").

11 13. The Parties subsequently negotiated and executed the Joint Stipulation of  
12 Settlement and Release Under the Private Attorneys General Act ("Agreement" or  
13 "Settlement"), a true and correct copy of which is attached herewith as **Exhibit B**. The  
14 settlement discussions were conducted at arm's length.

### 15 MONETARY TERMS OF SETTLEMENT

16 14. As defined by the Agreement, "Aggrieved Employees" means "all current and  
17 former California piece-rate, non-exempt employees who worked for Defendant at any time  
18 from April 12, 2021, through June 22, 2023" ("PAGA Period") ("Aggrieved Employees"). *See*  
19 Settlement Agreement ("SA") §§ B-2, B-14. Based on Defendant's records, there are  
20 approximately 683 Aggrieved Employees. These individuals worked in approximately 16,107  
21 pay periods during the PAGA Period. *See* SA § C-2.

22 15. The Settlement Agreement requires Defendant to pay the gross amount of Three  
23 Hundred Eighty-Seven Thousand Five Hundred Dollars (\$387,500.00) (the "Gross PAGA  
24 Settlement Amount"). *See* SA § B-10. The Gross PAGA Settlement Amount will be funded in  
25 installments, with the first payment of Twenty-Five Thousand Dollars being due within thirty  
26 (30) calendar days of the Effective Date. *See* SA § C-3. The final installment pay will be due,  
27 on or before August 15, 2026. *See id.*

28 16. Based on the Gross PAGA Settlement Amount, Defendant will pay

1 approximately \$24.05 per pay period to resolve the claims in this case.

2 17. The balance of the Gross Settlement Amount remaining after deduction of the  
3 approved attorneys' fees and litigation costs, Settlement Administration Costs, and Plaintiff's  
4 Enhancement Payment (the "PAGA Penalties Fund"), will be available for distribution to the  
5 LWDA and Aggrieved Employees. *See* SA §§ B-13, C-6.

6 18. Seventy-five percent (75%) of the PAGA Penalties Fund will be paid to the  
7 LWDA for PAGA penalties ("LWDA Payment"). *See* SA § C-5. The remaining twenty-five  
8 percent (25%) will be distributed to Aggrieved Employees ("Net PAGA Payment"). *See* SA §  
9 C-5.

10 19. As part of the Settlement, Defendant does not object to Plaintiff's Counsel's  
11 request for attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*,  
12 One Hundred Twenty Nine Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents  
13 (\$129,166.66), and reimbursement for litigation costs in an amount up to Fifteen Thousand  
14 Dollars (\$15,000.00), subject to the Court finally approving this Settlement. *See* SA § C-13.  
15 Plaintiff's Counsel's anticipated actual litigation costs total \$4,877.86, which includes \$132.28  
16 costs incurred by Diversity Law Group and \$4,745.58 in costs incurred by Fitzpatrick &  
17 Swanston. Any partition of the requested attorneys' fees and/or costs not approved by the  
18 Court shall be added to the PAGA Penalties Fund. *See id.*

19 20. Defendant has also agreed to not object to Plaintiff's request for an Enhancement  
20 Payment to Plaintiff in an amount not to exceed Five Thousand Dollars (\$5,000.00). *See* SA  
21 §§ B-9, C-12. Any portion of the Enhancement Payment to Plaintiff that is not approved by the  
22 Court shall become part of the PAGA Penalties Fund. *See id.*

23 21. Finally, the Settlement Agreement provides for the payment of the fees and  
24 expenses reasonably incurred by the Settlement Administrator. *See* SA § C-15. The Parties  
25 have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the  
26 administration costs estimated to be Six Thousand Nine Hundred Fifty Dollars (\$6,950.00).  
27 *See id.* at §§ B-20, C-15.

1                                    **PAYMENTS TO AGGRIEVED EMPLOYEES AND THE LWDA**

2            22.    Assuming that the Court approves the Enhancement Payment to Plaintiff  
3 (\$5,000), attorney's fees (\$129,166.66), actual litigation costs (\$4,877.86) and the Settlement  
4 Administrator's costs (\$6,950.00), I estimate that the PAGA Penalties Fund will total  
5 \$241,505.48. Seventy-Five percent of the PAGA Penalties Fund (approximately \$181,129.11)  
6 will be paid to the LWDA for PAGA penalties. The remaining twenty-five percent  
7 (approximately \$60,376.37) will be distributed to Aggrieved Employees.

8            23.    The Individual Settlement Payments to each Aggrieved Employee will be based  
9 on the number of pay periods in which he or she worked during the PAGA Period. *See* SA §§  
10 C-6. Based on the number of Aggrieved Employees, employees will be entitled to recover, on  
11 average, up to approximately \$88.38 each. The amount any particular Aggrieved Employee  
12 will be entitled to recover will be greater or lower than this average depending on the number  
13 of pay periods in which the employee worked during the PAGA Period, with some entitled to  
14 receive more, and others less. The Individual Settlement Payments to Aggrieved Employees  
15 shall be categorized as penalties for tax purposes. *See* SA § C-9.

16           24.    If any checks from the Settlement remain uncashed after 180 days, the  
17 Settlement Administrator will distribute the funds represented by the uncashed checks to the  
18 following *cy pres* recipient: Legal Aid at Work, a 501(c)(3) non-profit organization that  
19 provides legal services to low-income families. *See* SA § C-11. The Parties warrant and  
20 represent that they do not have a relationship, financial or otherwise, with the *cy pres* recipient.  
21 *See id.*

22                                    **POTENTIAL CIVIL PENALTIES**

23           25.    Due to the discretionary nature of PAGA penalties, PAGA civil penalties are  
24 difficult to evaluate. Defendant has indicated that there are 16,107 pay periods in which  
25 Aggrieved Employees received the payment of wages during the PAGA Period. Assuming that  
26 Plaintiff was to prevail on the merits of the PAGA claim, applying the standard penalty of  
27 \$100 per pay period yields \$1,610,700 in potential liability.

26. In the alternative, if the Court were to “stack” penalties, (*i.e.*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA penalties could total as high as \$7,038,100:

| Violation                           | Pay Periods | Aggrieved Employees | PAGA Penalties     |
|-------------------------------------|-------------|---------------------|--------------------|
| Unpaid Minimum and Overtime Wages   | 16,107      |                     | \$1,610,700        |
| Overtime Regular Rate Violation     | 5,115       |                     | \$511,500          |
| Rest Period Violation               | 16,064      |                     | \$1,606,400        |
| Meal Period Violation               | 16,064      |                     | \$1,606,400        |
| Sick Pay Regular Rate Violation     |             | 246                 | \$24,600           |
| Derivative Wage Statement Violation | 16,107      |                     | \$1,610,700        |
| Late Payment of Final Wages         |             | 678                 | \$67,800           |
|                                     |             |                     | <b>\$7,038,100</b> |

#### **FAIRNESS OF THE SETTLEMENT**

27. The above penalty calculations assume that Plaintiff will prevail on the merits. Plaintiff would be required at trial to provide each Aggrieved Employee experienced a violation(s) of the Labor Code during every pay period in the PAGA Period. However, Plaintiff’s claims are contested. Furthermore, the penalty calculation also assumes that the Court would award full PAGA penalties for each pay period during the PAGA Period. However, based on the arguments set for the below, the PAGA penalties are subject to reduction.

28. **Unpaid Minimum and Overtime Wages Associated With Off-the-Clock Work.** Plaintiff alleges that Defendant failed to pay Aggrieved Employees for all hours worked. Defendant’s timekeeping system does not permit employees to individually record

1 their time. Instead, a foreman manually records the time for an entire crew on a worksheet.  
2 Plaintiff contends that Defendant's method of tracking the start/end of the shifts fails to  
3 capture all hours worked. By way of example, Plaintiff maintains that Aggrieved Employees  
4 do not receive compensation for "pre-shift" activities, including waiting in line to wash their  
5 hands, exercising and reviewing safety requirements as required by Cal/OSHA for agricultural  
6 field operations.

7 29. Defendant argues that the minimum wage and overtime claims are not suitable to  
8 be adjudicated on a representative basis because its policies and training materials required  
9 accurate recording of time and prohibited off-the-clock work. Defendant's written policy  
10 strictly prohibits non-exempt employees from working off the clock for any reason.  
11 Furthermore, all time spent working must be reported, including any work activity performed  
12 pre-shift and post-shift. Citing to *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th  
13 1004 (2012) and its progeny, Defendant argues that its liability is contingent on proof that  
14 Defendant knew or should have known that off-the-clock work was occurring. In the absence  
15 of a uniform policy, Defendant contends that Plaintiff will not be able to establish the requisite  
16 knowledge through common proof.

17 30. **Failure to Provide Meal and Rest Periods.** Plaintiff alleges that Defendant  
18 failed to provide proper duty-free meal and rest periods. Plaintiff contends that Aggrieved  
19 Employees were required to remain on the premises during their meal and rest periods, which  
20 resulted in consistent violations because Defendant did not relinquish control of the employees  
21 during breaks.

22 31. Defendant maintains that it complied with the law, had lawful and compliant  
23 practices, and provided Aggrieved Employees with duty-free meal and rest periods. According  
24 to Defendant, an adjudication of the alleged meal and rest period violation would require  
25 individualized assessments as to the circumstances of each missed, delayed or interrupted  
26 break. Defendant argues that, even if Plaintiff was able to establish that some Aggrieved  
27 Employees experienced a meal and/or rest period violation, such a claim would not be  
28 manageable.

1           32.     **Underpayment of Rest and Recovery Wages.** Plaintiff alleges that Defendant  
2 failed to properly compensate employees for rest and recovery periods. Piece-rate employees  
3 must be paid rest and recovery compensation at their average hourly rate for the workweek..  
4 Here, Defendant utilized an employee's *daily hourly rate* to calculate their rest and recovery  
5 period compensation.

6           33.     Defendant denies Plaintiff's allegations. Defendant contends that its rest and  
7 recovery policy complies with California law. In many instances, an employee's daily hourly  
8 rate is either equal to, or more than, the weighted weekly average. Thus, according to  
9 Defendant, the cumulative effect resulted in the overpayment of wages to Aggrieved  
10 Employees.

11           34.     **Overtime Regular Rate Violation.** Plaintiff alleges that Defendant failed to pay  
12 overtime wages to employees at 1.5 times the regular rate of pay. When, as here, multiple rates  
13 of pay are paid during a workweek, an employer cannot simply use one fixed rate to pay  
14 overtime. Rather, the regular rate of pay for calculating overtime in that workweek must be  
15 based upon the "*weighted average of all hourly rates paid.*" Cal. DLSE Enforcement Policies  
16 and Interpretation Manual at § 49.2.5, p. 49-10. Here, rather than use a weighted average for  
17 the workweek, Plaintiff contends that Defendant calculated *daily* overtime based on an  
18 employee's *daily* piece-rate wages.

19           35.     Defendant denies Plaintiff's allegations. Defendant argues that, in many  
20 instances, the calculation of overtime on a daily basis does not result in the underpayment of  
21 wages to Aggrieved Employees.

22           36.     **Failure to Pay Sick Pay at the Regular Rate of Pay.** Plaintiff alleges that  
23 Defendant did not pay sick pay wages at the regular rate of pay, as required by the Healthy  
24 Workplaces, Healthy Families Act of 2014, Cal. Lab. Code section 245 *et seq.* ("HWHFA").  
25 Whenever Aggrieved Employees earn piece-rate compensation in workweeks that they take  
26 paid sick leave, Plaintiff contends that Defendant paid the sick pay wages at the employee's  
27 base hourly rate.

28           37.     Defendant denies Plaintiff's allegations. Defendant contests the sick pay claim

1 on a number of grounds. Defendant maintains that there is no private right of action to bring a  
2 paid sick pay claim. This argument presents novel legal issues and there is substantial ground  
3 for difference of opinion as to the remedies, if any, available to employees who have  
4 experienced a violation of the HWHFA. Even had Plaintiff ultimately prevailed on the merits,  
5 given the novelty of the legal questions it raised, Defendant may have sought immediate  
6 appellate review through a writ or appeal.

7       **38. Failure to Pay Wages at Termination.** Plaintiff alleges that Aggrieved  
8 Employees were not paid their final wages at the time they were owed. As seasonal workers,  
9 farm laborers are subject to termination when they were no longer needed by Defendant.  
10 However, terminated employees did not receive their final wages until the normal payroll  
11 cycle came around. Plaintiff, for example, separated employment on August 6, 2021, but was  
12 not paid until August 12, 2021.

13       **39. Failure to Provide Accurate Wage Statements.** Plaintiff alleges a derivative  
14 wage statement violation. As a result of the alleged underpayment and/or non-payment of  
15 wages to Aggrieved Employees, Plaintiff contends that the wage statements omit information  
16 required by Labor Code 226, including all applicable hourly rates and the total hours worked.  
17 As argued by Defendant, Plaintiff's derivative wage statement violation is vulnerable to a  
18 motion for summary judgment based on the weaknesses of the underlying primary claims.

19       **40.** In negotiating the amount of the settlement, I took into account the strengths and  
20 weaknesses of each alleged violation and the inherent uncertainty in the potential recovery in a  
21 PAGA action. By statute, the Court can decline to award the full amount of PAGA penalties  
22 where "...if, based on the facts and circumstances of the particular case, to do otherwise,  
23 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See* Cal.  
24 Labor Code § 2699(e)(2). Assuming that Plaintiff prevailed on liability, under the facts of this  
25 case, I appreciate the substantial risk that Defendant could present a persuasive argument to  
26 reduce the amount of PAGA penalties at trial.

27       **41.** In this case, Defendant asserted that a substantial reduction in potential PAGA  
28 penalties was warranted because: (1) even assuming that Plaintiff could establish the predicate

1 violations, the alleged violations were inadvertent; and (2) Aggrieved Employees did not  
2 suffer substantial economic harm as a result of the alleged violations of Labor Code. Thus,  
3 Defendant contends that no PAGA penalties were needed to punish or deter Defendant for its  
4 inadvertent behavior, much less to deter it from committing any future violations that were  
5 completely foreclosed by its new payroll practices.

6 42. I am also aware that Courts routinely award far less than the statutory maximum  
7 amount of civil penalties, even where an underlying violation of the Labor Code is found. As  
8 shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff  
9 prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty  
10 amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal.  
11 App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be  
12 proper. *Id.* at 539; *see O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D.  
13 Cal., 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses  
14 PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of the  
15 maximum PAGA penalties at issue—even with “stacking”— is \$703,810.

16 43. Assuming that the Court applies the standard penalty of \$100 per pay period  
17 (\$1,610,700), the Gross Settlement Amount (\$387,500.00) amounts to approximately 24.05%  
18 of the total estimated liability. Settlement for this reduced value allows for the distribution of  
19 penalties in an amount which accounts for the risk of continued litigation, and Defendant's  
20 likely arguments that higher penalties would have been confiscatory.

21 44. Even though I strongly believe that Plaintiff can prevail at trial, given  
22 Defendant's potential defenses to the alleged violations at issue, the risks and costs of  
23 continued litigation, I believe that the Settlement is fair and reasonable. After taking into  
24 account sharply disputed factual and legal issues involved in this litigation, the merits of  
25 Defendant's potential defenses, and the significant delay and potential appellate issues  
26 inherent to litigation, I have concluded that settlement on the terms set forth in the Settlement  
27 Agreement is appropriate and in the best interests of Plaintiff and the Aggrieved Employees.

## ATTORNEY EXPERIENCE

45. Diversity Law Group has a great deal of experience in wage and hour class action litigation and has been approved as class counsel in a number of class actions.

46. My qualifications are as follows: I was the 2003 recipient of the Spelman Presidential Scholarship to Emory University School of Law. During law school, I was a summer associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta office of the Equal Employment Opportunity Commission. I received my J.D. from Emory University in 2006 and was admitted to the California Bar in December 2006. Following law school, I was an associate at Sonnenschein from September 2006 to May 2009.

47. Since 2009, my primary area of practice has been employment litigation. I have practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500 companies in employment litigation in both state and federal courts, as well as before government agencies, including the California Department of Labor. My practice included the defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I also handled a number of wage and hour class actions.

48. While at Ogletree and Seyfarth, I served as the lead associate on a number of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court

1 Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia*  
2 *v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v.*  
3 *Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

4 49. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time  
5 handling employment cases. I primarily represent employees.

6 50. I have been approved as class counsel in numerous other wage/hour class actions  
7 that have been granted class certification and final approval, including: *Antonio Becerra-Mata*  
8 *v. PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-  
9 00030; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior  
10 Court Case No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior  
11 Court Case No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems,*  
12 *Inc.*, Santa Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix,*  
13 *LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven*  
14 *LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v.*  
15 *Watsonville Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael*  
16 *Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No.  
17 RG18908139; *Cody Wirbick v. Sundt Construction, Inc.*, U.S. District Court for the Eastern  
18 District of California Case No. 2:19-cv-02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue*  
19 *Foods, LLC*, Sonoma County Superior Court Case No. SCV 264649; *Delmer Wood III v.*  
20 *Reeve Trucking Company Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2018-  
21 0004414; *Eric Chavez v. Converse, Inc.*, U.S. District Court for the Northern District of  
22 California Case No. 15-cv-03746-NC; *Jharett Siron v. Raypak, Inc.*, Ventura County  
23 Superior Court Case No. 56-2019-00527959-CU-OE-VTA; *Prexxie Pascual and Arturo*  
24 *Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; and  
25 *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582.

26 51. I also second chaired two jury trials where I represented the prevailing  
27 defendant. Both cases involved employees who brought claims against their former employers  
28 pursuant to the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton*

1 *Aerospace LLC et al*, Los Angeles County Superior Court Case No. BC401543; and *Richard*  
2 *Gulden v. Pratt & Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case  
3 No. BC468909. More recently, I was lead trial counsel on a PAGA bench trial, in which the  
4 plaintiff was the prevailing party.

5 **ATTORNEYS' FEES AND LITIGATION COSTS**

6 52. To date, I have incurred approximately 94.10 hours in connection with the  
7 litigation of this lawsuit. Attached hereto as **Exhibit C** is a summary of the hours I have  
8 incurred to date. I expect to spend additional time finalizing this settlement, including  
9 preparing for the approval hearing, reviewing data provided by Defendant to Settlement  
10 Administrator, conferring with Settlement Administrator regarding distribution of Individual  
11 Settlement Payments to Aggrieved Employees, and fielding phone calls regarding inquiries  
12 about the Settlement.

13 53. My hourly rate in class and representative actions is \$700. However, in this  
14 motion, I request a reduced hourly rate of \$595.00. Accordingly, the total lodestar for my  
15 hours will be approximately \$55,989.50 (94.10 hours x \$595). I have been approved at an  
16 hourly rate of \$700.00 per hour by various Courts, in a number of matters, including: *Foaad*  
17 *Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia*  
18 *Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary*  
19 *Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court Case No.  
20 18CV00191; *Michael Randolph v. Pacific Racing Association*, Alameda County Superior  
21 Court Case No. RG18908139; *Gutierrez v. Spa Havens, LP*, San Diego Superior Court Case  
22 No. 37-2019-00057065-CU-OE-NC; *Cruzado v. Ontario T, Inc.*, San Bernardino Superior  
23 Court Case No. CIVSB2027249; *Ray v. C&W Facility Services, Inc.*, San Bernardino Superior  
24 Court Case No. CIVSB2101321; *Alvarez v. Forterra Building Products*, San Diego Superior  
25 Court Case No. 37-2020-00018179-CU-OE-CTL; *Dunn v. Universal Plant Services of*  
26 *California, Inc.*, Solano County Superior Court Case No. FCS056134, *Pulido v. Georgia-*  
27 *Pacific Corrugated III LLC*, Fresno Superior Court Case No. 18CECG00265; *In re: FPI*  
28 *Management Wage and Hour Cases*, Los Angeles Superior Court Case No. JCCP5050;

1 *Delgado v. Kloeckner Metals Corporation*, Los Angeles Superior Court Case No.  
2 20STCV22503; *Jackson v. Samuel, Son & Co. (USA) Inc.*, Riverside County Superior Court  
3 Case No. CVRI2101679, *Blanton v. Communications Test Design, Inc.*, San Joaquin Superior  
4 Court Case No. STK-CV-UOE-2021-0005136; *Diaz v. Acuity Brands Lighting, Inc.*, San  
5 Bernardino Superior Court Case No. CIVDS2015583; *Flournoy v. Partners Personnel –*  
6 *Management Services, LLC*, Riverside County Superior Court Case No. CVRI2102372; *Idian*  
7 *v. VHSD ES INC.*, San Diego Superior Court Case No. 37-2019-00018927-CU-OE-CTL;  
8 *Miller v. Stanbridge University*, Orange County Superior Court Case No. 30-2021-01206298-  
9 CU-OE-CXC; *Romano v. SSA Terminals, LLC*, Los Angeles Superior Court Case No.  
10 20STCV29048; *Wise v. Le Petite Academy, Inc.*, San Joaquin Superior Court Case No., STK-  
11 CV-UOE-2021-10561; *Chambers v. SOMACIS, Inc.*, San Diego Superior Court Case No. 37-  
12 2021-00033445-CU-OE-CTL; *Johnson v. FS Palo Alto Employment, Inc.*, Santa Clara  
13 Superior Court Case No. 21CV389927; *Rodriguez v. U.S. Bank National Association*, Los  
14 Angeles Superior Court Case No. BC617356; *Moss v. Sares Regis Operating Company, L.P.*,  
15 Orange County Superior Court Case No. 30-2021-01201041-CU-OE-CXC; and *Rodriguez v.*  
16 *City National Bank*, Los Angeles Superior Court Case No. 20STCV29761.

17 54. At the time the Parties negotiated the Settlement Agreement, I did not have a  
18 final tally of the litigation costs incurred to date. As such, the Parties included a maximum  
19 amount that could be attributed to costs under the settlement. To date, Diversity Law Group  
20 has incurred costs in the amount of \$132.28 for litigation related expenses. Attached hereto as  
21 **Exhibit D** is a true and correct copy of the cost report. Taking into account the \$4,745.58 in  
22 costs incurred by co-counsel, Plaintiff's Counsel's anticipated actual litigation costs total  
23 \$4,877.86.

#### 24 **NOTICE TO LWDA**

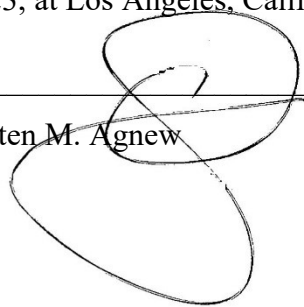
25 55. Concurrent with the filing of the Motion to Approve PAGA Settlement, my  
26 office uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's  
27 website. Attached hereto as **Exhibit E** is a true and correct copy of proof of submission of the  
28 settlement documents to the LWDA's website. In addition, my office shall submit to the

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LWDA a copy of the Court’s judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.

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

Executed on this 12<sup>th</sup> day of October 2023, at Los Angeles, California.

  
\_\_\_\_\_  
Kristen M. Agnew

# EXHIBIT A

**FITZPATRICK & SWANSTON**

B. JAMES FITZPATRICK  
CHARLES SWANSTON  
LAURA L. FRANKLIN

ATTORNEYS AT LAW  
555 South Main Street  
Salinas, California 93901  
Telephone: 831.755.1311  
Facsimile: 831.755.1319

April 12, 2022

**Via Online Filing**

Labor & Workforce Development Agency  
Attn: PAGA Administrator  
800 Capitol Mall, Suite 5000 (MIC-55)  
Sacramento, CA 95814

**Via Certified Mail**

Vasvision Berry Farms, LLC  
c/o Agent for Service of Process:  
Sharilyn R. Payne  
Noland, Hamerly, Etienne & Hoss  
A Professional Corporation  
333 Salinas Street  
P.O. Box 2510  
Salinas, CA 93902

Re: Notice of Labor Law Violations  
California Labor Code §§ 2699, 2699.3, 2699.5  
Aggrieved Employee: Natalia G. Cruz  
Our File No.: C0071-600

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To Representatives of the Labor and Workforce Development Agency and Vasvision Berry Farms, LLC:

Pursuant to California Labor Code §§ 2699, 2699.3, and 2699.5, aggrieved employee Natalia G. Cruz, on behalf of herself and as representatives on behalf of all current and former aggrieved employees (hereinafter shall be collectively referred to as “the employees”) of Vasvision Berry Farms, LLC (hereinafter shall be referred to as “the employer”), hereby notifies you of the labor law violations and facts and circumstances giving rise to them, committed by the employer.

The employees were subjected to numerous violations based on, among others, the following facts, circumstances and laws:

Natalia G. Cruz worked for the employer from approximately 2015, through approximately August 6, 2021.

The employer violated Labor Code § 226.2 by failing to correctly calculate the average regular rate of pay. As a result of such violations, the average regular rate of pay, the rest and recovery rates of pay, as well as the gross and net wages earned as reflected on the employees’ itemized wage statements were inaccurately identified, in violation of Labor Code § 226(a). Specifically, because of the miscalculation and under payment of wages, the wrong rate of overtime and vacation pay was listed, and the gross and net wages earned identified on the wage statements did not accurately reflect correct amount of wages that should have been paid had the

overtime and vacation rates of pay been accurately calculated. Finally, as a result of such violations, the employer also violated Labor Code §§ 201-203 by failing to pay all wages in a timely manner upon separation of employment pursuant to the above-referenced violations.

Moreover, the employer issued incomplete and inaccurate wage statements to the employees that included, but not limited to, the total hours worked, overtime hours worked, gross wages earned, net wages earned, all applicable rates of pay, including overtime pay, and the corresponding number of hours worked under each rate, all deductions, premium wages owed for missed rest and meal periods, and an accurate accounting for all wages, in violation of Labor Code section 226. For example, for June 28, 2021, the wage statement showed Ms. Cruz as having worked 1.5 hours of overtime at a rate of \$16.72 per hour; however, the total overtime paid for that date was \$12.54. Similarly, for the pay period of June 27, 2021 through July 3, 2021, Ms. Cruz's wage statement identified the total worked hours as being 55.50; however, Ms. Cruz was only paid overtime for 10.50 hours.

Finally, the employees were seasonal employees, the employer did not pay the employees their final wages on the last date of their employment. Rather, the employer waited until the next normal payroll cycle to pay the employees their final wages despite their employment having ended previously due to the completion of the season.

The legal violations arising from the conduct referenced above and below include, but are not limited to, the following:

1. The employer failed to pay either agreed wages for all hours worked;
2. The employer failed to pay wages in a timely manner;
3. The employer failed to pay employees who were discharged or who resigned all wages owed within the time required by Labor Code §§ 201 and 202;
4. The employer failed to:
  - a. Record in ink or other indelible form, properly dated, showing the month, day, and year, all deductions made from payment of wages of the employees. They also failed to provide the employees with a copy of the statement, and they failed to maintain a record of the deductions on file for at least three years at the place of employment or at a central location within the State of California;
  - b. Furnish to the employees, semimonthly or at the time of each payment of wages, a complete and accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked; (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer and; (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

5. The employer failed to keep accurate records, including but not limited to time and pay records showing when the employees begin and end each work period, start and stop times for meal periods and the total length of meal periods, the total daily hours worked in each payroll period, the applicable rate of pay and the total wages paid for at least three years at the place of employment or at a central location within the State of California;

The above described conduct by the employer violates numerous provisions of the Labor Code, including but not limited to, Labor Code §§ 201, 201.3, 202, 203, 204, 208, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.2, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, and the applicable California Industrial Welfare Commission Wage Order. The employees seek wages and penalties from the employer.

Very truly yours,

FITZPATRICK & SWANSTON

  
B. James Fitzpatrick

BJF/jf

# EXHIBIT B

1 B. James Fitzpatrick (SBN: 129056)  
Alison L. Baker (SBN: 193601)  
2 Laura L. Franklin (SBN: 282642)  
FITZPATRICK & SWANSTON  
3 555 S. Main Street  
Salinas, CA 93901  
4 Telephone: (831) 755-1311  
Facsimile: (831) 755-1319  
5

Larry W. Lee (SBN: 228175)  
6 Howard L. Magee (SBN: 185199)  
Kristen M. Agnew (SBN 247656)  
7 Nicholas Rosenthal (SBN 268297)  
8 DIVERSITY LAW GROUP, P.C.  
515 South Figueroa Street, Suite 1250  
9 Los Angeles, California 90071  
Telephone: (213) 488-6555  
10 Facsimile (213) 488-6554

11 Attorneys for Plaintiff and the Aggrieved Employees  
12

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF MONTEREY**

15  
16 NATALIA G. CRUZ, on behalf of herself and  
all similarly aggrieved employees,

17 Plaintiff,

18 v.

19 VASVISION BERRY FARMS, LLC; and  
20 DOES 1 through 50, inclusive,

21 Defendants.  
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Case No. 22CV001734

**JOINT STIPULATION OF SETTLEMENT  
AND RELEASE UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT, CALIFORNIA  
LABOR CODE § 2698, ET SEQ.**

1 This Joint Stipulation of Settlement and Release (“Agreement” or “Settlement”) under the  
2 Private Attorneys General Act, California Labor Code section 2698 *et seq.* (“PAGA”), is made by and  
3 between Natalia G. Cruz (“Plaintiff” or “Cruz”), individually and as representative on behalf of  
4 Aggrieved Employees as further defined herein and the State of California, and Vasvision Berry Farms,  
5 LLC (“Defendant” or “Vasvision”). Cruz and Vasvision are collectively referred to herein as the  
6 “Parties” and may be individually referred to as a “Party.”

7 **A. RECITALS**

8 1. This Settlement is made and entered into by and between Plaintiff and Defendant, and is  
9 subject to the terms and conditions hereof, and to the Court’s approval. The Parties expressly  
10 acknowledge that this Agreement is entered into solely for the purpose of compromising significantly  
11 disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant.  
12 Defendant denies that it is liable to Plaintiff or the Aggrieved Employees and denies that it has violated  
13 any law.

14 2. On April 12, 2022, Plaintiff filed a notice with the Labor & Workforce Development  
15 Agency (“LWDA”) alleging that Defendant violated Labor Code sections 201-204, 208, 216, 218,  
16 218.5, 218.6, 225.5, 226, 226.2, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, and the  
17 applicable California Industrial Welfare Commission Wage Order (“PAGA Notice”).

18 3. On June 17, 2022, Plaintiff filed a Class, Representative, and Individual Action  
19 Complaint for Damages, Penalties and for Injunctive Relief (the “Complaint”) in the matter of *Natalia*  
20 *G. Cruz v. Vasvision Berry Farms, LLC*, Monterey Superior Court Case No. 22CV001734 (the  
21 “Action”). In her Complaint, Plaintiff alleges class claims for failure to provide meal periods, failure to  
22 provide rest periods, failure to pay minimum wage, failure to pay hourly and overtime wages, failure to  
23 comply with itemized employee wage statement requirements, failure to pay all wages upon termination,  
24 and unfair business practices; representative action claims for penalties under the PAGA; and individual  
25 claims for discrimination based on national origin, hostile work environment based on national origin,  
26 retaliation based on national origin, discrimination based on religious creed, and failure to investigate  
and prevent harassment and discrimination in the workplace (“Plaintiff’s Individual Claims”).

27 4. Shortly after Plaintiff filed the Complaint, Defense Counsel informed Plaintiff’s Counsel  
28

1 that Plaintiff and the alleged putative class members were bound by an arbitration agreement that  
2 contained a class action waiver and provided a copy of the arbitration agreement to Plaintiff's Counsel,  
3 which Plaintiff's Counsel reviewed.

4 5. On October 14, 2022, Defendant filed a General Denial in which it denied all allegations  
5 in the Action and all claims of any wrongdoing whatsoever by Defendant or any of its parents,  
6 subsidiaries, affiliates, divisions, agents, servants, or employees for any claims.

7 6. During the course of litigation, the Parties engaged in formal and informal discovery.  
8 Plaintiff's Counsel reviewed and analyzed thousands of pages of time and pay records produced by  
9 Defendant pertaining to Plaintiff and the Aggrieved Employees.

10 7. On January 4, 2023, the Parties agreed to mediate the representative PAGA claim and  
11 Plaintiff's Individual Claims.

12 8. On June 22, 2023, the Parties participated in a full-day mediation with Christopher E.  
13 Panetta, Esq., an experienced mediator in California wage & hour law, including close to 30 years of  
14 practice as a labor and employment lawyer. With the assistance of Mr. Panetta at the mediation, and  
15 through further negotiation thereafter, the Parties were able to reach a settlement of all PAGA claims  
16 and Plaintiff's Individual Claims in this Action.

17 9. In light of the arbitration agreement signed by Plaintiff and putative class members,  
18 Plaintiff filed a request for dismissal of the putative class claims *without* prejudice. On August 17, 2023,  
19 the Court dismissed the class claims and allegations *without* prejudice.

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

## 24 **B. DEFINITIONS**

25 1. "Action" means *Natalia G. Cruz v. Vasvision Berry Farms, LLC*, initially filed on June  
26 17, 2022, in Monterey County Superior Court, Case No. 22CV001734.

27 2. "Aggrieved Employees" means all current and former California piece-rate, non-exempt  
28 employees who worked for Defendant at any time from April 12, 2021, through June 22, 2023.

1           3.       “Agreement” or “Settlement” means this Joint Stipulation of Settlement and Release.

2           4.       “Complaint” means the Class, Representative, and Individual Action Complaint for  
3 Damages, Penalties and for Injunctive Relief filed by Plaintiff in this Action.

4           5.       “Court” means the Monterey County Superior Court of California.

5           6.       “Defendant” or “Vasvision” mean Vasvision Berry Farms, LLC.

6           7.       “Defense Counsel” or “Counsel for the Defendant” means Sharilyn R. Payne of Noland,  
7 Hamerly, Etienne & Hoss.

8           8.       “Effective Date” shall be the later of the following: (a) if no timely objections are filed or  
9 if all objections are withdrawn, the date on which the Superior Court or any Party hereto serves notice of  
10 entry of the Superior Court’s order and judgment approving the Settlement; (b) if an objection is filed  
11 and not withdrawn, the date for filing an appeal and no such appeal being filed; and (c) if any timely  
12 appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not  
13 alter the terms of the settlement.

14           9.       “Enhancement Payment” means the amount that the Court authorizes to be paid to  
15 Plaintiff, in addition to her Individual Settlement Payment as an Aggrieved Employee, in recognition of  
16 her efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting  
17 approval of the Settlement, the Parties agree that Plaintiff shall be paid up to Five Thousand Dollars  
18 (\$5,000.00). The Enhancement Payment will be paid from the Gross Settlement Amount.

19           10.      “Gross PAGA Settlement Amount” means the gross amount of Three Hundred Eighty-  
20 Seven Thousand Five Hundred Dollars (\$387,500.00) to be paid by Defendant as provided by this  
21 Agreement to fully and finally settle, resolve, and conclude the PAGA claims as to Released Parties, as  
22 provided under this Agreement, without any admission of fault or liability. The Gross PAGA Settlement  
23 Amount includes all Individual Settlement Payments to Aggrieved Employees, payment to the LWDA,  
the Enhancement Payment to Plaintiff, Settlement Administration Costs, and Attorneys Fees and Costs.

24           11.      “Individual Settlement Payment” means the amount payable from the Net PAGA  
25 Payment, as defined herein, to each Aggrieved Employee.

26           12.      “Net PAGA Payment” means twenty-five percent (25%) of the PAGA Penalties Fund, as  
27 defined herein, that shall be distributed to all Aggrieved Employees in accordance with this Agreement.  
28

1           13.     “PAGA Penalties Fund” means the balance of the Gross Settlement Amount remaining  
2 after deduction of the approved Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs, and  
3 Settlement Administration Costs, as defined herein.

4           14.     “PAGA Period” means the period of April 12, 2021, through June 22, 2023.

5           15.     “Parties” means Plaintiff and Defendant, together, but shall not refer to Salvador  
6 Vasquez, who is a guarantor of the settlement but not a party to the Action.

7           16.     “Plaintiff” means Natalia G. Cruz.

8           17.     “Plaintiff’s Counsel” means B. James Fitzpatrick, Alison L. Baker, and Laura L. Franklin  
9 of Fitzpatrick & Swanston, and Larry W. Lee, Howard L. Magee, Kristen M. Agnew, and Nicholas  
10 Rosenthal of Diversity Law Group, P.C.

11           18.     “Released Claims” means all claims for penalties under the California Private Attorneys’  
12 General Act, including costs and attorneys’ fees related thereto, predicated upon violation of Labor Code  
13 sections 201, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.2, 226.7,  
14 246, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699 et seq.,  
based on the facts as alleged in the Complaint, that accrued during the PAGA Period.

15           19.     “Released Parties” means Defendant and any and all parents, affiliated companies,  
16 subsidiaries, divisions, predecessors, successors, subsidiaries of Vasvision, and each of their respective  
17 past, present, and future parents, affiliated companies, subsidiaries, divisions, predecessors, successors,  
18 partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns and each of  
19 their past, present and future officers, investors, directors, executives, trustees, agents, employees,  
20 attorneys, representatives, benefit plans sponsored or administered by the Released Parties, and any  
21 other persons or entities acting on behalf of or in concert with any of the foregoing. The release of  
22 Salvador Vasquez as an individual shall not relieve him of the obligations set forth in the Personal  
23 Guaranty attached hereto as **Exhibit B**, executed as a condition of this Settlement.

24           20.     “Settlement Administration Costs” means the fees and expenses reasonably incurred by  
25 the Settlement Administrator as a result of the procedures and processes expressly required for  
26 completion of the settlement and by this Agreement, which are estimated at Six Thousand Nine  
27 Hundred Fifty Dollars and zero cents (\$6,950.00). Any portion of the Settlement Administration Costs  
28

not used or approved by the Court shall be added to the PAGA Penalties Fund.

21. “Settlement Administrator” means Phoenix Settlement Administrators.

**C. MONETARY TERMS OF SETTLEMENT**

1. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Payments; (2) Attorneys’ Fees and Costs; (3) Enhancement Payment; (4) Settlement Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant. The entirety of the Gross Settlement Amount shall be personally guaranteed by Vasquez pursuant to the Personal Guaranty attached hereto as **Exhibit B**.

2. Escalator Clause. The Gross Settlement Amount was calculated with, and is premised on, Defendant’s representation that Aggrieved Employees worked approximately 16,107 pay periods during the PAGA Period. If the actual number of pay periods worked by Aggrieved Employees exceeds 16,107 pay periods by more than ten percent (or 1,611), Defendant will increase the settlement fund on a pro rata basis for those pay periods above the ten percent increase (*e.g.*, if the actual number of pay periods worked by Aggrieved Employees is 12% higher than the represented number, the Gross Settlement Amount shall be increased by 2%). Defendant shall also be responsible for any Settlement Administration costs of this additional payment, which will not be taken out of the additional payment but will be separately paid for by Defendant.

3. Funding of the Gross Settlement Amount. The Gross Settlement Amount shall be funded by Defendant in accordance with the following schedule and instructions:

3.1. Within thirty (30) calendar days of the Effective Date, Defendant shall deposit Twenty-Five Thousand Dollars (\$25,000.000) into a Qualified Settlement Fund (“QSF”) established by the Settlement Administrator.

3.2. On or before August 15, 2024, Defendant shall deposit One Hundred Twenty Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$120,833.33) into the QSF established by the Settlement Administrator.

3.3. On or before August 15, 2025, Defendant shall deposit One Hundred Twenty

1 Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$120,833.33) into the QSF  
2 established by the Settlement Administrator.

3 3.4. On or before August 15, 2026, Defendant shall deposit One Hundred Twenty  
4 Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$120,833.33) into the QSF  
5 established by the Settlement Administrator.

6 4. Establishment of Qualified Settlement Fund. The Settlement Administrator shall establish  
7 and maintain a Qualified Settlement Fund. The QSF shall be an interest-bearing account established by  
8 the Settlement Administrator at a federally-insured bank that is mutually acceptable to the Parties and  
9 the Settlement Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury  
10 securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered money  
11 market fund investing exclusively in U.S. Treasury securities with average maturities of less than 90  
12 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is intended to be a "Qualified  
13 Settlement Fund" under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26  
14 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the Settlement Administrator as such. With  
15 respect to the QSF, the Settlement Administrator shall: (1) open and administer the Settlement Account  
16 in such a manner as to qualify and maintain the qualification of the QSF as a "Qualified Settlement  
17 Fund" under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all  
18 federal, state, and local income and other tax reporting, return, and filing requirements with respect to  
19 the QSF, and any interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes  
20 (including any estimated taxes, interest, or penalties) with respect to the interest or other interest earned  
21 by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and administration  
22 of the QSF and the performance of its duties and functions as described in this Agreement. The  
23 aforementioned taxes, fees, costs, and expenses shall be treated as, and shall be included in, the costs of  
24 administering the QSF and as Claims Administration Expenses. The Parties and the Settlement  
25 Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest  
26 date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement shall be attached  
27 to the appropriate returns as required by 26 C.F.R. § 1.468B-1(j)(2)(ii). The Parties agree to cooperate  
28 with the Settlement Administrator and one another to the extent reasonably necessary to carry out the

provisions of this Section.

5. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum amount that will be available for distribution to the LWDA and Aggrieved Employees in full satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%), will be paid to all Aggrieved Employees ("Net PAGA Payment").

6. Net PAGA Payment to Aggrieved Employees. The Settlement Administrator shall calculate the Individual Settlement Payments by dividing the Net PAGA Payment by the total number of pay periods worked by Aggrieved Employees during the PAGA Period. That value will then be multiplied by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. Aggrieved Employees are entitled to 100% of the Net PAGA Payment.

7. Distribution of PAGA Penalty Fund. Within ten (10) calendar days of the transfer to the Settlement Administrator of the portion of the Gross Settlement Amount sufficient to pay the PAGA Penalties Fund, the Settlement Administrator shall: (i) issue each Aggrieved Employee a check for his or her share of the PAGA Penalties Fund, along with an explanatory letter attached hereto as **Exhibit A**; and (ii) issue a check to the LWDA in the amount of seventy-five percent (75%) of the PAGA Penalties Fund.

8. Verification of the Addresses of Aggrieved Employees. Prior to mailing the Individual Settlement Payments, the Settlement Administrator shall update the addresses of the Aggrieved Employees by reference to the National Change of Address Database maintained by the United States Postal Service. If a check is returned as non-deliverable but with a forwarding address, the Settlement Administrator shall resend the check to the forwarding address. If a check is returned as non-deliverable with no forwarding address, the Settlement Administrator shall conduct an advanced skip trace to locate the most current address of the person to whom the check was addressed, and shall resend within five (5) calendar days to any updated address.

1           9.     Tax Treatment of Individual Settlement Payment. All Individual Settlement Payments  
2 shall be allocated as 100% as penalties. The amount of payments shall be reported on an IRS Form 1099  
3 (to the extent required by law) by the Settlement Administrator and shall not be subject to local, state or  
4 federal tax withholdings. Aggrieved Employees shall hold harmless Defendant from any claim or  
5 liability for taxes, penalties, or interest arising as a result of the Individual Settlement Payments.

6           10.    No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein  
7 will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved  
8 Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans,  
9 stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it  
10 is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or  
11 amounts to which any Aggrieved Employee may be entitled under any benefit plans.

12           11.    Uncashed Individual Settlement Payments. Aggrieved Employees shall have one hundred  
13 eighty (180) days from the date of issuance of the Individual Settlement Payment to negotiate their  
14 check. Funds represented by settlement checks that remained un-cashed for more than 180 days after  
15 issuance shall be paid out pursuant to California Code of Civil Procedure section 384 to the following *cy*  
16 *pres* recipient: Legal Aid at Work, 180 Montgomery Street, #600, San Francisco, CA 94104. The  
17 Settlement Administrator shall make the *cy pres* payment after completing the payment of the  
18 Settlement Administration Costs, Enhancement Payment and Attorneys' Fees and Costs.

19           12.    Enhancement Payment. Defendant agrees not to oppose or impede any application or  
20 motion by Plaintiff for an Enhancement Payment of up to Five Thousand Dollars (\$5,000.00) to  
21 Plaintiff. The Enhancement Payment shall be paid from the Gross Settlement Amount, and shall be paid  
22 in addition to Plaintiff's Individual Settlement Payment as an Aggrieved Employee. It is understood by  
23 Plaintiff that the Court has final discretion in any Enhancement Payment. Any portion of the  
24 Enhancement Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be  
25 distributed to Aggrieved Employees as provided in this Agreement. The Settlement Administrator shall  
26 issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and  
27 legally responsible to pay any and all applicable taxes on her Enhancement Payment and shall hold  
28 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the

1 Enhancement Payment. The Enhancement Payment shall be paid to Plaintiff after the distribution of the  
2 Net PAGA Payment to Aggrieved Employees, and only upon sufficient amounts of the Gross  
3 Settlement Amount received by the Settlement Administrator to cover the Enhancement Payment.

4 13. Attorneys' Fees and Costs. Defendant agrees that Plaintiff's Counsel may apply to the  
5 Court for an amount of reasonable attorneys' fees not to exceed One Hundred Twenty-Nine Thousand  
6 One Hundred Sixty-Six Dollars and Sixty-Six Cents (\$129,166.66) and will request actual costs, up to a  
7 maximum of Fifteen Thousand Dollars (\$15,000.00) ("Attorneys' Fees and Costs"), pursuant to PAGA,  
8 which provides for the recovery of attorneys' fees and costs, which shall be paid from the Gross  
9 Settlement Amount. The Parties understand that the Court makes the final determination on the award  
10 of Attorneys' Fees and Costs, and that any portion of these amounts not awarded as Attorneys' Fees  
11 and Costs shall be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and  
12 LWDA as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 to  
13 Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses. The Attorneys' Fees  
14 and Costs shall be paid to Plaintiff's Counsel pursuant to Plaintiff's Counsel's instructions, after the  
15 distribution of the Net PAGA Payment to Aggrieved Employees, and only when sufficient amounts of  
16 the Gross Settlement Amount are received by the Settlement Administrator to cover such fees and costs  
17 of Plaintiff's Counsel.

18 14. Settlement Administration Costs. The Settlement Administrator shall provide the  
19 following services: (a) establish and maintain a Qualified Settlement Fund account; (b) calculate the  
20 Individual Settlement Payment to be paid to each Aggrieved Employee in accordance with the terms and  
21 provisions of this Agreement; (c) print and issue Individual Settlement Payment checks; (d) verify the  
22 last known address for each Aggrieved Employee through a generally utilized, national address update  
23 database prior to mailing the Individual Settlement Payment check; (e) disburse any awards of costs and  
24 attorneys' fees and the Enhancement Payment; (f) prepare and issue 1099 Forms; and (g) perform such  
25 other tasks necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the  
26 Court orders the Parties to perform.

27 15. Payment of Settlement Administration Costs. The Settlement Administrator shall be paid  
28 for the reasonable costs of administration of the Settlement from the Gross Settlement Amount,

1 currently estimated at Six Thousand Nine Hundred Fifty Dollars and zero cents (\$6,950.00). These costs  
2 shall be paid from the Gross Settlement Amount. Any portion of the Settlement Administration Costs  
3 not allowed shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved  
4 Employees and the LWDA as provided in this Agreement. The Settlement Administration Costs shall be  
5 paid to the Settlement Administrator pursuant to Plaintiff's Counsel's instructions, after the distribution  
6 of the Net PAGA Payment to Aggrieved Employees, and only when sufficient amounts of the Gross  
7 Settlement Amount are received by the Settlement Administrator to cover the Settlement  
8 Administration Costs.

9 **D. MUTUAL COOPERATION**

10 1. Approval of PAGA Settlement. Plaintiff's Counsel shall request the entry of an order  
11 granting approval of the Settlement, which shall include findings and orders: (i) approving the  
12 Settlement; (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the State of  
13 California; (iii) reciting the release terms; (iv) directing that the Settlement's terms and provisions be  
14 carried out; (v) entering final judgment in accordance with this Agreement and without further fees or  
15 costs to any party except as expressly set forth in this Agreement; and (vi) retaining jurisdiction to  
16 oversee administration and enforcement of the terms of this Agreement and the Court's orders.  
17 Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's approval motion seeks relief  
18 inconsistent with or not specified by this Agreement. In such event, Defendant reserves the right to  
19 address any assertions that are not contained in this Agreement.

20 2. Delivery of the Aggrieved Employee List and Data. Within thirty (30) calendar days of  
21 the Effective Date, Defendant shall provide the Settlement Administrator with a Microsoft Office Excel  
22 spreadsheet and shall include each Aggrieved Employee's: (1) full name; (2) employee ID number; (3)  
23 last known address, (4) Social Security Number, and (5) the number of pay periods during which the  
24 Aggrieved Employee worked during the PAGA Period.

25 3. Settlement Administration. The Parties agree to cooperate in the administration of the  
26 Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in  
27 the administration of the Settlement. If the Parties are unable to reach agreement on the form or content  
28 of any document needed to implement the Settlement, or on any supplemental provisions that may

1 become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the  
2 Court to resolve such disagreement.

3 4. Enforcement Action. In the event that one or more of the Parties institutes any legal  
4 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement  
5 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be  
6 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
7 expert witness fees incurred in connection with any enforcement actions.

8 **E. REPRESENTATIVE & INDIVIDUAL RELEASE**

9 1. Release of Claims by Aggrieved Employees. Upon the payment of the Gross Settlement  
10 Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do and shall be deemed to have  
11 fully and finally released and discharged the Released Parties from all Released Claims. It is understood  
12 and agreed that this Agreement neither releases the Released Parties from liability, if any, to Aggrieved  
13 Employees for violations of any predicate statutes other than PAGA, nor constitutes a waiver of claims  
14 by Aggrieved Employees against the Released Parties for any individual wage and hour claims.

15 2. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining the  
16 Enhancement Payment provided for herein, Plaintiff (on behalf of herself and her spouse, heirs,  
17 executors, administrators, trustees, and/or permitted assigns) also agrees to a general release of any and  
18 all claims against Defendant—which shall include without limitation any and all claims which in any  
19 way relate to her employment with Defendant or termination thereof, under State or Federal law, in tort,  
20 common law, statute, contract, or equity, whether pled in the Complaint or not, including but not limited  
21 to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA, California Labor Code, or any  
22 Industrial Welfare Commission Wage Order—now existing or arising in the future, based on any act,  
23 omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution  
24 hereof. Plaintiff further expressly waives and relinquishes, to the fullest extent permitted by law, the  
25 provisions, rights and benefits of Section 1542 of the California Civil Code, which provides: “A general  
26 release does not extend to claims which the creditor or releasing party does not know or suspect to  
27 exist in his or her favor at the time of executing the release, which if known by him or her must  
28 have materially affected his or her settlement with the debtor or released party.”

1           3.     No Right to Opt-Out. The Parties agree there is no statutory right for any Aggrieved  
2 Employee to opt out or otherwise exclude himself or herself from the Settlement.

3                                   **F.     DENIAL OF LIABILITY**

4           1.     Denial of Liability. The Parties expressly recognize that the making of this Agreement  
5 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.  
6 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,  
7 discussions or communications, nor any materials prepared, exchanged, issued or used during the course  
8 of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be  
9 used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other  
10 forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,  
11 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the  
12 foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the  
13 interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court  
14 entered into in connection therewith, including, without limitation, by Defendant should any party seek  
15 relief against any of the Released Parties on any Released Claims.

16           2.     No Additional Attorneys' Fees or Costs. The Parties agree to bear their own attorneys'  
17 fees and costs related to this Action except as specifically provided in this Agreement with respect to  
18 Attorneys' Fees and Cost.

19                                   **G.     MISCELLAENOUS**

20           1.     Tax Liability. Defendant, Defendant's counsel, the Settlement Administrator, and  
21 Plaintiff's Counsel make no representation as to the tax treatment or legal effect of the payments called  
22 for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement, representation,  
23 or calculation by Defendant, Defendant's counsel, Plaintiff's Counsel, or by the Settlement  
24 Administrator in this regard. Plaintiff and Aggrieved Employees understand and agree that they will be  
25 solely responsible for the payment of any and all taxes and penalties assessed on their respective  
26 payments described herein and will defend, indemnify, and hold Defendant, Defendant's counsel,  
27 Plaintiff's Counsel and the Settlement Administrator free and harmless from and against any claims  
28 resulting from treatment of such payments as non-taxable penalties/damages.

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

22           3.     No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
23 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
24 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of  
25 action or right herein released and discharged. None of the rights, commitments, or obligations  
26 recognized under this Agreement may be assigned by any Party, Plaintiff's Counsel, or Defense Counsel  
27  
28

1 without the express written consent of each Party. Plaintiff expressly warrants that Plaintiff has not  
2 transferred to any person or entity any right or cause of action, or claim released by this Agreement.

3 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve  
4 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then  
5 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,  
6 and the Parties will be returned to their original respective positions.

7 5. Continued Jurisdiction. After entry of the judgment, the Court will have continuing  
8 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the  
9 Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as may be  
10 appropriate under court rules or as set forth in this Settlement.

11 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'  
12 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed  
13 binding on the Parties.

14 7. Amendment or Modification. This Settlement Agreement may be amended or modified  
15 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all  
16 Parties.

17 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and  
18 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement  
19 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this  
20 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of  
21 this Agreement.

22 9. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
23 and inure to the benefit of, the successors or assigns of the Parties hereto.

24 10. California Law Governs. All terms of this Settlement Agreement and Exhibit A will be  
25 governed by and interpreted according to the laws of the State of California.

26 11. Execution and Counterparts. This Agreement is subject only to the execution of all  
27 Parties. However, the Agreement may be executed in one or more counterparts. All executed  
28 counterparts and each of them, including facsimile and scanned copies of the signature page, will be

1 deemed to be one and the same instrument provided that counsel for the Parties will exchange among  
2 themselves original signed counterparts.

3 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
4 Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this  
5 Settlement after arm's-length negotiations. The Parties further acknowledge that they are each  
6 represented by competent counsel and that they have had an opportunity to consult with their counsel  
7 regarding the fairness and reasonableness of this Settlement.

8 13. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,  
9 the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with  
10 applicable precedents so as to define all provisions of this Agreement valid and enforceable. If any  
11 provision of this Agreement is or becomes invalid or unenforceable in any respect, the validity and  
12 enforceability of the remaining provisions contained herein shall not be affected.

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

16 15. Waiver. No waiver of any condition or covenant contained in this Agreement or failure  
17 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a  
18 further waiver by such party of the same or any other condition, covenant, right or remedy.

19 16. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
20 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against  
21 one party than another merely by virtue of the fact that it may have been prepared by counsel for one of  
22 the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all  
23 Parties have contributed to the preparation of this Agreement.

24 17. Representation by Counsel. The Parties acknowledge that they have been represented by  
25 counsel throughout all negotiations that preceded the execution of this Agreement, and that this  
26 Agreement has been executed with the consent and advice of counsel, and reviewed in full.

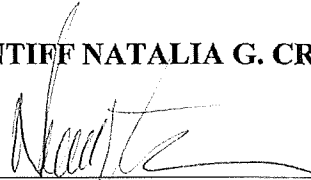
27 18. Binding Agreement. The Parties warrant that they understand and have full authority to  
28 enter into this Settlement, and further intend that this Agreement will be fully enforceable and binding

1 on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce  
2 its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under  
3 federal or state law.

4 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized  
5 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and  
6 with a full understanding of its consequences.

7  
8 DATED: 9/11/2023

**PLAINTIFF NATALIA G. CRUZ**

9  
10   
11 \_\_\_\_\_  
12 Plaintiff Natalia G. Cruz  
13

14  
15 DATED: \_\_\_\_\_

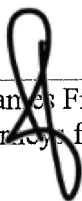
**DEFENDANT VASVISION BERRY FARMS, LLC**

16  
17 \_\_\_\_\_  
18 Please Print Name of Authorized Signatory

19 **APPROVED AND ACKNOWLEDGED**

20  
21 DATED: 9/11/2023

**FITZPATRICK & SWANSTON**

22  
23   
24 \_\_\_\_\_  
25 B. James Fitzpatrick  
26 Attorneys for Plaintiff and the Aggrieved Employees  
27  
28

1 DATED: 9/15/2023

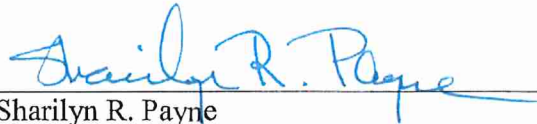
**DIVERSITY LAW GROUP, P.C.**



Kristen M. Agnew  
Attorneys for Plaintiff and the Aggrieved Employees

6 DATED: 8/28/23

**NOLAND, HAMERLY, ETIENNE & HOSS**



Sharilyn R. Payne  
Attorneys for Defendant Vasvision Berry Farms, LLC

negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

17. Representation by Counsel. The Parties acknowledge that they have been by counsel throughout all negotiations that preceded the execution of this Agreement, this Agreement has been executed with the consent and advice of counsel, and reviewed

represented  
and that  
in full.

18. Binding Agreement. The Parties warrant that they understand and have authority to enter into this Settlement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to in any proceeding to enforce its terms, notwithstanding any mediation confidentiality that otherwise might apply under federal or state law.

full  
  
disclosure  
provisions

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly representatives accept and agree to the terms of this Agreement and hereby execute it and with a full understanding of its consequences.

authorized  
voluntarily

DATED:

9/11/2023

PLAINTIFF NATALIA G. CRUZ



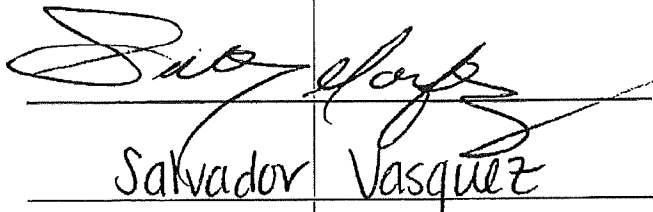
Plaintiff Natalia G. Cruz

DATED:

08/25/2023

DEFENDANT VASVISION BERRY  
LLC

FARMS,



Salvador Vasquez

**EXHIBIT A**

**NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS**

*Cruz v. Vasvision Berry Farms, LLC*  
(Monterey County Superior Court, Case No. 22CV001734)

**I. NOTICE OF PAGA SETTLEMENT**

The Monterey County Superior Court (the "Court") has approved a settlement in the lawsuit named above and filed by N. Cruz ("Plaintiff") on behalf of herself, the State of California, and all other "aggrieved employees" against Vasvision Berry Farms, LLC ("Defendants").

In this lawsuit, Plaintiff alleges that Defendant violated the California Labor Code by failing to: (1) provide meal periods; (2) provide rest periods; (3) pay minimum wage; (4) pay hourly and overtime wages; (5) comply with itemized employee wage statement requirements; (6) pay all wages owed upon termination. Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency ("LWDA") and other aggrieved employees under the Private Attorneys General Act ("PAGA").

Defendant denies these allegations. Defendant maintains that it was in compliance with the California Labor Code at all times and entered into the Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

The Court has not made a determination about Plaintiff's allegations. This Notice is not to be understood as a statement of any opinion by the Court as to the merits of the claim. You are receiving this Notice because you are in the group of employees referred to as the "Aggrieved Employees" defined as: All non-exempt employees who are or were employed by Defendant within the State of California from April 12, 2021 through June 22, 2023.

**II. CALCULATION OF INDIVIDUAL PAGA PAYMENT**

Pursuant to the terms of the Settlement Agreement, your individual PAGA payment is [CheckAmount].

Each individual PAGA payment is based on the number pay periods worked by each Aggrieved Employee in the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees. "PAGA Period" refers to the time period from April 12, 2021 through June 22, 2023.

**III. RELEASE**

The Court has approved the parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, the LWDA and the Aggrieved Employees, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

"Released Parties" means Defendant and each of its past or present divisions, d/b/a's, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys.

"Released Claims" means all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the lawsuit and claims stated expressly or by implication in the notice filed with the LWDA, including any and all claims under the California Private Attorneys General Act of 2004, which include, but are not limited to: violations of California Labor Code sections 201, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.2, 226.7, 246, 510, 512, 558, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.* and 2699 *et seq.*, and the California Industrial Welfare Commission Wage Order, which may have arisen during the PAGA Period.

1 **IV. SETTLEMENT ADMINISTRATOR**

2 You may call the Settlement Administrator, Phoenix Settlement Administrators, toll free at 1(XXX) XXX-XXXX with any  
3 questions.

4 Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement  
5 Administrator shall direct all unclaimed funds to the Controller of the State of California., to be held pursuant to the  
6 Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Aggrieved Employees who did not  
7 cash their checks, until such time that they claim their property. If your check is lost or misplaced, you should contact the  
8 Settlement Administrator immediately to request a replacement.

9 **PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**



1 NOW THEREFORE, in consideration of the Settlement Agreement, this Guaranty is given by  
2 Salvador Vasquez, an individual, as Guarantor, to induce Oblige to enter into the Stipulation.

3 1. **Obligation Guaranteed.** The undersigned Guarantor unconditionally guarantees to  
4 Oblige the obligation of Obligor for the payment when due of any and all indebtedness of Obligor to  
5 Oblige according to the payment provisions as set forth in the Settlement Agreement.

6 2. **Death, Insolvency, or Bankruptcy.** Guarantor unconditionally guarantees the payment  
7 when due of any and all indebtedness of Obligor to Oblige as set forth in the Settlement Agreement,  
8 whether or not due or payable by Obligor, including but not limited to on (a) the dissolution, insolvency,  
9 or business failure of, or any assignment for the benefit of creditors by, or commencement of any  
10 bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceedings by or against,  
11 Obligor or Guarantor, or (b) the appointment of a receiver for, or the attachment, restraint of, or making  
12 or levying of any court order or legal process affecting, the property of Obligor or Guarantor, and jointly  
13 and severally unconditionally promise to pay this indebtedness to Oblige, on demand, in lawful money  
14 of the United States.

15 3. **Extent of Liability.** The liability of Guarantor shall not exceed at any one time the sum  
16 of Three Hundred Eighty-Seven Thousand Five Hundred Dollars (\$387,500.00), together with all  
17 interest on the indebtedness, and attorneys' fees, costs, and expenses as provided in Paragraph 6 of this  
18 Guaranty. The liability of Guarantor under this Guaranty is exclusive and independent of any security  
19 for or other guarantee of the indebtedness of Obligor, whether executed by Guarantor or any other party,  
20 and the liability of Guarantor under this Guaranty is not affected or impaired by any of the following:

- 21 (a) Any indebtedness exceeding Guarantor's liability;
- 22 (b) Any direction of application by Obligor or any other party;
- 23 (c) Any other continuing or other guaranty, undertaking, or maximum liability of  
24 Guarantor or of any other party as to the indebtedness of Obligor;
- 25 (d) Any payment on or in reduction of any other guaranty or undertaking;
- 26 (f) Any dissolution, termination, or increase, decrease, or changes of personnel of  
27 any of the Guarantor or Obligor; or
- 28

1 (g) Any payment made to the Obligee on the indebtedness that Obligee repays to  
2 Obligor pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium, or other  
3 debtor relief proceeding. Guarantor waives any right to the deferral or modification of Guarantor's  
4 obligations by virtue of any such proceeding.

5 Except as provided herein, the obligation of Guarantor is independent of the obligations of  
6 Obligor. Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations  
7 affecting his liability under this Guaranty or the enforcement of this Guaranty. Any payment by Obligor  
8 or other circumstance that operates to toll any statute of limitations as to Obligor shall also operate to  
9 toll the statute of limitations as to Guarantor.

10 4. **Subordination.** In the event of Obligor's failure to pay Obligee any or all sums due to  
11 Obligee according to the payment provisions as set forth in the Settlement Agreement, then any  
12 indebtedness of Obligor now or later held by Guarantor shall be subordinated to the indebtedness of  
13 Obligor to Obligee, to the extent allowed by law, and all indebtedness of Obligor to Guarantor, if  
14 Obligee so requests, shall be collected, enforced, and received by Guarantor as trustees for Obligee and  
15 be paid over to Obligee on account of the indebtedness of Obligor to Obligee, without affecting or  
16 impairing in any manner the liability of Guarantor under the other provisions of this Guaranty.

17 5. **Waiver of Defenses.** Except as prohibited by applicable law, Guarantor waives defenses  
18 as follows:

19 (a) In the event of Obligor's failure to pay Obligee any or all sums due to Obligee  
20 when in accordance with the payment provisions as set forth in the Settlement Agreement, Guarantor  
21 then waives any right to require Obligee to (1) proceed against Obligor; (2) proceed against or exhaust  
22 any security held from Obligor; or (3) pursue any other remedy in Obligee's power whatsoever.

23 (b) Guarantor waives any defense based on or arising out of any defense of Obligor  
24 other than payment in full of the indebtedness, including without limitation any defense based on or  
25 arising out of the disability of Obligor, the unenforceability of the indebtedness from any cause, or the  
26 cessation from any cause of the liability of Obligor other than payment in full of the indebtedness.

27 (c) Until all indebtedness of Obligor to Obligee is paid in full, Guarantor shall have  
28 no right of subrogation, shall waive any right to enforce any remedy that Obligee now has or may later

1 have against Obligor, and shall waive any benefit of, and any right to, participation in any security now  
2 or later held by Obligor. Guarantor waives all presentments, demands for performance, notices of  
3 protest, notices of dishonor, notices of acceptances of this guaranty, and notices of the existence,  
4 creation, or incurring of new or additional indebtedness.

5 (d) Guarantor assumes all responsibility for keeping himself informed of Obligor's  
6 financial condition and assets, and of all other circumstances bearing on the risk of nonpayment and the  
7 nature, scope, and extent of the risks that Guarantor assumes and incurs under this Guaranty, and agrees  
8 that Obligees shall have no duty to advise Guarantor of information known to it regarding those  
9 circumstances or risks.

10 6. **Attorneys' Fees and Costs.** In addition to the amounts guaranteed under this Guaranty,  
11 Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Obligees  
12 in enforcing this Guaranty or the Settlement Agreement in any action or proceeding arising out of, or  
13 relating to, this Guaranty.

14 7. **Nonwaiver of Rights of Obligees.** No right or power of Obligees under this Guaranty shall  
15 be deemed to have been waived by any act or conduct on the part of Obligees, or by any neglect to  
16 exercise that right or power, or by any delay in so doing; and every right or power shall continue in full  
17 force and effect until specifically waived or released by an instrument in writing executed by Obligees.

18 8. **Effect on Heirs and Assigns.** This Guaranty and the liability and obligations of  
19 Guarantor under this Guaranty are binding on Guarantors heirs, executors, and assigns, and inure to the  
20 benefit of and are enforceable by Obligor and its successors, transferees, and assigns.

21 9. **Notices.** Any notice given by any party under this Guaranty shall be personally delivered  
22 or sent by United States mail, postage prepaid, and addressed to Obligees or Guarantor at their respective  
23 counsel's addresses for notices indicated below. Guarantor and Obligees may change the place to which  
24 notices, requests, and other communications are to be sent to them by giving written notice of that  
25 change to the other.

26 10. **Governing Law and Modification.** This Guaranty shall be deemed to be made under,  
27 and shall be governed by, the laws of the State of California in all respects, including matters of  
28 construction, validity, performance, and enforcement, and its terms and provisions may not be waived,

1 altered, modified, or amended except in writing duly signed by an authorized representative of Obligee  
2 and by Guarantor.

3 11. **Invalidity.** If any provision of this Guaranty contravenes or is held invalid under the laws  
4 of any jurisdiction, this Guaranty shall be construed as though it did not contain that provision, and the  
5 rights and liabilities of the parties to this Guaranty shall be construed and enforced accordingly.

6 12. **Headings.** Headings in this Guaranty are for convenience only and shall not be used to  
7 interpret or construe its provisions.

8 13. **Counterparts.** This Guaranty may be executed in two or more counterparts, each of  
9 which shall be deemed an original but all of which together shall constitute one and the same instrument.

10  
11 IN WITNESS WHEREOF, the undersigned have executed this Guaranty on \_\_\_\_\_  
12 [date].

13 GUARANTOR:

14  
15 \_\_\_\_\_  
16 Salvador Vasquez, an individual

17 Address for Notices to Guarantor:

18 \_\_\_\_\_  
19 \_\_\_\_\_  
20

21 OBLIGOR:

22  
23 VASVISION BERRY FARMS, LLC  
24  
25

26 \_\_\_\_\_  
27 By \_\_\_\_\_ (typed name and title, if applicable)  
28

Address for Notices to Obligor:

\_\_\_\_\_

\_\_\_\_\_

ATTN: \_\_\_\_\_

and inure to the benefit of and are enforceable by Obligor and its successors, transferees, assigns.

9. **Notices.** Any notice given by any party under this Guaranty shall be delivered or sent by United States mail, postage prepaid, and addressed to Oblige or at their respective counsel's addresses for notices indicated below. Guarantor and may change the place to which notices, requests, and other communications are to be sent giving written notice of that change to the other.

10. **Governing Law and Modification.** This Guaranty shall be deemed to be under, and shall be governed by, the laws of the State of California in all respects, matters of construction, validity, performance, and enforcement, and its terms and may not be waived, altered, modified, or amended except in writing duly signed by an representative of Oblige and by Guarantor.

11. **Invalidity.** If any provision of this Guaranty contravenes or is held invalid laws of any jurisdiction, this Guaranty shall be construed as though it did not contain that and the rights and liabilities of the parties to this Guaranty shall be construed and accordingly.

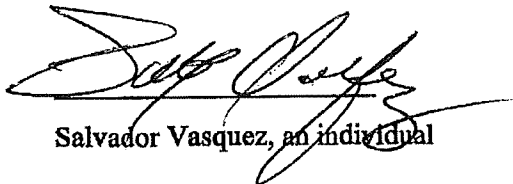
12. **Headings.** Headings in this Guaranty are for convenience only and shall to interpret or construe its provisions.

13. **Counterparts.** This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Guaranty on

08/25/2023 [date].

GUARANTOR:

  
Salvador Vasquez, an individual

and

personally  
Guarantor  
Oblige  
to them by

made  
including  
provisions  
authorized

under the  
provision,  
enforced

not be used

constitute

Address for Notices to Guarantor:

110415 Bonney Rd.  
Royal Oaks, CA 95076

OBLIGOR:

VASVISION BERRY FARMS, LLC



By Salvador Vasquez (typed name and title, if applicable)

Address for Notices to Obligor:

110415 Bonney Rd.  
Royal Oaks, CA 95076

ATTN: Salvador Vasquez

# EXHIBIT C

*Natalia G. Cruz v. Vasvision Berry Farms, LLC*  
Superior Court of California, County of Monterey, Case No. 22CV001734  
**Kristen M. Agnew Time and Task Chart**

| Hours | Description of Work                                                                                                                                                                                                                                                                                            |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6.30  | Initial research and review of background facts in preparation for filing of class action claims; review and analyze Plaintiff's wage statements and time records for potential labor code violations; confer with co-counsel re theories of liability and conduct research re same; draft memorandum to file. |
| 1.10  | Review and revise class action complaint for damages; confer with co-counsel re same.                                                                                                                                                                                                                          |
| 9.80  | Meet and confer with defense counsel re arbitration agreement; conduct legal research re same and draft memorandum to file; confer with co-counsel re same.                                                                                                                                                    |
| 2.60  | Draft Requests for Production of Documents (Set One), Special Interrogatories (Set One) and Employment Form Interrogatories (Set One); confer with co-counsel re same.                                                                                                                                         |
| .50   | Meet and confer with defense counsel re October 18, 2022 initial case management conference; draft request to continue case management conference; review and respond to email re same.                                                                                                                        |
| 1.20  | Meet and confer with defense counsel re November 15, 2022 initial case management conference; draft initial joint report; review and respond to email re same.                                                                                                                                                 |
| 1.30  | Meet and confer with defense counsel re mediation and stay on discovery; review and respond to email re same; confer with co-counsel re same.                                                                                                                                                                  |
| 1.90  | Review and revise draft stipulated protective order; review and respond to email re same; confer with co-counsel re same.                                                                                                                                                                                      |
| 2.40  | Meet and confer with defense counsel re mediation and sample time and payroll records; confer with co-counsel re mediation; draft informal discovery requests for mediation; review and respond to email re same.                                                                                              |
| .70   | Meet and confer with defense counsel re January 4, 2022 case management conference; review and revise joint report; review and respond to email re same.                                                                                                                                                       |
| 8.80  | Interview current and former employees re Defendant's operations, including pre-shift activities and meal/rest period practices; draft memorandum to file re same.                                                                                                                                             |
| 6.10  | Conduct legal research re calculation of rest and recovery period pay; confer with co-counsel re strength and weaknesses of claim; draft memorandum to file re same.                                                                                                                                           |
| .40   | Meet and confer with defense counsel re February 21, 2023 case management conference; review and revise joint report; review and respond to email re same.                                                                                                                                                     |
| 6.90  | Review and analyze Defendant's production of payroll data for aggrieved employees; confer with defense counsel re scope of data and payroll codes; draft memorandum to file re analysis of data and penalties calculation; confer with co-counsel re same.                                                     |
| .20   | Meet and confer with defense counsel re June 27, 2023 case management conference; review and revise joint report; review and respond to email re same.                                                                                                                                                         |

| <b>Hours</b> | <b>Description of Work</b>                                                                                                                                                                                                                                                                             |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 23.50        | Draft mediation statement; legal research re same; confer with co-counsel re strategy for mediation; attend all day mediation.                                                                                                                                                                         |
| 9.20         | Draft Joint Stipulation of Settlement and Release Under the Private Attorneys General Act (“Settlement Agreement”); review and respond to defense counsel’s proposed revisions to Settlement Agreement; confer with co-counsel re defense counsel’s proposed revisions; finalize Settlement Agreement. |
| 11.10        | Draft and revise motion for approval of Settlement Agreement; draft supporting attorney and client declarations; confer with co-counsel re same.                                                                                                                                                       |
| <b>94.10</b> | <b>TOTAL HOURS</b>                                                                                                                                                                                                                                                                                     |

# EXHIBIT D

10/10/2023  
4:17 PM

DIVERSITY LAW GROUP  
Slip Listing

Page 1

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Selection Criteria

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Slip Classification Open  
Client (hand select) Include: Cruz, Natalia G. v. Vasvision  
Slip.Transaction Ty 2 - 2

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Rate Info - identifies rate source and level

| Slip ID                       |     | Timekeeper                    | Units     | Rate        | Slip Value |
|-------------------------------|-----|-------------------------------|-----------|-------------|------------|
| Dates and Time                |     | Activity                      | DNB Time  | Rate Info   |            |
| Posting Status                |     | Client                        | Est. Time | Bill Status |            |
| Description                   |     | Reference                     | Variance  |             |            |
| 73158                         | EXP | Erika Mejia                   | 1         | 3.60        | 3.60       |
| 10/3/2022                     |     | Court fees                    |           |             |            |
| WIP                           |     | Cruz, Natalia G. v. Vasvision |           |             |            |
| Odyssey - Request to Cont CMC |     |                               |           |             |            |
| 73445                         | EXP | Erika Mejia                   | 1         | 3.60        | 3.60       |
| 11/1/2022                     |     | Court fees                    |           |             |            |
| WIP                           |     | Cruz, Natalia G. v. Vasvision |           |             |            |
| Odyssey - Joint CMS           |     |                               |           |             |            |
| 75750                         | EXP | Kristen Agnew                 | 1         | 52.63       | 52.63      |
| 6/22/2023                     |     | Meals                         |           |             |            |
| WIP                           |     | Cruz, Natalia G. v. Vasvision |           |             |            |
| Meal                          |     |                               |           |             |            |
| 75948                         | EXP | Olympia                       | 1         | 3.60        | 3.60       |
| 8/14/2023                     |     | Court fees                    |           |             |            |
| WIP                           |     | Cruz, Natalia G. v. Vasvision |           |             |            |
| Odyssey - Stip re Dismissal   |     |                               |           |             |            |
| 75972                         | EXP | Olympia                       | 1         | 3.60        | 3.60       |
| 8/18/2023                     |     | Court fees                    |           |             |            |
| WIP                           |     | Cruz, Natalia G. v. Vasvision |           |             |            |
| Odyssey - NOE                 |     |                               |           |             |            |
| 76331                         | EXP | Kristen Agnew                 | 1         | 65.25       | 65.25      |
| 10/10/2023                    |     | Court fees                    |           |             |            |
| WIP                           |     | Cruz, Natalia G. v. Vasvision |           |             |            |
| Est Motion Filing Fees        |     |                               |           |             |            |
| Grand Total                   |     |                               |           |             |            |
|                               |     |                               | 0.00      |             | 132.28     |
|                               |     |                               | 0.00      |             | 0.00       |
|                               |     |                               | 0.00      |             | 132.28     |

# EXHIBIT E