

STIPULATION OF CLASS AND PAGA SETTLEMENT

This Stipulation of Class and PAGA Settlement ("**Settlement Agreement**") is reached by and between: (i) Plaintiff Claudio Valdez ("**Plaintiff**"), individually and on behalf of all Aggrieved Employees and members of the Settlement Class, defined below, on the one hand; and (ii) Defendants McClarty Farms LLC ("**McClarty**") and Cardenas Brothers Ag, Inc. ("**CBAG**") (collectively "**Defendants**") on the other hand (Plaintiff and Defendants are referred to herein as the "**Parties**"). Plaintiff, Aggrieved Employees, and the Settlement Class are represented by Daniel J. Brown and Jessica Flores of Stansbury Brown Law, PC ("**Class Counsel**"). Defendant McClarty is represented by Ian B. Wieland and Michael J. Conway II of Sagaser, Watkins & Wieland PC and Defendant CBAG is represented by Ryan W. Porte of Raimondo Miller, ALC.

The class action complaint ("**Complaint**") against Defendants was filed on May 16, 2022, in Kings County Superior Court, Case No. 22C-0173, which alleges causes of action for: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) waiting time penalties; (5) failure to provide accurate, itemized wage statements; (6) unfair competition; (7) failure to reimburse for necessary business expenses; Plaintiff filed a First Amended Class and Representative Action Complaint ("**FAC**") on August 18, 2022, to add an additional cause of action for civil penalties under the Private Attorneys General Act ("**PAGA**") pursuant to Labor Code section 2698 *et seq.* based on claims asserted in the PAGA letters submitted to the Labor Workforce Development Agency ("**LWDA**") in Case No. LWDA-CM-884011-22. The Complaint and FAC are referred to herein as the "**Action**." The FAC is the Operative Complaint for settlement purposes.

The original class representative and named plaintiff in the Action was Nicolas Sanchez. Mr. Sanchez passed away in Spring 2023. Thereafter, Class Counsel was retained by putative class member Claudio Valdez who requested to be substituted in as the new class representative.

On July 20, 2023, and continuing thereafter in subsequent negotiations that occurred between then and the present, Plaintiff and Defendants, represented by their respective counsel of record, privately mediated the Action before Laurie Quigley Saldaña of Mediation Central. The Parties were unable to reach a resolution at the mediation, but continued to have ongoing settlement discussions. On July 25, 2023, the Parties reached an agreement by way of a mediator's proposal, which is now presented to the Court for approval.

Prior to entering into settlement discussions, the Parties conducted significant investigation of the facts and law both through formal and informal discovery, which included completing the *Belaire West* process, review and analysis of CBAG's policies and putative class members' and Aggrieved Employees' time records and payroll records. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the damages and penalties claimed by Plaintiff in the Action. As a result of the Parties' thorough investigation of the allegations and defenses thereto, they were able to reach an agreement for a global settlement after extensive negotiations.

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Action on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely

to allow the Parties to resolve the disputed claims asserted in this Action and avoid further litigation.

1. Certification for Settlement Purposes.

For the purposes of this Settlement Agreement only, the Parties stipulate to conditional certification of the following Settlement Class (hereinafter, the “**Settlement Class**” or “**Settlement Class Members**”):

All current and former non-exempt employees of Cardenas Brothers Ag, Inc. who performed work for McClarty Farms, LLC in California at any time from May 16, 2018, through December 31, 2021 (the “**Class Period**”).

The Parties agree that conditional certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Aggrieved Employees.

For the purposes of this Settlement Agreement only, the Parties stipulate that the “**Aggrieved Employees**” shall be defined as:

All current and former non-exempt employees of Cardenas Brothers Ag, Inc. who performed work for McClarty Farms, LLC in California at any time from May 16, 2021, through December 31, 2021 (the “**PAGA Period**”).

The Parties agree that the definition of the Aggrieved Employees for purposes of settlement is not an admission that the PAGA representative claim alleged in the Action meets the applicable standard of manageability. If this Settlement Agreement is not approved or is terminated, in whole or in part, this definition of Aggrieved Employees, and this Settlement Agreement in general, will be inadmissible and will have no effect in the Action or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

3. Releases.

- A. **Released Parties.** As referenced herein, **Released Parties** shall collectively mean: McClarty Farms LLC and Cardenas Brothers Ag, Inc., together with their present and former parents, subsidiaries, present and former owners, boards, officers, directors, trustees, shareholders, members, managers, partners, employees, agents, insurers, attorneys, representatives, heirs, joint-employers, alter egos, or other entities or persons against whom vicarious liability for the Release Class Claims and Released PAGA Claims could be asserted under Labor Code 558.1.

- B. **Releases Effective Upon Full Payment of the GSA.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount and Defendant CBAG will fund all employer payroll taxes owed on the wage portion of the individual Participating Member Payments, Plaintiff, Settlement Class Members, and Aggrieved Employees will release claims against all Released Parties as described below.
- C. **Released Class Claims.** All Settlement Class Members who do not opt out of the settlement (collectively, “**Participating Settlement Class Members**”) on behalf of themselves and their respective past and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties, from all claims that were alleged based on facts pled in the Action during the Class Period. Without limiting the foregoing, Released Class Claims shall include all claims for: (a) minimum wage violations; (b) failure to pay all overtime wages; (c) meal period violations (including the failure to pay premiums at all or at the correct rate for any violation of meal period obligations); (d) rest and recovery period violations (including the failure to pay premiums at all or at the correct rate for any violation of rest and recovery period obligations pursuant to Labor Code §226.2); (e) waiting time penalties; (f) failure to provide accurate, itemized wage statements; (g) failure to keep accurate records; (h) all claims arising out of unfair business practices under Business & Professions Code § 17200, *et seq.*; (i) failure to reimburse for necessary business expenses, and (j) any and all related statutory penalties associated with the foregoing. Such Released Class Claims shall include, but are not limited to, those claims arising under California Labor Code §§201-203, 204b, 205, 206, 210, 218, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and/or those arising under the applicable Industrial Welfare Commission Wage Order(s), (including subsections 3, 4, 7, 11, and 18 C.C.R. §11140), California Business and Professions Code §§17200 *et seq.* (including, without limitation, California Business and Professions Code §§17200 through 17208); the California Civil Code §3287; California Code of Civil Procedure §1021.5. The release extends to the limits of the Class Period. This Release is limited to liability for the Released Class Claims that arose for shifts worked by Participating Settlement Class Members during the Class Period and in which Participating Settlement Class Members performed work for McClarty on behalf of CBAG. This Release shall not be construed to extend to liability CBAG may have to Settlement Class Members arising from shifts during which Settlement Class Members performed work for individuals or entities other than McClarty on behalf of CBAG. This notwithstanding, McClarty shall have no further liability to Participating Settlement Class Members for the Released Class Claims based on work performed for McClarty by Settlement Class Members on behalf of CBAG.
- D. **Released PAGA Claims.** Aggrieved Employees, on behalf of themselves and their respective past and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, regardless of whether they opt out of the Settlement Class, will release and discharge the Released Parties from all claims assertable under PAGA for civil penalties that were alleged based on facts pled in the Action and the LWDA letters

during the PAGA Period. Without limiting the foregoing, Released PAGA Claims shall include all claims for civil penalties relating to: (a) minimum wage violations; (b) failure to pay all overtime wages; (c) meal period violations (including the failure to pay premiums at all or at the correct rate for any violation of meal period obligations); (d) rest and recovery period violations (including the failure to pay premiums at all or at the correct rate for any violation of rest and recovery period obligations pursuant to Labor Code §226.2); (e) failure to provide accurate, itemize wage statements, (f) failure to keep accurate records, and (g) failure to reimburse for necessary business expenses. Such Released PAGA Claims shall include, but are not limited to, any civil penalty associated with violations of, or any civil penalty arising under, arising under California Labor Code §§201-203, 204b, 205, 206, 210, 218, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2698 *et seq.*, 2699 *et seq.*, and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including subsections 3, 4, 7, 11, and 18 C.C.R. §11140). The release extends to the limits of the PAGA Period. This Release is limited to liability for the Released PAGA Claims that arose for shifts worked by Aggrieved Employees during the PAGA Period and in which Aggrieved Employees performed work for McClarty on behalf of CBAG. This Release shall not be construed to extend to liability CBAG may have to Aggrieved Employees arising from shifts during which Aggrieved Employees performed work for individuals or entities other than McClarty on behalf of CBAG. This notwithstanding, McClarty shall have no further liability to Aggrieved Employees for the Released PAGA Claims based on work performed for McClarty by Aggrieved Employees on behalf of CBAG.

- E. **Plaintiff's Release of Unknown Claims.** In light of his Class Representative Service Award, Plaintiff agrees to release, in addition to the Released Class and PAGA Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers compensation claims or any other claims which cannot be released via a private agreement generally releasing all known and unknown claims as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

4. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendants agree to pay a common fund of One Hundred Eighty Thousand Six Hundred Dollars and Zero Cents (\$180,600.00) ("**Gross Settlement Amount**" or "**GSA**") in full and complete settlement of this matter. Besides the triggering of the escalator clause pursuant to paragraph 4(D) of this Settlement Agreement and Defendants' payment of their share of

payroll taxes pursuant to paragraph 4(C) of this Settlement Agreement, in no event shall Defendants be required to pay more than the GSA. The GSA shall be paid as follows:

- A. **Funding of the Gross Settlement Amount.** The GSA shall be deposited with the Settlement Administrator within fourteen (14) days after the Effective Settlement Date (defined below), except if the Effective Settlement Date occurs on or before December 1, 2023, in which case the funding of the GSA shall occur no earlier than January 1, 2024.
- B. **Non-revisionary.** This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - i. All payments to the Aggrieved Employees and Settlement Class;
 - ii. Settlement Administrator. All fees and expenses of the settlement administrator associated with the administration of the settlement, which are anticipated to be no greater than Fourteen Thousand Dollars and Zero Cents (\$14,000.00). The Parties agree to the appointment of Phoenix Settlement Administrators as the settlement administrator (“**Settlement Administrator**”). The Settlement Administrator shall be responsible for sending all required notices in both English and Spanish, providing written reports to Class Counsel and Defense Counsel that, among other things, tally the number of Notices mailed or re-mailed, Notices returned undelivered, Requests for Exclusion, objections and disputes received from Settlement Class Members, calculating the Net Settlement Amount, calculating each Settlement Class Member’s and Aggrieved Employees’ Participating Member Payment, defined below, amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Paragraph 5(C), and providing declarations regarding the Settlement Administrator’s background and services for Preliminary Approval, attesting to its due diligence and compliance with all of its obligations under this Agreement for Final Approval, and a final report detailing disbursement of the Gross Settlement Amount in compliance with the Final Approval Order. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after checks have been mailed to all Aggrieved Employees and Participating Settlement Class Members (collectively “**Participating Members**”);
 - iii. Class Representative Service Award. Up to Five Thousand Dollars (\$5,000) for a class representative service award to Plaintiff subject to Court approval, in recognition of Plaintiff’s general release of claims, contributions to the Action, and service to the Settlement Class. Defendants will not object to a request for a Class Representative Service Award for Plaintiff up to \$5,000.00 in exchange for the general release of his claims and waiver of Civil Code Section 1542, his time and risks in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff’s Participating Member Payment (defined below) as a Participating Member and shall be reported on an IRS

Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Class Representative Service Award to the Plaintiff is for his services in connection with this Action and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Class Representative Service Award and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Class Representative Service Award does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Class Representative Service Award constitutes wages for income tax and withholding purposes. Plaintiff agrees to assume all responsibility for remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendants from the Class Representative Service Award paid under this Settlement Agreement, and all liability associated therewith. In the event that the Court reduces or does not approve the requested Class Representative Service Award, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding;

- iv. Class Counsel Fees and Costs. Up to thirty-five percent (35%) of the Gross Settlement Amount in attorneys' fees, which is currently estimated to be Sixty-Three Thousand Two Hundred Ten Dollars and Zero Cents (\$63,210.00), plus up to Twelve Thousand Dollars and Zero Cents (\$12,000.00) in verified costs and expenses that are related to the Action as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding. If the Gross Settlement Amount increases pursuant to Paragraph 4(D), the amount of fees requested by Class Counsel will increase proportionally such that the requested award is thirty-five percent of the GSA. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court. Defendants shall have no obligation to Plaintiff, Settlement Class Members, Aggrieved Employees, or Class Counsel for any attorneys' fees and statutorily recoverable costs incurred in prosecuting this Action other than as stated herein, provided that Defendants fully comply with the terms of this Settlement, including but not limited to timely payment of the Gross Settlement Amount.; and

- v. **PAGA Penalties.** Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount has been allocated by the Parties to the settlement of Plaintiff's PAGA claim for civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be payable to the Labor & Workforce Development Agency ("**LWDA Payment**"), and the remaining twenty-five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500.00) will be payable to the Aggrieved Employees as the "**PAGA Amount.**" The LWDA Payment and PAGA Amount are collectively referred to herein as the "**PAGA Penalties.**"

- C. **Payroll Tax Payments.** Defendant CBAG's share of payroll taxes shall be paid by Defendant CBAG separately from, and in addition to, the Gross Settlement Amount.
- D. **Escalator Clause.** CBAG represents that Settlement Class Members worked approximately 4,200 Class Workweeks within the Class Period. If, the actual number of Class Workweeks released by this Settlement increased by 10% or more (i.e., increase by more than 420 Class Workweeks), then Defendants shall increase the Gross Settlement Amount on a pro-rata basis equal to the increase in number of workweeks (e.g., if the number of Class Workweeks increases by 11%, the GSA will increase by 11%).

A "Class Workweek" shall be any calendar week in which the Settlement Class Member worked at least one shift performing work for Defendant McClarty Farms LLC on behalf of Cardenas Brothers Ag, Inc. during the Class Period based on CBAG's records.

- E. **Effective Date of Settlement.** The Effective Settlement Date of this settlement shall be the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is "final." The Judgment is "final" as of the latest of the following occurrences: (a) if no Participating Class Member nor the LWDA objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members or the LWDA objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. ("**Effective Settlement Date**").
- F. **Disbursement of Gross Settlement Amount.** Within ten (10) calendar days following the funding of the Gross Settlement Amount with the Settlement Administrator by Defendants, the Settlement Administrator will calculate Participating Member Payments (defined below) and mail individual Participating Member Payments to Participating Settlement Class Members and Aggrieved Employees and transfer to Class Counsel its attorney's fees and verified costs.

5. **Participating Member Payment Procedures.** Participating Members are not required to submit a claim form to receive their share of the Settlement (“**Participating Member Payment**”). Participating Member Payments will be determined and paid as follows:

A. **Net Settlement Amount:** The Net Settlement Amount is the Gross Settlement Amount after the following deductions are made: (a) all costs of settlement administration; (b) Class Representative Service Award to Plaintiff; (c) the LWDA Payment; and (d) costs and attorneys’ fees for Class Counsel. The Net Settlement Amount shall be available for Participating Members. From the Net Settlement Amount, the Settlement Administrator will calculate each Participating Member Payment based on the following formula:

- i. **PAGA Amount.** Each Aggrieved Employee shall receive a portion of the Two Thousand Five Hundred Dollars (\$2,500.00) that has been designated as the PAGA Amount based on their proportionate share of PAGA Workweeks (i.e., any calendar week in which the Aggrieved Employee worked at least one shift performing work for Defendant McClarty during the PAGA Period based on CBAG’s records), by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee’s PAGA Workweeks, and the denominator of which is the total PAGA Workweeks of all Aggrieved Employees.
- ii. **Remainder.** The remainder of the Net Settlement Amount shall be distributed to each Participating Settlement Class Member based on their proportionate share of Class Workweeks, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Settlement Class Member’s Class Workweeks, and the denominator of which is the total Class Workweeks of all Participating Settlement Class Members.

B. **Participating Member Payment Tax Treatment.** For purposes of calculating applicable taxes and withholdings for the payment to Participating Members described in Paragraph 5(A)(ii), two and one-half percent (2.5%) of each such payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings; ten percent (10%) of each such payment shall be designated as reimbursements subject to IRS Form 1099 reporting with no withholdings, and eighty-seven and one-half percent (87.5%) of each such payment shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Additionally, 100% of the PAGA Amount paid to Aggrieved Employees shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of these payments to each Participating Member above, none of the Participating Member Payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

C. **Deadline to Negotiate Participating Member Payment.** Each Participating Member who receives a Participating Member Payment must negotiate the settlement check

within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Participating Members whose checks are not negotiated within one hundred eighty (180) days period will not be reissued and will be transferred by the Settlement Administrator to the California Farmworker Foundation, as the designated *cy pres*.

- D. Defendants shall be deemed to have fully discharged their obligations to each Participating Member upon fully funding the Gross Settlement Amount, regardless of whether such checks are actually received and/or negotiated by Participating Members. Neither Plaintiff nor Defendants, nor their Counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by his, her, or its own acts of omission or commission, the same is true for the Settlement Administrator.

6. **Preliminary Approval.** Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown of Stansbury Brown Law, PC as Class Counsel;
- C. Appointing Claudio Valdez as the Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice, and directing the mailing of same in English and Spanish;
- G. Scheduling a Final Approval hearing;
- H. Plaintiff shall submit the proposed settlement to the LWDA pursuant to Labor Code § 2699(l)(2). Proof of this submission will be provided to the Court and to Defendants' counsel; and

7. **Notice Procedures.** Following preliminary approval, Settlement Class Members and Aggrieved Employees shall be notified as follows:

- A. Within fourteen (14) days after entry of an order preliminarily approving this Settlement Agreement, Defendants will provide the Settlement Administrator with a class list (in electronic format) including the full names, last known addresses, social security numbers, Class Workweeks and PAGA Workweeks for each Aggrieved Employee and Settlement Class Member.

- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members and Aggrieved Employees through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members and Aggrieved Employees; (ii) update the addresses of any Settlement Class Member or Aggrieved Employee for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Settlement Class Member or Aggrieved Employee in English and Spanish at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member or Aggrieved Employee immediately, and in any event within three (3) business days of obtaining the updated address.
- D. **Opt-Out/Request for Exclusion Procedures.** Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail or fax a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The request for exclusion must: (1) contain the name, address, telephone number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the class settlement; (3) be signed by the Settlement Class Member; and (4) be faxed or postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion fails to comply with items (1), (2), or (4), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion not containing a Settlement Class Member's telephone number will be deemed valid. The date of the postmark on the Request for Exclusion, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to their share of the PAGA Amount) or have any right to object, intervene, appeal, or comment thereon. Any Settlement Class Member who does not submit a request for exclusion is automatically deemed a Participating Settlement Class Member.

- E. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel as well as filing them with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendants' counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class Member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) objections must be postmarked on or before the Response Deadline.
- F. **Challenges to Participating Member Payment Calculations.** Each Notice Packet mailed to a Settlement Class Member or Aggrieved Employee shall disclose the amount of the Settlement Class Member's or Aggrieved Employee's estimated Participating Member Payment as well as all of the information that was used from Defendants' records in order to calculate the Participating Member Payment, including the number of Class Workweeks and the number of PAGA Workweeks. Settlement Class Members and Aggrieved Employees will have the opportunity, should they disagree with CBAG's records regarding the number of Class Workweeks and PAGA Workweeks stated in their Notice Packet, to challenge the data provided. In order to challenge CBAG's data, the Settlement Class Member or Aggrieved Employee must provide documentation and/or an explanation demonstrating that Defendants' data is incorrect and evidencing the correct number of Class Workweeks and/or PAGA Workweeks that the Settlement Class Member or Aggrieved Employee believes they should have been credited with and/or evidence of the correct date their employment ended. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt.
- G. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Settlement Class Member's or Aggrieved Employee's Participating Member Payment, the allocation of W-2 wages, and the number of Class Workweeks and PAGA Workweeks. Where the information submitted by CBAG from their records differ from the information submitted by the Settlement Class Member or Aggrieved Employee, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and Defendants' counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will finally determine the eligibility for and amount of any Participating Member Payment. Such determination

shall be binding upon the Settlement Class Member, Aggrieved Employee, and the Parties.

8. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:
 - A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
 - B. Approving Plaintiff's application for Settlement Administrator's fees and expenses, Plaintiff's Class Representative Service Award, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the PAGA Penalties; and
 - C. Entering judgment pursuant to California Rule of Court 3.769.
9. **Non-Admission.** Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, that they have any liability to anyone under the claims asserted in the Action, and that but for this settlement a class should not be certified in this Action. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code section 1152.
10. **No Public Comment:** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, publish this settlement on any social media site, website, blog, and/or other online platform, or have any communication with the press about the fact, amount or terms of the Settlement.
11. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties or their representatives, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.
12. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses of the Parties' representatives set forth below, or such other addresses as the Parties may designate in writing from time to time:

If to Defendant Cardenas Brothers Ag, Inc.: Ryan W. Porte, Esq.
RAIMONDO | MILLER, ALC
7060 N. Marks Ave., Suite 108

Fresno, CA 93711
rwp@raimondomiller.com
jld@raimondomiller.com

If to Defendant McClarty Farms LLC:

Ian B. Wieland, Esq.
SAGASER, WATKINS &
WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, CA 93704
ian@sw2law.com

If to Plaintiff:

Daniel J. Brown, Esq.
STANSBURY BROWN LAW, PC
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
dbrown@stansburybrownlaw.com

13. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.
14. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.
15. **Failure to Obtain Final Approval.** If the court fails to grant either preliminary or final approval, the Parties shall be restored to their positions at the time of the execution of this memorandum, which shall include but not be limited to, all funds paid by Defendants shall be returned to Defendants, with the exception that if any settlement administration costs are due and payable, Plaintiff and Defendants agree to split those costs.
16. **Attorney's Fees and Costs.** Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear their own attorneys' fees and costs related to this Action.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

EXECUTION BY PARTIES AND COUNSEL

Date: 10/17/2023



Claudio Valdez, Plaintiff

Date: _____

_____, on behalf of
Defendant McClarty Farms LLC.

Date: _____

_____, on behalf of
Defendant Cardenas Brothers Ag, Inc.

Approved as to form:

Date: _____

RAIMONDO | MILLER, ALC

Ryan W. Porte
Counsel for Defendant Cardenas Brothers Ag,
Inc.

Date: _____

SAGASER, WATKINS & WIELAND, PC

Ian B. Wieland
Counsel for Defendant McClarty Farms LLC

Date: _____

STANSBURY BROWN LAW, PC

Daniel J. Brown
Counsel for Plaintiff and the Settlement
Class