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14 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN

JUAN D. LOPEZ, et al.,

Plaintiffs,

v.

REMONDA FARMS, et al.,

Defendants.

Case No.: STK-CV-UOE-2016-0004914

**JOINT APPLICATION FOR APPROVAL OF
SETTLEMENT AND PAGA DISMISSAL;
POINTS AND AUTHORITIES IN SUPPORT;
AND DECLARATION OF BLANCA A.
BAÑUELOS**

Date: **JAN 10 2019**

Time: **9:00 A.M.**

Dept.: 11B

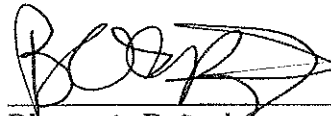
**JOINT APPLICATION FOR THE COURT TO RETAIN JURISDICTION OVER
JUDICIALLY APPROVED SETTLEMENT**

Plaintiffs JUAN D. LOPEZ, ANTONIO CEJA FERRER, GILDARDO GONZALEZ, RAMIRO GONZALEZ, FELIPE DE JESUS LOPEZ RUIZ, JOSE L. LOPEZ, LINO LOPEZ CEJA and JESUS SALGADO (hereafter collectively referred to as "Plaintiffs") on behalf of themselves and other current and former employees of Defendants, through their counsel Blanca A. Bañuelos, and Defendant MORADA FARMING COMPANY, LLC (hereafter referred to as "MORADA FARMING"), through its counsel, Darin Judd, jointly waive the notice provisions of a motion and hereby jointly apply to the Court for an order approving the Settlement Agreement between the Plaintiffs and Defendant MORADA FARMING as fair, reasonable, adequate and in the interests of the Plaintiffs and other

1 current and former employees of Defendants, and retaining jurisdiction over the parties to enforce the
2 settlement until its terms are fully performed pursuant to Code of Civ. Proc. § 664.6. The parties also
3 seek approval of this settlement as required by Lab. Code § 2699(1)(2). This request is supported by
4 this application; the Points and Authorities in Support; the Declaration of Blanca a. Bañuelos; and the
5 Settlement Agreement between the parties attached thereto.

6
7 Date: November 29, 2018

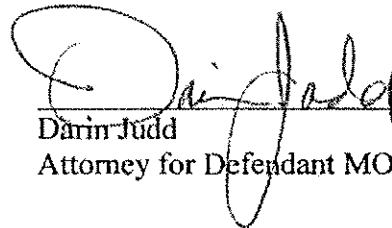
**CALIFORNIA RURAL LEGAL ASSISTANCE,
INC.**

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11 Blanca A. Bañuelos
Attorney for Plaintiffs

12
13 Date: November 16, 2018

**THOMPSON, WELCH, SOROKO & GILBERT
LLP**

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17 Darin Judd
Attorney for Defendant MORADA FARMING, LLC

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1 When enacting Labor Code § 2698 the Legislature recognized an important public policy that
2 could only be accomplished by supplementing State enforcement agency activities and allowing
3 workforce wide recovery of penalties. After noting the critical importance of labor law enforcement as
4 the “only meaningful deterrent to unlawful conduct” and the inadequacy of state agency staffing, the
5 Legislature went on to specifically find that:

6 (d) It is therefore in the public interest to provide that civil penalties for violations
7 of the Labor Code may also be assessed and collected by aggrieved employees
8 acting as private attorneys general, while also ensuring that state labor law
9 enforcement agencies' enforcement actions have primacy over any private
enforcement efforts undertaken pursuant to this act.

10 Stats. 2003 ch 906, *see*, Historical and Statutory Notes to Labor Code § 2698. West's Annotated
11 California Codes, 2007 Cumulative Pocket Part. The very essence of a private attorney general is to go
12 beyond enforcement of personal rights and to provide a mechanism for enforcing those rights in a
13 manner that promotes the interest of the public at large.

14 Here, the Plaintiffs have done extensive discovery to attempt determine if there are civil
15 penalties owed to other “aggrieved employees” and if so, to recover for other aggrieved workers.
16 However, the only workers that have come forward are Opt-In Plaintiffs. Plaintiffs have been unable to
17 locate any other “aggrieved employees” and based on the records provided by Defendant MORADA
18 FARMING, Plaintiffs cannot demonstrate that there are other “aggrieved employees” and that any
19 other civil penalties are owed under the PAGA. As such, Plaintiffs and Defendant MORADA
20 FARMING stipulate and request approval of the Settlement Agreement and request that the Court
21 approve dismissal of the PAGA Cause of Action.

22 **b. COURT REVIEW AND APPROVAL OF PAGA CAUSE OF ACTION**

23 Judicial review of the settlement in this case is required due to the representative claim brought
24 under the PAGA. *See* Cal. Labor Code § 2699(1)(2) (courts “shall review and approve any settlement
25 of any civil action filed pursuant to [the PAGA].”) The PAGA statute does not set forth an express
26 standard for settlement approval. Nor have courts extensively discussed the standard.
27 Nevertheless, the statute offers some guideposts for the review process and the assessment of fairness
28 and reasonableness.

1 First, the LWDA is afforded an opportunity to review a proposed PAGA settlement or request
2 for dismissal and may submit objections. See Cal. Labor Code § 2699(l) ("The proposed [PAGA]
3 settlement shall be submitted to the agency at the same time that it is submitted to the court."). The
4 PAGA does not establish a specific timeframe for the LWDA to respond to a settlement. Adequate
5 time, however, is required for the LWDA's review of the agreement and motion for approval.² Here,
6 Plaintiffs have provided LWDA with the Notice of Request for Court Approval of Settlement
7 Agreement and Request for Dismissal of the PAGA cause of action. In this case, it is fair and
8 reasonable to dismiss the PAGA cause of action, as there appear to be no other "aggrieved employees."
9 The parties do not anticipate the LWDA will object to this Settlement or Request for Dismissal of the
10 PAGA Cause of Action.

11 Second, the PAGA authorizes the courts to exercise their discretion in lowering the amount of
12 civil penalties awarded "if, based on the facts and circumstances of the particular case, to do otherwise
13 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Labor Code
14 § 2699(e)(2). Here, the parties seek that the court exercise its discretion in dismissing the PAGA Cause
15 of Action. As detailed in the Declaration of Blanca A. Bañuelos, it is fair and reasonable to dismiss the
16 PAGA Cause of Action in this case.

17 II. CONCLUSION

18 For the reasons set forth above, Plaintiffs and Defendant MORADA FARMING request that the
19 Court grant approval of the Settlement and dismissal of the PAGA Cause of Action.

20 Date: November 29, 2018

CALIFORNIA RURAL LEGAL ASSISTANCE,
INC.

23 
24 Blanca A. Bañuelos
25 Attorney for Plaintiffs

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27 ² When a party provides the LWDA notice of a proposed PAGA settlement, the party must include "the Points and
28 Authorities or other item being submitted to the court that explains the basis for the settlement, and the Notice of Motion or
other item indicating when and where there will be a hearing on the proposed settlement." Cal. Dept. of Industrial Relations,
Private Attorneys General (PAGA) -- Document submission instructions, https://www.dir.ca.gov/Private-Attorneys-General-Act/Document_Submission-Instructions.html.

1 **DECLARATION OF BLANCA A. BAÑUELOS IN SUPPORT OF JOINT APPLICATION**

2 I, Blanca A. Bañuelos, declare:

3 1. I am one of the attorneys of record for Plaintiffs in this matter.

4 2. The Plaintiffs and Defendant MORADA FARMING, LLC have entered into a
5 Settlement Agreement that is fair, reasonable, and adequate and in the interests of the Plaintiffs and
6 Opt-In Plaintiffs. A copy of the executed Settlement Agreement is attached hereto as Exhibit 1.

7 3. The parties jointly request that the court retain jurisdiction over this matter to enforce the
8 terms of the Settlement Agreement pursuant to Code of Civil Procedure § 664.6.

9 4. The parties jointly request that the court approve this settlement pursuant to Labor Code
10 § 2699.3(b)(4).

11 5. Shortly after the Motion date is set by this Court, and within the same day, Plaintiffs'
12 Counsel submit a copy of this Motion; the Points and Authorities in Support; this Declaration and the
13 Settlement Agreement, to the Labor Workforce Development Agency through their online system
14 found at <https://dir.tfaforms.net/195>.

15 6. One of the terms of the Settlement Agreement is that Plaintiffs and Defendant
16 MORADA FARMING stipulate that the 14th Cause of Action under the Private Attorney General Act
17 (Lab. Code § 2699 *et seq.*) ("PAGA") be dismissed. We are requesting dismissal of the PAGA Cause
18 of Action as it is fair, reasonable and adequate in this case, as demonstrated by the following reasons:

- 19 a. Plaintiffs have conducted extensive written discovery, depositions and a land inspection.
20 Despite that discovery, no other "aggrieved employees" have come forward besides the
21 Opt-In Plaintiffs;
- 22 b. Plaintiffs have sought and were granted Entry of Default Judgment against Defendant
23 JOSEPH REMONDA. Defendant JOSEPH REMONDA has not participated in any way
24 in the litigation of this case;
- 25 c. The Plaintiffs filed a Motion for Conditional Certification under the Fair Labor
26 Standards Act ("FLSA") on May 30, 2017. The Court granted this Motion and allowed
27 the Plaintiffs to provide Notice of the Right to Opt-In to the Lawsuit, along with Opt-In

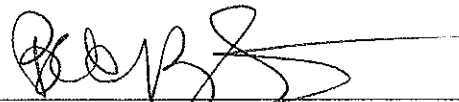
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Forms on September 25, 2017. The Court also approved an Opt-in Period of six months. The last day for Opt-In Forms to be filed was May 1, 2018;

- d. After the Court approved the Plaintiffs' Motion for Conditional Certification, Plaintiffs' counsel mailed out Notices of the Right to Opt-In to the Lawsuit and Opt-In Forms, to all potential "aggrieved employees." To identify and locate "aggrieved employees", Plaintiffs' counsel conducted media announcements for over six months on Spanish radio and Lexis Searches for potential "aggrieved employees." After the Court approved the Plaintiffs' Motion for Conditional Certification, Plaintiffs' counsel also mailed out Notices of the Right to Opt-In to the Lawsuit and Opt-In Forms, to all potential "aggrieved employees";
- e. There are six workers who have Opted-In this case and have maintained contact with Plaintiffs' counsel through the litigation of this case. The Settlement Agreement provides payment to these six workers. Because they Opted-In to the case, they are entitled to seek similar recovery to the named Plaintiffs;
- f. The Plaintiffs and Defendant MORADA FARMING believe that it is unlikely that if there are other "aggrieved employees," those aggrieved employees will be found. As such, the parties have stipulated to dismissal of the PAGA cause of action, as the Opt-In Plaintiffs are included in the Settlement Agreement and are recovering damages under the FLSA and not the PAGA cause of action.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Stockton, California.

Date: November 29, 2018



Blanca A. Bañuelos
Attorney for Plaintiffs

Exhibit 1

SETTLEMENT AGREEMENT

This Settlement Agreement (hereafter "Agreement") is made and entered into by and between JUAN D. LOPEZ, ANTONIO CEJA FERRER, GILDARDO GONZALEZ, RAMIRO GONZALEZ, FELIPE DE JESUS LOPEZ RUIZ, JOSE L. LOPEZ, LINO LOPEZ CEJA and JESUS SALGADO (hereafter collectively "Plaintiffs") on behalf of themselves and other current and former employees named below in Section I(a) (hereafter referred to as "Opt-In Plaintiffs") and MORADA FARMING COMPANY, LLC (hereafter "Defendant") for purposes of resolving all claims between them brought forth in Case No. STK-CV-UOE-2016-4914 filed in San Joaquin County Superior Court (hereinafter "the lawsuit") on May 20, 2016.

The First Amended Complaint in the lawsuit was filed on July 20, 2016, containing the following causes of action: (1) Failure to pay minimum wages; (2) Liquidated damages for failure to pay minimum wages; (3) Failure to pay wages owed; (4) Failure to provide rest periods; (5) Failure to provide meal periods; (6) Failure to provide adequate wage statements; (7) Failure to pay all wages due; (8) Payment with Insufficient; (9) Failure to provide copies of employment records; (10) Failure to Provide Copies of Personnel Records; (11) Violation of the FLSA; (12) Violation of the AWP; (13) Violation of the UCL; and (14) Violation of the PAGA.

The parties agree that the terms of the settlement set forth in this Agreement are fair, reasonable and in the interests of the Plaintiffs and Opt-In Plaintiffs.

Therefore, Plaintiffs and Defendants agree as follows:

I. MONETARY SETTLEMENT TERMS

In consideration of the mutual promises set forth in this Agreement, Defendants shall pay the total amount of seventy-two thousand five hundred dollars and no cents (\$72,500.00) for full settlement of the claims brought forth in the lawsuit. These amounts shall be paid as explained below.

All amounts are designated as non-wage payments and will be considered a payment of general damages/penalties. No deductions of any kind will be taken from the non-wage payments. To report the non-wages paid to Plaintiffs and Opt-in Plaintiffs to the IRS, no later than January 31, 2019, Defendant will mail form 1099-MISC corresponding to the amounts set forth for Plaintiffs and Opt-In Plaintiffs, with this amount reported under box 3, "Other Income," to Blanca A. Bañuelos, California Rural Legal Assistance, Inc., 145 E. Weber Avenue, Stockton, CA 95202.

a. Payments to Plaintiffs and Opt-In Plaintiffs

Out of the total sum of \$72,500.00 to be paid by Defendant, \$42,275.55 shall be paid and Defendant shall issue checks made out to Plaintiffs and Opt-in Plaintiffs as detailed below:

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Plaintiff or Opt-in Plaintiff	Non-Wages Amount
Antonio Ceja Ferrer	\$ 3,642.20
Gildardo Gonzalez	\$ 3,642.20
Ramiro Gonzalez	\$ 3,642.20
Lino Lopez Ceja	\$ 3,642.20
Felipe de Jesus Lopez Ruiz	\$ 3,642.20
Juan D. Lopez	\$ 3,642.20
Jose L. Lopez	\$ 3,642.20
Jesus Salgado	\$ 3,642.20
Abraham Hernandez	\$ 1,983.70
Bonifacia Morales Ramirez	\$ 1,983.70
Salvador Morales Ramirez	\$ 1,983.70
Santiago Morales	\$ 1,983.70
Vicenta Rodriguez	\$ 1,983.70
Epifanio Calihua	\$ 3,219.45
TOTAL	\$ 42,275.55

b. Payments to CRLA for Attorney's Fees and Costs

Out of the total sum of \$72,500.00 to be paid by Defendant, \$30,224.45 shall be paid to California Rural Legal Assistance, Inc. (CRLA) for Attorney's Fees and Costs. Defendant shall issue a check in this amount to CRLA.

c. Dismissal of the PAGA Cause of Action & Court Settlement Approval

The parties agree to stipulate to dismissal of the PAGA Cause of Action. Within five days of the last signature on this Agreement, the parties will file a Joint Application for Court Approval of Settlement Agreement, to be drafted and filed by Plaintiffs' counsel, and submit a copy of the Agreement to the LWDA through LWDA's online system. In the event that the Court does not approve the Agreement, this agreement is null and void.

II. PAYMENT SCHEDULE

The \$72,500.00 will be due within 15 days court approval of the settlement agreement. Checks shall be mailed to Blanca A. Bañuelos, California Rural Legal Assistance, Inc., 145 E. Weber Avenue, Stockton, CA 95202.

Defendant agrees that the Payment Schedule in this Agreement is a material term of this Agreement; that time is of the essence in making the payments set forth in this Agreement; and that any failure to deliver any of the settlement funds within five business days of the date specified in this Agreement shall be deemed a material breach of this Agreement.

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III. RELEASE OF CLAIMS

By signing this Agreement and accepting the sum agreed upon, Plaintiffs agree that the amounts paid to them pursuant to this Agreement represents settlement of the disputed claims set forth in the lawsuit and any other claims that may exist not related to Plaintiffs' employment. Plaintiffs hereby release and forever discharge Defendant, their agents, employees, attorneys, successors and assigns from all claims, rights, demands, actions, obligations, liabilities, and causes of actions, arising out of or related to the claims raised in this lawsuit and any other claims that may exist not related to Plaintiffs' employment.

Plaintiffs hereby expressly waive any rights they may have under the provisions of California Civil Code § 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Plaintiffs and Defendant agree that this Release does not apply to Defendants REMONDA FARMS, JOSEPH REMONDA, individually and dba REMONDA FARMS, and KIRSTEN SILVA, individually and dba REMONDA FARMS (collectively referred to as “REMONDA FARMS”). For purposes of this agreement, REMONDA FARMS are not Defendant MORADA FARMING COMPANY, LLC's agents, employees, attorneys and/or successors. Defendant MORADA FARMING COMPANY, LLC further agrees to not oppose the continuing prosecution of REMONDA DEFENDANTS, including, but not limited to, seeking default entry and entry of default judgments.

IV. GENERAL PROVISIONS

a. Disposition of Lawsuit – Request for Dismissal

Within fifteen (15) days of the last payment of this Agreement, Plaintiffs shall execute and file a Dismissal with Prejudice as to Defendant MORADA FARMING COMPANY, LLC.

b. Choice of Law

This Agreement shall be interpreted according to the laws of the State of California. The parties hereby submit themselves to the Superior Court of San Joaquin County for the purpose of enforcing this Agreement.

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c. Enforceability

This Agreement is not, and shall not be construed, as an admission of liability, fault or wrongdoing on the part of Defendant or any of them. Defendant expressly denies the allegations made in the lawsuit and expressly denies any liability to Plaintiffs or the Opt-In Plaintiffs.

If any party sues to enforce this Agreement, the prevailing party in such suit shall be entitled to recover, in addition to any other relief, his/her or its costs and expenses, including court costs and attorneys' fees, if any, incurred in connection with such suit.

If any portion of this Agreement is held invalid for any reason, the remainder of this Agreement shall continue in full force and effect.

The parties acknowledge that they have read and fully understand all of the provisions of this Agreement and that they are voluntarily entering into this Agreement, without coercion, and based on the party's own judgment, and not in reliance on any representations or promises made by the other party other than those contained herein. The parties acknowledge that prior to the execution of this Agreement, they have consulted with counsel concerning the terms and conditions set forth herein.

The parties agree that this Agreement represents the sole and entire agreement between them and supersedes all prior agreements, negotiations and discussions between them hereto and/or their respective counsel with respect to the subject matters covered hereby.

It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event any language of this Agreement is found to be ambiguous, each party shall have an opportunity to present evidence as to the actual intent of the parties with respect to any such ambiguous language, consistent with the parole evidence rule.

This Agreement may be executed in counterparts and as executed shall constitute one Settlement Agreement, binding on all parties. Facsimile, scanned, or photocopied signatures have the same force and effect as originals. Any amendment to this Agreement must be in writing and signed by all parties.

Date

Plaintiff Juan D. Lopez

Date

Plaintiff Antonio Ceja Ferrer

c. Enforceability

This Agreement is not, and shall not be construed, as an admission of liability, fault or wrongdoing on the part of Defendant or any of them. Defendant expressly denies the allegations made in the lawsuit and expressly denies any liability to Plaintiffs or the Opt-In Plaintiffs.

If any party sues to enforce this Agreement, the prevailing party in such suit shall be entitled to recover, in addition to any other relief, his/her or its costs and expenses, including court costs and attorneys' fees, if any, incurred in connection with such suit.

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10/19/18
Date

Juan D. Lopez
Plaintiff Juan D. Lopez

10-19-18
Date

Antonio Cesa F.
Plaintiff Antonio Cesa Ferrier

10-19-18
Date

Gildardo Gonzalez C.
Plaintiff Gildardo Gonzalez

10-19-18
Date

Ramiro Gonzalez
Plaintiff Ramiro Gonzalez

Date

Plaintiff Felipe de Jesus Lopez Ruiz

10-19-18
Date

Jose Luis Lopez
Plaintiff Jose L. Lopez

10.19.18
Date

Lino Lopez Ceja
Plaintiff Lino Lopez Ceja

10/18/18
Date

Jesus Salgado R
Plaintiff Jesus Salgado

11/15/18
Date

Morada Farming, LLC
Defendant Morada Farming, LLC

Approved as to Form:

11/16/18
Date

Blanca A. Bahueros
California Rural Legal Assistance, Inc.
Attorneys for Plaintiffs

11/16/18
Date

Darin Judd
Attorneys for Defendant

Date

Plaintiff Gildardo Gonzalez

Date

Plaintiff Ramiro Gonzalez

10-27-2018
Date

Felipe A. Juan Lopez Ruiz
Plaintiff Felipe de Jesus Lopez Ruiz

Date

Plaintiff Jose L. Lopez

Date

Plaintiff Lino Lopez Ceja

Date

Plaintiff Jesus Salgado

11-15-18
Date

[Signature]
Defendant Morinda Farming, LLC

Approved as to Form:

Date

Blanca A. Bañuelos
California Rural Legal Assistance, Inc.
Attorneys for Plaintiffs

Date

Darin Judd
Attorneys for Defendant