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Attorneys for Plaintiff
GUADALUPE HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

GUADALUPE HERNANDEZ, on behalf of
himself, and all others similarly situated,

Plaintiff,

v.

AUTOMATED HARVESTING, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No: 22CV002717

REPRESENTATIVE ACTION

**DECLARATION OF ROBERT SPENCER
IN SUPPORT OF MOTIONS FOR AN
ORDER APPROVING SETTLEMENT OF
PAGA ACTION AND DISMISSING
ACTION WITH PREJUDICE AND FOR
AN ORDER AWARDING ATTORNEYS'
FEES AND COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION FEES**

[Assigned for all purposes to The Honorable
Thomas A. Wills, Dept. 15]

Date: November 17, 2023
Time: 10:00 a.m. (matter will trail to end of
8:30 a.m. calendar)
Dept. 15

Complaint filed: September 13, 2022
FAC Filed: November 15, 2022
SAC Filed: December 20, 2022

1 I, ROBERT SPENCER, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California and
3 before this Court. I am a senior associate in the law firm Keller Grover LLP, counsel for
4 Representative Plaintiff Guadalupe Hernandez ("Plaintiff") in this action. I have personal
5 knowledge of the facts stated herein and, if called as a witness, I could and would testify
6 competently to the facts set forth below.

7 **Plaintiff's Counsel's Experience:**

8 2. Eric A. Grover, Esq.'s Experience: Between September 1988 and October 2005,
9 Eric A. Grover was first an associate and then a shareholder in the firm Littler Mendelson, P.C.
10 ("Littler"). Littler is the largest law firm in the United States specializing in labor and
11 employment law. During Mr. Grover's 17 years at Littler, he practiced extensively in all areas
12 of labor and employment law, including wage and hour law and class action defense. He also
13 has extensive litigation experience, including numerous arbitrations and trying a number of cases
14 to verdict in state and federal courts.

15 3. In the time Mr. Grover worked at Littler, he worked on many class action matters.
16 The following is a list of various class action matters for which Mr. Grover was the lead or co-
17 lead defense attorney:

- 18 a. *DLSE v. UI Video* (Blockbuster) (Alameda County) (Failure to provide
19 uniforms.);
- 20 b. *Vickery, et al. v. Cinema Seven, Inc.* (San Francisco County) (Independent
21 contractor vs. employee status, overtime, minimum wage and expense
22 reimbursement claims.);
- 23 c. *ILWU, et al. v. DMS Messenger Services, et al.* (San Francisco County)
24 (Overtime, minimum wage, expense reimbursement and waiting time
25 penalties.);
- 26 d. *Shields, et al. v. Lyon's Restaurants* (San Diego County) (Manager
27 misclassification.);
- 28 e. *O'Donnell, et al. v. Starving Students Movers* (Marin County) (Overtime,
minimum wage and waiting time penalties.);
- f. *Cross, et al. v. Compass* (Sacramento County) (Overtime and waiting time
penalties.);

- g. *Flowers, et al. v. Starving Students Movers* (San Joaquin County) (Overtime, minimum wage and waiting time penalties.);
- h. *Chen v. DMX Music, Inc.* (San Francisco County) (Improper chargebacks on commission payments.);
- i. *Tiffany, et al. v. Hometown Buffet* (San Francisco County) (Manager misclassification.);
- j. *Leoni, et al. v. Jetsetter Express, Inc.* (San Joaquin County) (Manager misclassification.);
- k. *Solano v. Clark Pest Control* (Los Angeles County) (Technician/salesperson misclassification.);
- l. *Guglielmino, et al. v. McKee Foods Corp.* (USDC-ND) (Independent contractor vs. employee status.); and
- m. *Evets v. Guess?, Inc.* (San Francisco County) (Manager misclassification.).

4. Between October 15, 2005 and the present, Mr. Grover has been practicing law at Keller Grover LLP. At Keller Grover, approximately 95% of Mr. Grover's time is spent representing Plaintiffs in employment, consumer, privacy, and data breach class and representative action matters. Mr. Grover is currently lead counsel or co-lead counsel on more than 15 different class and/or representative actions. Mr. Grover has been named Class Counsel in numerous recent wage and hour, consumer, privacy, and data breach class action matters, including:

- a. *Watson v. Ann Taylor Stores Corp.*, Los Angeles County Superior Court Case No. BC342729
- b. *Novak v. Retail Brand Alliance, Inc., et al.*, Alameda County Superior Court Case No. RG 05-223254;
- c. *Jos. A. Banks Overtime Cases*, Solano County Superior Court Case No. JCCP NO. 4479;
- d. *Diaz v. Best Buy Stores, L.P.*, Alameda County Superior Court Case No. RG 06-264187;
- e. *Lozoya v. PA Acquisition Corp.*, et al, Alameda County Superior Court Case No. RG 06-258395;
- f. *Krispy Kreme Overtime Cases*, Alameda County Superior Court Case No. JCCP No. 4489;
- g. *Walgreens Overtime Cases*, Los Angeles County Superior Court Case No. JCCP 4387;

- 1 h. *Gring v. Claire's Boutique's, Inc.*, Alameda County Superior Court Case No. RG
2 05-247759;
- 3 i. *Greene v. Federated Retail Holdings, Inc.* San Francisco County Superior Court
4 Case No. CGC 06-449456;
- 5 j. *Stermer v. L'Occitane, Inc.*, San Francisco County Superior Court Case No. CGC
6 06-456056;
- 7 k. *Wilde v. Catalina Restaurant Group, Inc. et al.*, Los Angeles County Superior
8 Court Case No. BC347513;
- 9 l. *Rogers v. Accentcare, Inc.*, Alameda County Superior Court County Superior
10 Court Case No. RG 05-237683;
- 11 m. *Fleming v. Dollar Tree Stores, Inc.*, United States District Court, Northern District
12 of California, Case No. C 06-cv-03409 MJJ;
- 13 n. *Corrado v. Valero Services, Inc.*, Alameda County Superior Court Case No. RG
14 07-322134;
- 15 o. *Stenroos v. Core-Mark International, Inc.*, San Mateo County Superior Court
16 Case No. CIV 451198;
- 17 p. *Ford v. Pilot Travel Centers LLC*, United States District Court, Northern District
18 of California, Case No. C-07-cv-02715 TEH;
- 19 q. *Elsbury v. Pizza Hut of Southeast Kansas, Inc.*, United States District Court,
20 Eastern District of California Case No. EDCV 07-00695 SGL (JCRx);
- 21 r. *Brior v. AE Retail West LLC*, San Francisco County Superior Court Case No.
22 CGC 06-455422;
- 23 s. *Moore v. Genesco, Inc. et al.*, Alameda County Case No. RG 06-270570;
- 24 t. *Stermer v. Ulta Salon, Cosmetics & Fragrance, Inc.*, San Francisco County
25 Superior Court Case No. CGC 08-427014;
- 26 u. *Lauzon v. Club Monaco U.S., LLC, Polo Retail, LLC, and Polo Ralph Lauren*
27 *Corporation*, San Francisco County Superior Court Case No. CGC 06-449963;
- 28 v. *Davenport v. Union Bank of California, N.A. and Unionbanc Investment Services*
LLC, United States District Court, Central District of California, Case No. 2:07-
cv-00001 FMC (VBKx);
- w. *Jacobs v. Les Schwab Tire Centers of California, Inc., et al.*, San Francisco
County Superior Court Case No. CGC 08-478372;
- x. *Daniel Arias v. Praxair Distribution, Inc., et al.*, San Francisco County Case No.
CGC 08-474506;
- y. *Flores, et al. v. Zale Delaware, Inc.*, United States District Court, Northern
District of California, Case No. 07-cv-00539 TEH;

- 1 z. *Payan et al. v. MetroPCS, Inc.*, San Francisco County Superior Court Case No.
2 CGC 08-476703;
- 3 aa. *Njoku v. Ecko Direct, LLC*, San Francisco County Superior Court Case No. CGC
4 07-469480;
- 5 bb. *Wiggins v. Cingular Wireless Employee Services, LLC*, San Francisco County
6 Superior Court Case No. CGC 08-477763;
- 7 cc. *Lee v. Marshalls of CA LLC*, Alameda County Superior Court Case No. RG 07-
8 337021;
- 9 dd. *Flores v. Cintas Corporation No. 2, Inc.*, Los Angeles County Superior Court
10 Case No. BC400422;
- 11 ee. *Drew v. HCR Manor Care Medical Services of Florida, LLC, et al.*, San Francisco
12 County Superior Court Case No. CGC 09-490181;
- 13 ff. *Ireland, et al. v. National Distribution Centers, L.P., et al.*, San Francisco County
14 Superior Court Case No. CGC 09-493709;
- 15 gg. *Lim-Hui v. Carter's Retail, Inc.*, San Francisco County Superior Court Case No.
16 CGC 09-484456;
- 17 hh. *Sefton v. OshKosh B'Gosh, Inc.*, San Francisco County Superior Court Case No.
18 CGC 09-484496;
- 19 ii. *Murphy v. Check n' Go of California, Inc.*, San Francisco County Superior Court
20 Case No. CGC 06-449394;
- 21 jj. *Wireless Advocates Wage and Hour Cases*, Los Angeles County Superior Court
22 Case No. JCCP 4600;
- 23 kk. *Matrix Service Wage and Hour Cases*, Alameda County Superior Court Case
24 No. JCCP 4610;
- 25 ll. *Sullivan v. Kelly Services, Inc.*, United States District Court, Northern District of
26 California Case No. 08-cv-3893 CW;
- 27 mm. *Strickland, et al. v. Timec Company, Inc., et al.*, San Francisco County Superior
28 Court Case No. CGC 10-501832;
- nn. *Davis and Duke v. Plant Performance Services LLC, et al.*, Alameda County Case
No. RG 10-501301;
- oo. *Jordan v. Directory Distributing Associates, Inc.*, San Francisco County Superior
Court Case No. CGC 10-500633;
- pp. *Martin v. Total Safety U.S., Inc.*, Alameda County Case No. RG 10-533750;
- qq. *Placer Title Company Wage and Hour Cases*, Sacramento County Superior
Court Case No. JCCP 4567;
- rr. *Martin, et al. v. Starcon International, Inc.*, Contra Costa County Superior Court
Case No. MSC10-01071;

- 1 ss. *Meyer v. Irwin Industries, Inc.*, ADRS Case No. 11-3844-RAH;
2 tt. *Lazarin, et al. v. Total Western, Inc.*, JAMS Case No. 1100067385;
3 uu. *Potter v. Zale Delaware, Inc.*, Alameda County Superior Court Case No. RG 10-
4 548469;
5 vv. *Canales, et al. v. Electrical & Instrumentation Unlimited of California, Inc.*,
Kern County Superior Court Case No. S-1500-CV-271947 WDP;
6 ww. *Schechter and Porter v. ISYS Solutions, Inc.*, Alameda County Superior Court
7 Case No. RG 10-550517;
8 xx. *Gomez v. Pizza Hut of Southeast Kansas, Inc.*, San Bernardino County Superior
Court Case No. CIVVS900679;
9 yy. *Hernandez v. Bodell Construction Company*, Alameda County Superior Court
Case No. RG12-624600;
10 zz. *Gilliam v. Matrix Energy Services, Inc.*, Alameda County Superior Court Case
11 No. RG11-592345;
12 aaa. *Tate v. Wyatt Field Services Co.*, Alameda County Superior Court Case No. RG
13 10-522846;
14 bbb. *Becerra, et al. v. RadioShack Corporation*, United States District Court,
Northern District of California, Case No. C-11-cv-03586 YGR;
15 ccc. *Vasquez, et al. v. Turnaround Welding Services, Inc.*, Contra Costa County
Superior Court Case No. MSC12-00340;
16 ddd. *Betten and Lafa v. Diamond Wireless, LLC*, United States District Court, Central
17 District of California, Case No. 2:13-cv-02885 CBM;
18 eee. *Martin v. AltairStrickland LLC*, Alameda County Superior Court Case No.
19 RG11 575618;
20 fff. *Miller v. Southwest Airlines Co.*, United States District Court, Northern District
21 of California, Case No. C-12-cv-5978-CRB;
22 ggg. *Nguyen v. Equilon Enterprises LLC*, United States District Court, Northern
District of California, Case No. 4:12-cv-04650-YGR;
23 hhh. *Saunders v. StubHub Inc.*, San Francisco County Superior Court Case No. CGC-
24 12-517707;
25 iii. *Oregel v. PacPizza, LLC*, Contra Costa County Superior Court Case No.
MSC12-01454;
26 jjj. *Torres, et al. v. San Joaquin Community Hospital*, JAMS Case No. 1220043288;
27 kkk. *Hulsey v. San Joaquin Community Hospital*, JAMS Case No. 1210030884;
28

- 1 lll. *DeLeon, et al. v. NCR Corp.*, San Bernardino County Superior Court Case No.
2 CIVDS1403274;
- 3 mmm. *Springer, et al. v. Stanford Hospital and Clinics, et al.*, Los Angeles County
4 Superior Court Case No. BC470522;
- 5 nnn. *Ginn, et al. v. Certified Safety, Specialists LLC et al.*, Contra Costa County
6 Superior Court Case No. C11-0969;
- 7 ooo. *Clothier v. SPAR Marketing Services, Inc.*, Alameda County Superior Court
8 Case No. RG12-639317;
- 9 ppp. *St. Joseph Health System Medical Information Cases*, Orange County Superior
10 Court JCCP Case No. 4716;
- 11 qqq. *Everhart and Everhart v. Advantage Sales & Marketing, LLC*, Alameda County
12 Superior Court Case No. RG14-712100;
- 13 rrr. *Miller v. Hitachi America, Ltd.*, San Mateo County Superior Court Case No.
14 CIV 526430;
- 15 sss. *Johnson and Storey v. Mobility Plus Transportation LLC, et al.*, San Francisco
16 County Superior Court Case No. CGC-13-532872;
- 17 ttt. *Tripp and Solberg v. Crossmark, Inc., et al.*, United States District Court,
18 Northern District of California, Case No. 3:12-cv-04818-NC.
- 19 uuu. *McCabe, et al. v. Six Continents Hotels, Inc.*, United States District Court,
20 Northern District of California, Case No. 12-cv-04818-NC;
- 21 vvv. *Wheelock v. Hyundai*, Orange County Superior Court, Case No. 30-2011-
22 00522293-CU-BT-CJC;
- 23 www. *Roberts v. Wyndham Hotel and Resorts LLC, et al.*, United States District Court,
24 Northern District of California, Case No. 5:12-cv-05083-PSG;
- 25 xxx. *Castillo, et al. v. Seagate Technology LLC*, United States District Court,
26 Northern District of California Case No. 3:16-cv-01958-RS;
- 27 yyy. *Halkola v. Fisher, Sand & Gravel Co.*, Alameda County Superior Court, Case
28 No. RG17844100;
- zzz. *Ashlock, et al. v. Sunrun, Inc., et al.* San Francisco County Superior Court CGC-
 17-557027;
- aaaa. *Spitzer v. FRHI Hotels and Resorts (Canada) Inc.*, San Bernardino County
 Superior Court Case No. CIVDS1712220;
- bbbb. *Matthews v. eHealthinsurance Services, Inc.*, Santa Clara County Superior Court
 Case No. 17CV305656;

- cccc. *Crowley, et al. v. Central Transport LLC*, San Bernardino Case No. CIVDS1604546;
- dddd. *Alfinito v. Loop Transportation*, San Francisco County Superior Court Case No. CGC-17-556677;
- eeee. *Rabanal v. P.F. Chang's China Bistro, et al*, Alameda County Case No. RG17851208;
- ffff. *Kindt and Pappas v. Aerovias de Mexico, S.A. de C.V., et al*, San Bernardino County Case No. CIVDS1809416;
- gggg. *Duke v. Jacobs Engineering Group Inc., et al.*, San Bernardino Superior Court Case No. CIVDS1703459;
- hhhh. *O'Leary v. Youngevity International, Inc.*, San Diego County Superior Court Case No. 37-2017-00045550-CU-BT-CTL;
- iiii. *Kindt v. Concesionaria Vuela Compañía de Aviación S.A.P.I. de C.V., et al.*, Napa County Superior Court Case No. 19CV000373;
- jjjj. *Docter v. Accor Management US Inc.*, San Joaquin County Superior Court Case No. STK-CV-UBT-2019-0000147;
- kkkk. *Clothier v Spar Group, Inc.*, Alameda County Superior Court Case No. RG18926494;
- llll. *Pennywell-Foster v. IMKO Workforce Solutions, et al.*, Sacramento County Superior Court Case No. 34-2019-00252683;
- mmmm. *Stohs, et al. v. Samsonite Company Stores, LLC*, Alameda County Superior Court Case No. RG19001392;
- nnnn. *Casarez v. Chemtrade West US LLC*, Alameda County Superior Court Case No. RG19008007;
- oooo. *Butler v. Apple Inc.*, Santa Clara County Superior Court Case No. 1-14-cv-262989;
- pppp. *Gomez v. Pinnacle Workforce Logistics*, San Bernardino County Superior Court Case No. CIVDS1804163;
- qqqq. *Vilitchai, et al. v. Ametek Programmable Power, Inc.*, San Diego County Superior Court Case No. 37-2015-00025968-CU-OE-CTL;
- rrrr. *Madrid, et al. v. Golden Valley Health Centers*, Merced County Superior Court Case. No. 20Cv-01484;
- ssss. *Curtis v. Aegis Treatment Centers, LLC*, Shasta County Superior Court Case No. 193712;
- tttt. *Millay v. Napaidence OPCO, LLC*, Napa County Superior Court Case. No. 19CV001903;

- uuuu. *Gutierrez v. Brand Energy of California, Inc.*, Alameda County Superior Court Case No. RG17846239;
- vvvv. *Sica and Ellis v. Construction & Turnaround Services, L.L.C.*, United States District Court, Northern District of California Case No. 4:21-cv-0188-JSW;
- www. *Clark-Alonso v. Southwest Airlines Co.*, Merced County Superior Court Case No. 21 CV-02475
- xxxx. *Zuckerbraun v. Flour Maintenance Serv., Inc.*, Alameda County Superior Court Case No. RG20054385;
- yyyy. *Sica v Madison Industrial Serv. Team, Ltd Partnership*, United States District Court, Northern District of California Case No. 4:20-cv-08347-KAW;
- zzzz. *Harrington v. Forbes Security, Inc.*, San Francisco County Superior Court Case No. CGC-20-584155;
- aaaaa. *Hernandez v. Chino Commercial Bank*, San Bernardino County Superior Court Case No. CIVDS1922849;
- bbbbb. *Ellis v. Harder Mechanical Contractors, Inc.*, United States District Court, Northern District of California Case No. 21-cv-00844-JSW;
- ccccc. *Harrington v. Creative Security Company, Inc.*, Alameda County Superior Court Case No. RG21095377;
- ddddd. *Espinoza, et al. v. Dedicated Bldg. Serv. LLC*, Los Angeles County Superior Court Case No. 20STCV03569
- eeeee. *Macomber v. Dermalogica, LLC*, San Diego County Superior Court Case No: 37-2020-00020451- CU-BT-CTL; and
- fffff. *Alvarez, et al. v. Autozone, Inc.*, San Bernardino Superior Court Case No. CIVDS1416344.

5. Robert Spencer, Esq.’s experience: I am a senior associate with Keller Grover LLP. I have spent my entire legal career, over 17 years, with Keller Grover LLP. Approximately 95% of my time is spent representing Plaintiffs in employment, consumer, privacy, and data breach class and representative action matters. I have been named Class Counsel in many of the cases referred to above alongside Eric A. Grover, Esq. I will not repeat them here for the sake of brevity.

Factual and Procedural Background:

6. A true and correct copy of the Parties' Labor Code Private Attorneys General Act Settlement Agreement (the "Settlement Agreement")¹ entered into by Plaintiff and Automated Harvesting, LLC ("Defendant"), is attached hereto as **Exhibit 1**. The Settlement Agreement is discussed below.

7. On September 8, 2022, pursuant to Labor Code § 2699.3's exhaustion requirements, Plaintiff gave written notice of his PAGA claims to the California Labor and Workforce Development Agency ("LWDA") and Defendant. A true and correct copy of the September 8, 2022 exhaustion letter is attached hereto as **Exhibit 2**.

8. Plaintiff filed the initial Complaint on September 13, 2022 in Monterey County Superior Court alleging putative class action claims. After satisfying the administrative requirements of Labor Code § 2699.3(a), Plaintiff filed the First Amended Complaint on November 15, 2022 adding the PAGA claims and filed the operative Second Amended Complaint ("SAC") on December 20, 2022, which alleges only PAGA representative claims. The SAC alleges that Defendant violated PAGA when it violated Labor Code provisions related to its overtime, wage statement issuance, termination pay and timely pay practices. Specifically, the PAGA claims in the SAC are based on alleged violations of Labor Code §§ 201-203, 204b, 226(a), 510, 1194, 1197, 1198, and 1199. The SAC seeks Labor Code § 2699(f) penalties. A true and correct copy of the Second Amended Complaint is attached hereto as **Exhibit 3**.

9. Defendant has denied all of the allegations in their entirety. To date, no court has made a finding of any wrongdoing on the part of Defendant or that Defendant otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.

10. After the filing of the SAC, the Parties met and conferred regarding the potential for settlement. The Parties agreed to exchange informal discovery and participate in private

¹ Unless noted otherwise, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

1 mediation. The Parties subsequently exchanged informal discovery, including documents and
2 information relevant to the claims alleged in the SAC, such as timekeeping and payroll records
3 and the number of total workweeks and pay periods at issue. Defendant also provided
4 information from its records supporting there are no more than 600 individuals who meet the
5 Settlement Agreement's definition of the PAGA Group.

6 11. Armed with the information obtained from informal discovery, the Parties
7 participated in a formal mediation session with Mark S. Rudy, Esq. on July 13, 2023. Even
8 thought the Parties did not reach an agreement at the mediation, the Parties were able to reach a
9 tentative settlement shortly afterwards with the assistance of the mediator. The Parties agreed to
10 settle the entire action, subject to approval by the Court. The settlement is the result of arm's-
11 length negotiations between the Parties' counsel. The detailed, formalized Settlement Agreement
12 sets forth all terms of the Parties' settlement. See **Exhibit 1**.

13 **Plaintiff's Counsel's work litigating and settling this action:**

14 12. Prior to filing this action, Plaintiff's Counsel expended time and effort in
15 investigating and researching Plaintiff's potential Labor Code claims, and preparing this case for
16 litigation. On September 8, 2022, pursuant to Labor Code § 2699.3's exhaustion requirements,
17 Plaintiff's Counsel, on behalf of Plaintiff, gave written notice of his PAGA claims to the LWDA
18 and Defendant. See **Exhibit 2**. Plaintiff's Counsel drafted and then filed the initial Complaint
19 on September 13, 2022 in Monterey County Superior Court. After the LWDA declined to take
20 action within the statutory time period, Plaintiff's Counsel drafted and then, filed the First
21 Amended Complaint on November 15, 2022 adding the PAGA claims and the operative SAC on
22 December 20, 2022, which alleges only PAGA representative claims. See **Exhibit 3**.

23 13. After the filing of the SAC, I engaged in discussions with Defense Counsel
24 regarding potential settlement and agreed to mediate. In preparation, the Parties agreed to
25 exchange relevant information and documents informally, as noted above. I reviewed and
26 analyzed information and documents that Defendant provided, including documents and
27 information relevant to the claims alleged in the SAC, such as timekeeping and payroll records
28 and the number of total pay periods at issue.

14. Armed with the information obtained from informal discovery, Parties participated in a formal mediation session with Mark S. Rudy, Esq. on July 13, 2023. Eric Grover and I attended the mediation during which we engaged in arm's length negotiations with Defense Counsel. Even though the Parties did not reach an agreement at the mediation, they were able to reach a tentative settlement shortly afterwards with the assistance of the mediator and agreed to settle the entire action, subject to approval by the Court. Our experience in litigating similar representative PAGA actions based on wage and hour claims, the degree of investigation that we conducted and the amount of data obtained from Defendant made it possible for us to determine the potential value and evaluate the strength of the PAGA claims when negotiating the settlement.

15. Following the mediation, working together, Defense Counsel and I drafted a detailed Settlement Agreement. All terms of the Parties' settlement are set forth in the Settlement Agreement, which is **Exhibit 1**.

16. Concurrently with the submission of the Settlement Agreement to the Court, Plaintiff is submitting the settlement to the LWDA as required by Labor Code § 2699(l)(2). I personally uploaded the following documents to the LWDA: 1) Notice of Motion for an Order Awarding Attorneys' Fees, Costs, Enhancement Payment, and Settlement Administration Fees, 2) Memorandum of Points and Authorities in Support of Motion for an Order Awarding Attorneys' Fees, Costs, Enhancement Payment, and Settlement Administration Fees, 3) Notice of Motion and Motion for an Order Approving Settlement of PAGA action and Dismissing Action with Prejudice, 4) Memorandum of Points and Authorities in Support of Motion for an Order Approving Settlement of PAGA action and Dismissing Action with Prejudice, 5) the proposed order, 6) this declaration, 7) the declaration of Plaintiff Hernandez, and 8) the settlement agreement.

17. Subsequent to the mediation, I and attorneys in Keller Grover LLP have spent time negotiating and drafting Settlement Agreement, drafting the motion for approval of the PAGA settlement, and drafting the motion seeking an award of attorneys' fees and costs, settlement administration fees and Plaintiff's enhancement award. I have spent time communicating with

1 Defense Counsel and the Parties’ selected Settlement Administrator regarding settlement
2 administration issues. Further, I expect to spend additional time working with the Settlement
3 Administrator, speaking with PAGA Group members, finalizing and filing this motion, and
4 preparing for and attending the hearing.

5 **Plaintiff’s Counsel’s Assessment of the Settlement’s Fairness:**

6 18. Based on my years of experience and my own independent investigation and
7 evaluation, I am of the opinion that settlement for the consideration and on the terms set forth in
8 the Settlement Agreement is fair, reasonable, and adequate and it is in the best interests of the
9 LWDA and the PAGA Group in light of all known facts and circumstances, controlling case law,
10 and the expenses and risks inherent in litigation.

11 19. The Settlement Agreement defines the PAGA Group as “All persons within the
12 State of California who are or were employed by Defendant in the State of California as an
13 hourly, non-exempt employee at any time within the PAGA Release Period.” The “PAGA
14 Release Period” is from September 8, 2021 through August 12, 2023, inclusive. Defendant has
15 identified 600 PAGA Group members.

16 20. The Parties have selected Simpluris, Inc. to serve as Settlement Administrator and
17 expect the settlement administration to cost \$6,500.

18 21. The Settlement Agreement achieves a substantial benefit for the LWDA and the
19 PAGA Group members. The Settlement Agreement provides that, to settle this matter,
20 Defendant will pay a total of \$400,000 (the “Settlement Amount”). The estimated total sum
21 available for payment of PAGA penalties is calculated by deducting up to \$148,916.81 for the
22 payment of Plaintiff’s Counsel’s fees and costs, a \$5,000 enhancement payment to Plaintiff, and
23 administration costs of \$6,500 from the \$400,000 Settlement Amount, leaving \$239,583.19 (the
24 “Net Settlement Amount”) to be distributed to the LWDA and the PAGA Group members. As
25 required by Labor Code § 2699(i), the Settlement Agreement provides that 75% of the Net
26 Settlement Fund (\$179,687.39) will be paid to the LWDA and 25% (\$59,895.80) to the PAGA
27 Group, who are the aggrieved employees.

28 22. Under the Settlement Agreement, the LWDA will receive approximately

1 \$179,687.39, which Labor Code § 2699(i) requires it to use for education and enforcement
2 purposes.

3 23. PAGA Group members do not need to submit a claim to receive a settlement
4 payment. The PAGA Group members will divide their portion based on the formula set forth in
5 the Settlement Agreement, which, in summary, provides that the portion of the Net Settlement
6 Amount to be distributed to the PAGA Group shall be divided by the total number of full pay
7 periods, with partial pay periods rounded up to the next whole number, as determined by
8 Defendant's records, for all times during the PAGA Release Period which the PAGA Group
9 worked for Defendant. This amount shall be known as the "Pay Period Value." Each member of
10 the PAGA Group shall be paid an amount equal to the number of individual pay periods he or
11 she worked for Defendant during the PAGA Release Period multiplied by the Pay Period Value.
12 Each PAGA Group member will receive, on average, \$99.83 ($\$59,895.80/600 = \99.83).

13 24. The settlement provides that Simpluris will send notice of the settlement to the
14 PAGA Group (see Exhibit 1, Settlement Agreement exhibit A), even though notice is not
15 required in settlements of PAGA actions and aggrieved employees are not entitled to opt out of
16 the settlement.² The settlement requires Defendant to provide Simpluris with the following
17 information for each PAGA Group member: name, last known home address, number of pay
18 periods that the PAGA Group member worked, and social security number (collectively referred
19 to as the "PAGA List") no later than 30 calendar days after the Court approves the settlement.
20 After updating the PAGA List, the Settlement Administrator will mail the Notice and the
21 Individual Settlement Payment check to each member of the PAGA Group no later than 60
22 calendar days after the Court approves the settlement.

23 25. Under the settlement terms, for any Individual Settlement Payment check that is
24 returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the
25 PAGA Group member by performing an additional skip-trace and shall remail the Individual

26
27 ² See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 ("PAGA has no notice
28 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
action."); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same);

1 Settlement Payment check no later than 10 calendar days following the receipt of the undelivered
2 Notice and check.

3 26. I am of the opinion that the Settlement and its distribution of approximately
4 \$179,687.39 to the LWDA and \$59,895.80 to the PAGA Group is fair, reasonable, and adequate,
5 given the inherent risk of continued litigation and the costs of pursuing such litigation.

6 27. The fairness, reasonableness and adequacy of the settlement is demonstrated by
7 the significant uncertainty and risks that Plaintiff will be unable to prevail on the merits.
8 Defendant adamantly disputes that any of its practices regarding overtime, wage statement
9 issuance, termination pay and timely pay practices violated any Labor Code provisions. If
10 Defendant succeed in any or all of its defenses, recovery for the LWDA, Plaintiff and the PAGA
11 Group will be significantly reduced or even eliminated.

12 28. Defendant has argued that, even if Plaintiff succeeded on the merits, it will be able
13 to convince the Court to reduce the amount of PAGA penalties awarded, which Plaintiff
14 recognizes is a substantial risk as courts have authority to set PAGA penalty amounts under
15 Labor Code § 2699(e)(2). Labor Code § 2699(e)(2) provides that the court sets the amount of
16 PAGA penalties after trial. In setting the penalties to be assessed, court have wide latitude.³ The
17 following are examples of cases where courts awarded substantially reduced PAGA penalties:

- 18 • *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist.
19 LEXIS 154590, at *8-9 (C.D. Cal. Aug. 12, 2011) (of \$2,800,000 PAGA
penalties requested, the court awarded \$500,000);
- 20 • *Elder v Schwan Food Co.*, No. B238876, 2013 Cal. App. Unpub. LEXIS
21 1472, at *7, 11, 19 (Feb. 27, 2013) (the court affirmed a reduced award of
\$2,500 individual PAGA civil penalty);
- 22 • *Aguirre v Genesis Logistics*, No. SACV 12-00687-JVS (ANx), 2013 U.S.
23 Dist. LEXIS 189820, at *6-7 (C.D. Cal. Dec. 30, 2013) (of \$1,800,000 PAGA
penalties requested, the court awarded \$500,000);
- 24 • *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No.
25 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after

26 ³ See e.g., *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1100, 1104
27 (finding that, under Labor Code § 2699(e)(2), “the Court has broad discretion to award PAGA
28 penalties as the Court sees fit” and reducing the PAGA penalty award significantly from the
maximum penalties possible).

trial awarding wages to class on basis that action was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, because corporate defendants corrected violations and were no longer in business, inequity would result from awarding penalties only to employees who opted out of class, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory);

- *Makabi v Gedalia*, No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at *6-7 (Mar. 2, 2016) (noting that the trial court found in favor of plaintiffs on Labor Code violation claims, but declined to award any PAGA penalties);
- *Arnold v San Diego Second Chance Program*, San Diego County Superior Court No. 37-2016-00018375 (Dec. 18, 2017) (no PAGA penalties awarded);
- *Felczer v Apple Inc.*, San Diego County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) (no PAGA penalties awarded);
- *Morales v Peck Jeep Eagle, Inc.* (San Diego County Superior Court No. 37-2012-00103823, Oct. 24, 2016) (PAGA penalties of \$80,400.00 awarded);
- *Allen v American Multi-Cinema*, Alameda County Superior Court No. RG11585502 (July 24, 2016) (no PAGA penalties awarded);
- *Atempa v Pama*, San Diego County Superior Court (July 31, 2015) (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00);
- *Banford v American Gen. Life*, Santa Barbara County Superior Court No. CIV-DS1017566 (Feb. 24, 2015) (PAGA penalties of \$99,000.00 assessed);
- *Parr v GoldenState*, Alameda County Superior Court No. RG12-618103 (July 10, 2014) (PAGA penalties of \$325,835.00 assessed);
- *Driscoll v Granite Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) (the court declined to award PAGA penalties);
- *In re Taco Bell Wage and Hour Actions*, (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (the court declined to award PAGA penalties after trial);
- *Morales v Bridgestone Retail Operations LLC*, Orange County Superior Court No. 30-2017-00900244 (Aug. 2, 2018) (of \$7 million PAGA penalties requested, the court awarded \$425,000);
- *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); and
- *Magadia v Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1073, 1080, 1101, 1103-04, 1111 (the court awarded \$53,901,700 in total PAGA penalties, including \$48,046,000 of \$131,427,750 penalties sought for Labor Code §226(a)(9) wage statement violations; \$5,785,700 of \$28,928,500 sought for Labor Code § 226(a)(6) final pay statement violations; and \$70,000 of requested \$821,400 for Labor Code § 226.7 missed meal period violations;

also decertifying meal period regular rate claim class).

Plaintiff's Enhancement Award:

29. It is appropriate to recognize the contributions of the representative Plaintiff in prosecuting this litigation. I am of the opinion that it is fair and reasonable that Plaintiff Hernandez receive a \$5,000 service award. Plaintiff Hernandez was an essential element in the successful prosecution and ultimate settlement of this case and was always available to provide his input on the litigation, provide evidence and other information important to the prosecution.

30. The proposed enhancement award is fair given the amount of time and effort the representative Plaintiff spent assisting in the prosecution of this case and the personal hardship and pressure faced as a result of filing this lawsuit against his former employer. If the Court approves the settlement, Plaintiff's work bringing this representative PAGA action will result in substantial monetary benefits for the LWDA and the PAGA Group. The representative Plaintiff has provided a declaration outlining his efforts on behalf of the LWDA and the PAGA Group.

Plaintiff's Counsel's Fee and Costs Request:

31. Labor Code § 2699(g)(1) provides for reasonable attorneys' fees and costs in a PAGA action. Plaintiff's Counsel is seeking a total award of \$148,916.81 in fees and out-of-pocket costs from the Settlement Amount that Defendant is required to pay to settle this action. The amount sought is reasonable because it is within the range for fee awards in similar wage and hour-related settlements and in light of the risks Plaintiff's Counsel undertook in accepting this case given its contingent nature, the quality of the representation we provided to the LWDA and PAGA Group, the results achieved, and the preclusion of other employment, as discussed below.

32. The fee request also is supported by a lodestar cross-check.

33. Through August 23, 2023, attorneys at Keller Grover LLP have spent over 87 hours litigating this case engaged in the litigation activities discussed above, along with other necessary tasks required to litigate this representative PAGA action based on the alleged Labor Code violations. Plaintiff's Counsel expects to spend at least another 10 hours finalizing this

motion, attending the approval hearing, and dealing with settlement administration issues. A bullet-point summary of some of the necessary tasks engaged in by Keller Grover LLP is below:

- Researched potential claims and the appropriate defendant entities.
- Researched and drafted the LWDA exhaustion letter.
- Prepared and filed the Complaint, First Amended Complaint and SAC.
- Drafted informal requests to Defendant seeking information and documents relevant to the claims at issue in preparation for mediation.
- Worked with Defense Counsel to obtain data for the mediation.
- Prepared a mediation brief and related materials.
- Reviewed materials provided by Defendant in connection with the mediation.
- Engaged in substantial mediation preparation.
- Attended one mediation session.
- Drafted the Settlement Agreement and related exhibit.
- Engaged with Defense Counsel in detailed discussions regarding the terms of the Settlement Agreement and related exhibit.
- Drafted the motion for approval and motion for award of fees and costs.

34. The following chart summarizes the hours expended by Plaintiff's Counsel at Keller Grover LLP in connection with this litigation through August 23, 2023:

NAME	POSITION	BAR ADMISSION	RATE	HOURS ⁴	BILLING
Eric A. Grover	Partner	1988	\$950	13	\$12,350
Elizabeth Acevedo	Sr. Associate	2003	\$675	16.40	\$11,070
Robert Spencer	Sr. Associate	2005	\$675	58.50	\$39,487.50
Total Lodestar:					\$62,907.50

⁴ In an exercise of billing judgment, time entries have been rounded down and other time entries eliminated.

35. The rates used to calculate our attorneys' fees in this case are our current 2023 rates. Keller Grover LLP's partners periodically establish hourly rates for all billable personnel in the firm. Keller Grover LLP's partners set the rates based on their regular and on-going monitoring of prevailing market rates in the San Francisco Bay Area for attorneys of comparable skill, experience, and qualifications. In doing so, they obtain information concerning market rates from other attorneys in the area who perform comparable litigation, including the prosecution or defense of complex and/or class action litigation, from conversations with attorneys who are involved in fee litigation, from reviewing fee applications that are submitted in other cases (which report the billing rates of attorneys practicing in other firms), and the orders approving or disapproving them. Keller Grover LLP's partners set the billing rates for our firm to be consistent with prevailing market rates in the private sector in the Bay Area for attorneys of comparable skill, qualifications and experience, but not at the higher or most aggressive end of the spectrum despite our belief that our work product and efficiency and general quality of representation is at the upper end of that continuum.

36. Eric A. Grover's reasonable hourly rate for this matter is \$950 per hour. This rate is based on his 34 years of experience and substantial involvement in class actions, including serving as lead or co-lead counsel in scores of employment, consumer, data breach, and privacy class and representative actions.

37. Elizabeth A. Acevedo, Esq. is a 2003 graduate of the University of Southern California Gould School of Law and, throughout her career, has represented plaintiffs in employment, consumer, privacy and securities class actions. Ms. Acevedo worked at Keller Grover for approximately 12 years through 2019 and continued to work for the firm in an Of Counsel capacity until she recently returned to the firm. Ms. Acevedo's current reasonable hourly rate is \$675.

38. I am a 2005 graduate of the Loyola Law School of Los Angeles. I have spent my entire career at Keller Grover LLP and specialize in representing plaintiffs in consumer, privacy, and employment class and representative actions. My current reasonable hourly rate is \$675.

39. Courts have approved Keller Grover LLP's hourly rates in orders approving class action and PAGA action settlements in other cases. *See e.g., Parker v. Cherne Contr. Corp.*, 2021 U.S. Dist. LEXIS 236229, *20-21 (N.D. Cal. Dec. 9, 2021), finding Keller Grover LLP's rates to be in line with hourly rates by comparable attorneys in the Northern District, citing *Hefler v. Wells Fargo & Co.* (N.D. Cal. Dec. 18, 2018) No. 16-CV-05479, 2018 U.S. Dist. LEXIS 213045, 2018 WL 6619983, at *14 (rates from \$650 to \$1,250 for partners or senior counsel, \$400 to \$650 for associates) and *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.* (N.D. Cal. Mar. 17, 2017) No. 2672 CRB (JSC), 2017 U.S. Dist. LEXIS 39115, 2017 WL 1047834, at *5 (billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals reasonable "given the complexities of this case and the extraordinary result achieved for the Class.")

40. Plaintiff's Counsel's rates are in line with Bay Area attorney rates. In addition to the cases just noted, recent Northern District case law describing hourly rates by comparable attorneys in similar complex class actions supports that Plaintiff's Counsel's fee request is within the range of the Bay Area market. *See e.g., Acosta v. Frito-Lay, Inc.* (N.D. Cal. May 14, 2018) No. 15-cv-02128-JSC, 2018 U.S. Dist. LEXIS 75998, at *37-39 (finding rates in wage and hour class action between \$330 and \$890 to be reasonable); *Nitsch v. DreamWorks Animation SKG Inc.* (N.D. Cal. June 5, 2017) No. 14-cv-04062-LHK, 2017 U.S. Dist. Lexis 86124, at *32-33 (finding rates of lead counsel between \$870 and \$1,200 per hour reasonable and rates between \$275 and \$750 for other counsel to be reasonable); *O'Bannon v. NCAA* (N.D. Cal. July 13, 2015) No. 09-cv-03329-CW (NC), 2015 U.S. Dist. LEXIS 91514, at * 14 (finding similar range of hourly rates in 2015 from \$985 to \$250 for class counsel experienced in complex class actions to be reasonable); *Williams v. SuperShuttle Int'l, Inc.* (N.D. Cal. Feb. 12, 2015) No. 12-CV-06493-WHO, 2015 U.S. Dist. LEXIS 19341, at *5 (finding similar range of hourly rates in 2015 from \$750 to \$325) for class counsel experienced in complex employment class actions to be reasonable).

41. The following cases looking at rates between six and nine years ago also supported Plaintiff's Counsel's rates: *Steinfeld v. Discover Fin. Servs.* (N.D. Cal. Mar. 31, 2014) No. C 12-

01118 JSW, 2014 U.S. Dist. LEXIS 48540, at **4-5 (finding similar range of hourly rates (from \$725 to \$415) for class counsel experienced in complex consumer class actions to be reasonable and comparable to rates of attorneys doing similar work in the Bay Area community); *Vedachalam v. Tata Consulting Serv. Ltd.* (N.D. Cal. July 18, 2013) No. C 06–0963 CW, 2013 U.S. Dist. LEXIS 100796, at *8 (finding similar range of hourly rates (from \$725 to \$425) of class counsel experienced in complex employment and consumer class actions to be reasonable and comparable to rates charged by other attorneys in the field); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. Oct. 18, 2013) No. C 12–4466 LB, 2013 U.S. Dist. LEXIS 150299, at *14-15 (approving similar range of hourly rates (from \$725 to \$395) in complex class action); *Greko v. Diesel U.S.A., Inc.* (N.D. Cal. Apr. 26, 2013) No. 10-CV-02576 NC, 2013 U.S. Dist. LEXIS 60114, at *35 (approving similar range of hourly rates (from \$700 to \$300) for attorneys experienced in employment class action field); *Wren v. RGIS Inventory Specialists* (N.D. Cal. April 01, 2011) 2011 U.S. Dist. LEXIS 38667, at **52-62 (approving similar range of hourly rates (from \$725 to \$250) in complex employment class action, citing the multiple declarations by counsel and other Bay Area plaintiffs’ attorneys who affirmed the rates were at market).

42. Keller Grover’s lodestar through August 23, 2023 is \$62,907.50. Further, Plaintiff’s Counsel expects to spend at least 10 additional hours working on this action that will incur approximately \$6,750 in additional lodestar, totaling \$69,657.50.

43. The requested attorneys’ fees of \$133,333.33 represents an amount that is 2.12 times Keller Grover’s actual loadstar, and 1.9 times Keller Grover LLP’s anticipated loadstar at the end of this litigation.

44. Plaintiff’s Counsel’s expertise representing California employees in representative and class actions was crucial to negotiating a settlement with Defendant and obtaining a good monetary result for the PAGA Group and the State. Also, Plaintiff’s Counsel undertook the risk of litigating this case on a contingency basis. If this case had proceeded toward trial, it would have required discovery regarding Defendant’s overtime, wage statement issuance, termination pay and timely pay practices and substantive motion practice, which would be followed by trial and any subsequent appeals. Plaintiff’s Counsel was prepared to finance the litigation through

1 all of that, which likely would have taken years. Taking that considerable risk to represent he
2 aggrieved employees in this PAGA action supports that a modest multiplier is warranted. Also,
3 because of the resources that this action would require, Plaintiff's Counsel was precluded from
4 taking other cases in order to represent Plaintiff in his PAGA action brought on behalf of the
5 aggrieved employees and the State.

6 45. Contingent Nature of Case and Risk to Counsel: This case was taken on a
7 contingency basis and is not a case undertaken lightly. The risk of advancing costs in this type
8 of litigation can be quite a burden.

9 46. Even with Plaintiff's Counsel's extensive experience litigating wage and hour
10 cases, prosecuting these cases still carries a considerable amount of risk. This case involved
11 significant uncertainty and risk in not prevailing on the merits. Defendant disputes Plaintiff's
12 ability to prove that it violated the Labor Code provisions underlying his PAGA claims.
13 Defendant has raised what it considers to be substantial defenses to Plaintiff's claims, including
14 that it properly paid overtime to Plaintiff and the aggrieved employees, as well as that its wage
15 statements are proper under *General Atomics v. Superior Court* (2021) 64 Cal. App. 5th 987.
16 Also, even if Plaintiff prevailed on the merits, Labor Code § 2699(e)(2) allows the court to
17 award a lesser amount of penalties than the maximum set forth in the statute. Continued
18 litigation of this action presents significant risks that this action could result in a lower recovery
19 or no recovery at all.

20 47. Quality of Representation and Results Achieved: The nature of class and
21 representative action work and the expertise of the attorneys in Keller Grover LLP also justify
22 our hourly rates as well. I and the attorneys who worked on this case have expertise in
23 representing employees in similar representative and class actions based on wage and hour
24 violations and have provided the LWDA and PAGA Group with an exceptional quality of
25 representation.

26 48. Because of that experience, we were able to resolve the action efficiently and
27 fairly and obtain significant monetary benefits to the LWDA and reasonable monetary benefits
28 to the PAGA Group members. The Settlement Agreement benefits the State by providing that

1 approximately \$179,687.39 will be paid to California's LWDA. PAGA Group members also
2 each will receive, on average, an Individual Settlement Payment of \$99.83. The success
3 achieved by the settlement supports Plaintiff's Counsel's fee request.

4 49. Preclusion of Other Work: A practice like ours can only properly litigate a limited
5 number of cases at one time. The requirements of this case were significant. Had we not
6 reached a settlement with Defendant, the demands of litigating this case would have required a
7 significant portion of our resources. Thus, we were precluded from taking other cases due to the
8 demands of this case.

9 50. Plaintiff's Counsel is requesting a fee award that is supported by a lodestar review
10 and applicable case law. My experience in representative and class actions as well as my review
11 of fee awards in similar actions support my conclusion that the fee request is reasonable and in
12 line with the common practice in this type of case. I have also conferred with Eric A. Grover,
13 Esq., and he concurs with my opinion.

14 **Plaintiff's Counsel's Costs:**

15 51. Keller Grover LLP's costs to date are \$15,383.48 and include filing fees, legal
16 research fees, mediation fees, damage consultant fees, printing charges and mailing charges.
17 These costs were reasonably incurred in litigating this matter. Keller Grover LLP expects to
18 incur additional costs of approximately \$200 through the rest of the case, including additional
19 courier charges, filing fees, and federal express costs. A true and correct copy of an itemized list
20 of costs incurred by Keller Grover to date in this action is attached hereto as **Exhibit 4**.

21 52. Plaintiff's Counsel is seeking the Court's approval of \$15,583.19 in costs.

22 53. Thus, Plaintiff's Counsel is seeking \$133,333.33 in attorneys' fees and \$15,583.19
23 in costs, a total of \$148,916.81, as set forth in the Settlement Agreement.

24 I declare under penalty of perjury under the laws of the State of California and the United
25 States that the foregoing is true and correct, and that this Declaration was executed on this
26 10th day of October, 2023 at San Francisco, California.

27 

28 **ROBERT SPENCER**

EXHIBIT 1

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Attorneys for Defendant
AUTOMATED HARVESTING, LLC

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY

GUADALUPE HERNANDEZ, on behalf of
all aggrieved employees,

Plaintiffs,

v.

AUTOMATED HARVESTING, LLC; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 22CV002717

*Assigned for all purposes to the
Hon. Thomas W. Wills, Dept. 15*

**LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT
AGREEMENT**

Complaint Filed: September 13, 2022
SAC Filed: December 20, 2022
Trial Date: TBD

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3 OGLETREE, DEAKINS, NASH, SMOAK
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Attorneys for Defendant
AUTOMATED HARVESTING, LLC

1 This Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement
2 Agreement (“Settlement Agreement” or “Agreement”) is made by and between GUADALUPE
3 HERNANDEZ (“Plaintiff”), on his own behalf and on behalf of all members of the PAGA Group
4 (as defined below) and the State of California, on the one hand, and AUTOMATED
5 HARVESTING, LLC (“Defendant”) on the other hand (collectively the “Parties”), in the lawsuit
6 entitled *Hernandez v. Automated Harvesting, LLC*, filed in Monterey County Superior Court,
7 Case No. 22CV002717 (the “Litigation”). This Settlement Agreement resolves all claims under
8 the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§
9 2698, *et seq.*, based on or arising out of alleged violations of the Labor Code, including all claims
10 that could have been alleged based on the factual allegations and identified Labor Code sections
11 in the operative pleading for the Litigation and the LWDA Letter.

12 **I. DEFINITIONS**

13 **A. Administrative Costs.** The term “Administrative Costs” as used herein means
14 all administrative costs of settlement, including cost of notice to the PAGA Group,
15 administration, the reminder postcards, and any fees and costs incurred or charged by the
16 Settlement Administrator in connection with the execution of its duties under this Settlement
17 Agreement.

18 **B. Agreement or Settlement Agreement.** The terms “Agreement” or “Settlement
19 Agreement” are used synonymously herein to mean this Labor Code Private Attorneys General
20 Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.

21 **C. Court.** The term “Court” as used herein means the Superior Court of the State
22 of California for the County of Monterey.

23 **D. Defendant.** The term “Defendant” as used herein means Automated Harvesting,
24 LLC.

25 **E. Defendant’s Counsel.** The term “Defendant’s Counsel” as used herein means
26 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

27 **F. Individual Settlement Payment.** The term “Individual Settlement Payment” as
28 used herein means the payment that each member of the PAGA Group will receive as his or her

1 share of the Net Settlement Amount. The portion of the Net Settlement Amount to be distributed
2 to the PAGA Group shall be divided by the total number of full pay periods, with partial pay
3 periods rounded up to the next whole number, as determined by Defendant's records, for all
4 times during the PAGA Release Period which the PAGA Group worked for Defendant. This
5 amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be
6 paid an amount equal to the number of individual pay periods he or she worked for Defendant
7 during the PAGA Release Period multiplied by the Pay Period Value. Defendant represents that,
8 based on a reasonable investigation of its records, the total number of full pay periods worked
9 by individuals in the PAGA Group, including Plaintiff, does not exceed 14,000.

10 **G. Litigation.** The term "Litigation" as used herein means the action entitled
11 *Hernandez v. Automated Harvesting, LLC*, filed in Monterey County Superior Court, Case No.
12 22CV002717.

13 **H. LWDA Payment.** The term "LWDA Payment" as used herein means the
14 seventy-five percent (75%) of the Net Settlement Amount payable to the LWDA.

15 **I. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
16 means the Settlement Amount minus any award of attorneys' fees and litigation costs to
17 Plaintiff's Counsel, Administrative Costs, and Plaintiff's enhancement award. Based on the
18 statutory requirement that seventy-five percent (75%) of PAGA civil penalties be paid to the
19 California Labor and Workforce Development Agency ("LWDA") and twenty-five percent
20 (25%) of PAGA civil penalties be distributed to the aggrieved employees, seventy-five percent
21 (75%) of the Net Settlement Amount will be paid to the LWDA and twenty-five percent (25%)
22 of the Net Settlement Amount will be paid to the PAGA Group based on the distribution formula
23 set forth below.

24 **J. PAGA Group.** The PAGA Group is defined as: All persons within the State of
25 California who are or were employed by Defendant in the State of California as an hourly, non-
26 exempt employee at any time within the PAGA Release Period. Defendant represents that, based
27 on a reasonable investigation of its records, the total number of individuals in the PAGA Group,
28 including Plaintiff, does not exceed 600.

1 **K. PAGA Release Period.** The term “PAGA Release Period” as used herein shall
2 refer to the time period from and including September 8, 2021 through August 12, 2023.

3 **L. Plaintiff.** The term “Plaintiff” as used herein means Guadalupe Hernandez.

4 **M. Plaintiff’s Counsel.** The term “Plaintiff’s Counsel” as used herein means Keller
5 Grover LLP.

6 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
7 means Simpluris Inc., which will be responsible for the administration of the settlement
8 embodied in this Agreement and all related matters.

9 **O. Settlement Amount.** The term “Settlement Amount” as used herein means a
10 fund in the sum of Four Hundred Thousand dollars (\$400,000), which shall be paid by
11 Defendant. The Settlement Amount shall cover, resolve, and fully satisfy the Administrative
12 Costs and any and all amounts owed to Plaintiff, the PAGA Group, the LWDA, and Plaintiff’s
13 Counsel, including all amounts allocated to attorneys’ fees and litigation costs.

14 **II. BACKGROUND**

15 A. On December 20, 2022, Plaintiff filed the operative Second Amended Complaint
16 against Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations and
17 penalties under Labor Code §§ 201, 202, 203, 204b, 226, 226.3, 510, 511, 1194, 1198, and 1199.

18 Following the filing of the Second Amended Complaint, counsel for the Parties met and
19 conferred with respect to the potential settlement of the Litigation. Pursuant to these discussions,
20 the Parties agreed to exchange informal discovery and engage in private mediation. The Parties
21 subsequently exchanged informal discovery, including: timekeeping and payroll records;
22 information and documentation concerning the claims set forth in the Litigation; and information
23 regarding the number of PAGA Group members and the total workweeks and pay periods
24 worked by the PAGA Group during the PAGA Release Period.

25 B. Plaintiff and Defendant and their respective counsel have engaged in good faith,
26 arms-length negotiations. On July 13, 2023, the Parties participated in a mediation with Mark S.
27 Rudy. Even though the Parties did not reach an agreement on the day of the mediation, through
28 the assistance of the mediator, an agreement was reached on July 20, 2023, which resulted in

1 resolution of this matter. The Parties have entered into this more detailed, formalized Settlement
2 Agreement for submission to the Court for approval.

3 C. Plaintiff's counsel has conducted an investigation of the law and facts relating to
4 the claims asserted in the Litigation and has concluded, taking into account the sharply contested
5 issues involved, the expense and time necessary to pursue the Litigation through trial and any
6 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
7 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
8 the Plaintiff, the State of California, and the members of the PAGA Group pursuant to this
9 Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair,
10 reasonable, adequate, and in the best interests of the State of California and the PAGA Group.
11 Plaintiff, on his own behalf and as a representative pursuant to PAGA, has agreed to settle the
12 Litigation with Defendant on the terms set forth herein.

13 D. Defendant has concluded that, because of the substantial expense of defending
14 against the Litigation, the length of time necessary to resolve the issues presented herein, the
15 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
16 interests to accept the terms of this Agreement. Defendant denies each of the allegations and
17 claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle
18 the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing
19 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

20 E. This Agreement is intended to and does effectuate the full, final and complete
21 resolution of all allegations and claims under the California Labor Code Private Attorneys
22 General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged
23 violations of the Labor Code including all claims that could have been alleged based on the
24 factual allegations and identified Labor Code sections in the operative pleading for the Litigation.

25 **III. JURISDICTION**

26 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
27 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
28 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted

1 approval of this Agreement, pursuant to California Code of Civil Procedure § 664.6 the Court
2 shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and
3 enforcing this Agreement consistent with the terms set forth herein, and the Parties and their
4 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and
5 enforcing this Agreement and all orders and judgments entered in connection therewith.

6 **IV. STATEMENT OF NO ADMISSION**

7 **A.** Defendant denies liability to Plaintiff and to the PAGA Group upon any and all
8 claims or cause of actions. This Agreement does not constitute, and is not intended to constitute,
9 an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or
10 claims made against it in the Litigation.

11 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
12 any statements, discussions or communications, nor any materials prepared, exchanged, issued
13 or used during the course of the negotiations leading to this Agreement is intended by the Parties
14 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in
15 any way in this case or any other judicial, arbitral, administrative, investigative or other forum
16 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
17 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
18 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
19 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as
20 purported evidence of any violation of any federal, state, or local law, statute, ordinance,
21 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
22 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
23 the Court that has as its purpose the interpretation, implementation, or enforcement of this
24 Agreement or any orders or judgments of the Court entered in connection with the settlement.

25 **C.** None of the documents produced or created by Plaintiff or his counsel in
26 connection with the approval of this settlement or administration of this settlement constitute,
27 and they are not intended to constitute, an admission by Defendant of any violation of any
28 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any

1 obligation or duty at law or in equity.

2 **D.** Nothing in this Agreement will be construed as an admission or
3 acknowledgement of any kind that any group should or would be given collective treatment in
4 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
5 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
6 regarding the propriety of collective treatment. In the event that this Agreement is not approved
7 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff
8 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
9 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
10 way any of their rights, objections or defenses in the Litigation.

11 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

12 **A. Scope of Release.**

13 Upon approval of this Settlement Agreement by the Court, Plaintiff, individually and as
14 a representative acting as a proxy or agent of the LWDA in this Litigation, agrees to release
15 Defendant and its parent, subsidiary, affiliated, predecessor and successor companies and
16 entities, and its and their past and present shareholders, investors, officers, directors, employees,
17 attorneys, agents, benefit plans, trustees, fiduciaries and administrators (collectively, the
18 "Released Parties"), of and from any and all claims under the California Labor Code Private
19 Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have
20 been alleged based on the factual allegations and identified Labor Code sections in the Litigation
21 and the LWDA Letter, including, but not limited to, California Labor Code sections §§ 201, 202,
22 203, 204b, 226, 226.3, 510, 511, 1194, 1198, and 1199, during the time period from and
23 including September 8, 2021 through August 12, 2023 (the "Released Claims"). The Parties
24 further agree to release any and all claims for costs, fees, and interest related to the Released
25 Claims. The Parties further agree that this Agreement and judgment to be entered by the Court
26 following approval of this settlement forever bars Plaintiff and the LWDA, directly or through
27 any other proxy or agent, from any future prosecution of any of the Released Claims against any
28 of the Released Parties.

1 **VI. SETTLEMENT ADMINISTRATOR**

2 Plaintiff and Defendant, through their respective counsel, have selected Simpluris Inc.
3 as the Settlement Administrator to administer the settlement, which includes but is not limited
4 to distributing and responding to inquiries about the Notice of Settlement and calculating all
5 amounts to be paid from the Settlement Amount, including the Individual Settlement Payments.
6 The Administrative Costs are estimated to be no more than six thousand and five hundred dollars
7 (\$6,500), will be paid from the Settlement Amount. Any charges and expenses of the Settlement
8 Administrator greater than the allocated six thousand and five hundred dollars (\$6,500) will
9 come from the Settlement Amount. If the actual Administrative Costs are less than the Parties'
10 estimation, the difference between the actual and estimated Administrative Costs will be
11 included in the Net Settlement Amount.

12 **VII. NOTICE**

13 Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice
14 of Settlement (the "Notice"), in the form attached hereto as **Exhibit "A"** which in substance will
15 be provided to the members of the PAGA Group as follows:

16 As soon as practicable following approval of this Settlement Agreement, but no later than
17 30 calendar days after the Court approves the settlement, Defendant will provide to the
18 Settlement Administrator the following information about each PAGA Group member: (1)
19 name; (2) last known home address; (3) number of pay periods as a PAGA Group member during
20 the PAGA Release Period; and (4) social security number (collectively referred to as the "PAGA
21 List").

22 The Settlement Administrator shall run all the addresses provided by Defendant through
23 the United States Postal Service NCOA database (which provides updated addresses for any
24 individual who has moved in the previous four years who has notified the U.S. Postal Service of
25 a forwarding address) to obtain current address information. Within 30 calendar days after the
26 Settlement Administrator's receipt of the PAGA List, the Settlement Administrator will mail the
27 Notice together with the Individual Settlement Payments to all PAGA Group members by first-
28 class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice

1 and return all undeliverable Notices to the Settlement Administrator. For each Notice and
2 Individual Settlement Payment that is returned as undeliverable, the Settlement Administrator
3 shall promptly attempt to locate the PAGA Group member by performing an additional skip
4 trace and shall re-mail the Notice and Individual Settlement Payment no later than 10 calendar
5 days following receipt of the undeliverable Notice. The Notice will be provided in English and
6 Spanish.

7 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

8 **A. Distribution Formula.**

9 The portion of the Net Settlement Amount to be distributed to the PAGA Group shall be
10 divided by the total number of full pay periods, with partial pay periods rounded up to the next
11 whole number, as determined by Defendant's records, for all times during the PAGA Release
12 Period which the PAGA Group worked for Defendant. This amount shall be known as the "Pay
13 Period Value." Each member of the PAGA Group shall be paid an amount equal to the number
14 of individual pay periods he or she worked for Defendant during the PAGA Release Period
15 multiplied by the Pay Period Value.

16 **B. Funding of the Settlement Amount.**

17 The funding of the Settlement Amount by Defendant will be completed at one time with
18 funds provided to and escrowed by the Settlement Administrator. The Settlement Amount shall
19 be paid to the Settlement Administrator by Defendant within 30 calendar days of its receipt of a
20 notice of entry of the Court's approval order regarding this Settlement Agreement.

21 If a PAGA Group member is deceased at the time of distribution, the Settlement
22 Administrator shall distribute the deceased PAGA Group member's Individual Settlement
23 Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to
24 the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA
25 Group member's estate and attempt to place the deceased PAGA Group member's payment in
26 escrow or similar disposition such that any competing heirs may take whatever action they wish
27 to resolve ultimate disposition of such money and the Settlement Administrator and the Parties
28 hereto may disclaim any further interest in or obligation in relation to such money.

1 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
2 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
3 search and, if another address is identified, shall mail the check to the newly identified address.
4 If the Settlement Administrator is unable to obtain a valid mailing address through this process,
5 after the check void date, the monies represented by the check shall be turned over according to
6 the California State Controller for deposit in the Unclaimed Property Fund in the name of the
7 PAGA Group member to whom the uncashed Individual Settlement Payment was drafted.

8 Settlement checks will specifically indicate that they are void if not negotiated within
9 180 days of their issuance. After 90 days, the Settlement Administrator will send a reminder
10 postcard to each PAGA Group member with an uncashed check. Any settlement checks that
11 remain uncashed 180 or more calendar days after issuance by the Settlement Administrator shall
12 be voided and the Settlement Administrator will remit the entire amount of each PAGA Group
13 member's uncashed Individual Settlement Payment to the California State Controller for deposit
14 in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed
15 Individual Settlement Payment was drafted.

16 **C. Time for Distribution of the Enhancements to Plaintiff, Attorneys' Fees and**
17 **Litigation Costs to Plaintiff's Counsel, the LWDA Payment and**
18 **Administrative Costs.**

19 The Settlement Administrator shall cause the Court approved enhancement to Plaintiff,
20 attorneys' fees and litigation costs awarded to Plaintiff's Counsel, and the LWDA Payment to
21 be paid within 30 days of the funding of the Settlement Amount. The Settlement Administrator
22 may pay itself the Court-approved administrative costs once the Individual Settlement Payments
23 have been mailed out.

24 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

25 The amounts paid under this Agreement do not represent a modification of any
26 previously credited hours of service under any employee benefit plan, policy or bonus program
27 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
28 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)

1 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of
2 this Agreement shall not be applied retroactively, currently or on a going forward basis as salary,
3 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan,
4 policy or bonus program. Defendant retains the right to modify the language of its benefit plans,
5 policies and bonus programs to effect this intent and to make clear that any amounts paid
6 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any
7 similar measuring term as defined by applicable plans, policies and bonus programs for purpose
8 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
9 benefits are not required by this Agreement.

10 **X. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

11 Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's
12 Counsel shall not seek or receive an amount in excess of One Hundred and Thirty-Three
13 Thousand, Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33),
14 which represents one-third of the Settlement Amount, for all past and future attorneys' fees
15 necessary to prosecute, settle and administer the Litigation and this Agreement. Additionally,
16 Defendant shall not oppose an application by Plaintiff's Counsel for reimbursement of all past
17 and future litigation costs and expenses necessary to prosecute, settle and administer the
18 Litigation and this Agreement, which Plaintiff's Counsel estimates shall not exceed Fifteen
19 Thousand dollars (\$15,000.00). Any attorneys' fees or litigation costs awarded to Plaintiff's
20 Counsel by the Court shall be deducted from the Settlement Amount for the purpose of
21 determining the Net Settlement Amount. This amount shall include all attorneys' fees, litigation
22 costs and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory
23 whatsoever. Should the Court approve a lesser percentage or amount of fees and/or litigation
24 costs than the amount that Plaintiff's Counsel ultimately seeks, then the unapproved portion or
25 portions shall revert to the Net Settlement Amount.

26 **XI. ENHANCEMENT TO PLAINTIFF**

27 Defendant shall not oppose an application by Plaintiff to seek or receive an amount equal
28 to Five Thousand dollars (\$5,000) for his participation in and assistance with the Litigation. Any

enhancement awarded to Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than Five Thousand dollars (\$5,000) to Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement Amount.

XII. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows (“Net Settlement Allocation”): 100% as penalties.

PAGA Group members may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

XIII. COURT APPROVAL

This Agreement is contingent upon approval by the Court. Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure approval of this Agreement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court approval of this Agreement in all respects.

XIV. APPRISAL AND CERTIFICATION BY THE SETTLEMENT ADMINISTRATOR.

The Settlement Administrator shall keep Plaintiff’s Counsel and Defendant’s Counsel apprised of all distributions from the Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Plaintiff’s Counsel and Defendant’s Counsel. The Settlement Administrator shall also provide a final accounting, including the names of payees and the amounts of the Individual Settlement Payments.

XV. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending approval of this Agreement by the Court.

//

1 **B. Interpretation of the Agreement.**

2 This Agreement constitutes the entire agreement between Plaintiff and Defendant.
3 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
4 other written or oral representations or terms, and no such extrinsic oral or written
5 representations or terms shall modify, vary or contradict its terms. In entering into this
6 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
7 may not be varied or contradicted by extrinsic evidence. This Agreement will be interpreted and
8 enforced under the laws of the State of California, both in its procedural and substantive aspects,
9 without regard to its conflict of law's provisions. Any claim arising out of or relating to this
10 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
11 Court of the State of California for the County of Monterey, and Plaintiff and Defendant hereby
12 consent to the personal jurisdiction of the Court over them solely in connection therewith.
13 Plaintiff, on his own behalf and on behalf of the PAGA Group and the State of California, and
14 Defendant participated in the negotiation and drafting of this Agreement and had available to
15 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant
16 may claim that any ambiguity in this Agreement should be construed against the other.

17 The terms and conditions of this Agreement constitute the exclusive and final
18 understanding and expression of all agreements between Plaintiff and Defendant with respect to
19 the resolution of the Litigation. This Agreement may be modified only by a writing signed by
20 counsel for all Parties or their successors-in-interest.

21 **C. Further Cooperation.**

22 Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare
23 and execute all documents, to seek approval of this Agreement from the Court, and to do all
24 things reasonably necessary or convenient to consummate this Agreement as expeditiously as
25 possible. Specifically, following the Parties' execution of this Agreement, Defendant agrees that
26 Plaintiff may notice a hearing with the Court seeking approval of this Settlement Agreement for
27 the earliest possible date permitted by California Code of Civil Procedure section 1005.

28 //

1 **D. Counterparts.**

2 This Agreement may be executed in one or more actual or non-original counterparts, all
3 of which will be considered one and the same instrument and all of which will be considered
4 duplicate originals.

5 **F. Authority.**

6 Each individual signing below warrants that he or she has the authority to execute this
7 Agreement on behalf of the party for whom or which that individual signs.

8 **G. No Third-Party Beneficiaries.**

9 Plaintiff, members of the PAGA Group, the State of California, Defendant and Released
10 Parties are direct beneficiaries of this Agreement. The Parties are not aware of any third-party
11 beneficiaries.

12 **H. Deadlines Falling on Weekends or Holidays.**

13 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
14 or legal holiday, that deadline shall be continued until the following business day.

15 **J. Severability.**

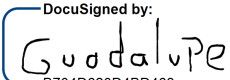
16 In the event that any one or more of the provisions contained in this Agreement shall for
17 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
18 unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiff's
19 Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as
20 if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

21 **K. Defendant's Fees and Costs**

22 All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall be
23 borne by Defendant.

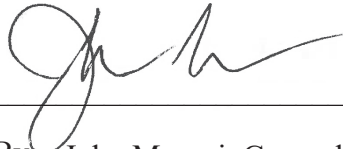
24 **APPROVED AS TO CONTENT:**

25 8/16/2023
26 DATED: August __, 2023

DocuSigned by:

B704D020B4BD403...
Guadalupe Hernandez

1
2 DATED: August 11, 2023

AUTOMATED HARVESTING, LLC

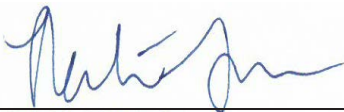
3
4 
5 _____

By: John Mazzei, General Counsel

6
7
8 **APPROVED AS TO FORM:**

9
10 DATED: August 16, 2023

KELLER GROVER LLP

11
12 By: 
13 _____

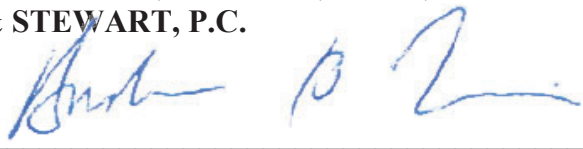
Eric A. Grover

Robert W. Spencer

Attorney for Plaintiff

14
15
16
17 DATE: August 10, 2023

**OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.**

18
19 By: 
20 _____

Michael D. Wilson, Jr.

Andrew B. Levin

Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

GUADALUPE HERNANDEZ, on behalf
of all aggrieved employees,

Plaintiffs,

v.

AUTOMATED HARVESTING, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV002717

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
(CAL. LABOR CODE §§ 2698, *ET SEQ.*)**

You have been identified as an hourly, non-exempt employee who worked for Automated Harvesting, LLC (“Automated Harvesting” or “Defendant”) in California between September 8, 2021 and August 12, 2023, inclusive (“Covered Employee”).

On December 20, 2022, Guadalupe Hernandez (“Plaintiff”) filed a complaint in Monterey County Superior Court (the “Court”) to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* (“PAGA”). The lawsuit alleges that Covered Employees were, among other things, not paid overtime for all applicable hours worked and did not receive accurate, itemized wage statements.

Automated Harvesting denies all of Plaintiff’s allegations and disputes all of Plaintiff’s claims.

Plaintiff and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the lawsuit. The Court approved the settlement on _____. The settlement is for \$ _____. However, by law, \$ _____ has been paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) for the enforcement of the state’s labor laws. An additional \$ _____ has been paid to Plaintiff’s Counsel’s for its attorneys’ fees and costs, Plaintiff has been paid \$ _____ as a service payment, and \$ _____ has been paid to the Settlement Administrator. The remaining settlement funds of \$ _____ are being distributed to the Covered Employees as described below.

Pursuant to the settlement agreement, the amount to be distributed to the Covered Employees shall be divided by the total number of full pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant’s records, worked by all Covered Employees between September 8, 2021 and August 12, 2023, inclusive. This amount shall be known as the “Pay Period Value.” Each Covered Employee shall be paid an amount equal to the number of individual pay periods he or she worked for Defendant between September 8,

2021 and August 12, 2023, inclusive. Your Individual Settlement Payment is provided with this Notice.

The Court-approved settlement contains the following release of claims, which is meant to bar any future litigation by Plaintiff and the California Labor & Workforce Development Agency (“LWDA”), either directly or through any other proxy or agent:

Upon approval of this Settlement Agreement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA in this Litigation, agrees to release Defendant and its parent, subsidiary, affiliated, predecessor and successor companies and entities, and its and their past and present shareholders, investors, officers, directors, employees, attorneys, agents, benefit plans, trustees, fiduciaries and administrators (collectively, the “Released Parties”), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, that were or could have been alleged based on the factual allegations and identified Labor Code sections in the Litigation and the LWDA Letter, including, but not limited to, California Labor Code sections §§ 201, 202, 203, 204b, 226, 226.3, 510, 511, 1194, 1198, and 1199, during the time period from and including September 8, 2021 through August 12, 2023 (the “Released Claims”). The Parties further agree to release any and all claims for costs, fees, and interest related to the Released Claims. The Parties further agree that this Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.

If you have any questions or would like a copy of the settlement agreement approved by the Court, please contact the Settlement Administrator at _____.

EXHIBIT 2

KELLER GROVER LLP

1965 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103
TELEPHONE: (415) 543-1305
FAX: (415) 543-7861

Robert Spencer, Esq.
rspencer@kellergrover.com

September 8, 2022

Via Online Submission Only

California Labor & Workforce
Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Automated Harvesting, LLC

Dear Sir or Madam:

The undersigned represents Mr. Guadalupe Hernandez, a former employee of Automated Harvesting, LLC ("Automated Harvesting"), on behalf of aggrieved employees currently and formerly employed in the State of California by Automated Harvesting. The purpose of this letter is to comply with the statutory exhaustion requirements of Labor Code § 2699.3 before commencing an action under Labor Code §§ 2699, *et seq.* alleging violations of Labor Code §§ 201, 202, 203, 204b, 226(a), 226.3, 510, 1194, 1198, and 1199.

Automated Harvesting, as its name implies, is a harvesting company. Mr. Hernandez worked for Automated Harvesting as a non-exempt, hourly lettuce cutter in California from approximately April 2021 through November 2021 in Salinas, California.

Automated Harvesting violated Labor Code §§ 510, 1194, 1198, and 1199 and IWC Wage Order 14-2001, by failing to pay Mr. Hernandez and other aggrieved employees the applicable overtime rate for all hours worked. Employees covered by IWC Wage Order 14-2001, are entitled to overtime wages for hours worked over eight and one half in a day. A review of Mr. Hernandez's wage statements shows that he was not always paid overtime for hours worked over eight and half in a day. Further, it appears that Mr. Hernandez was not paid overtime at the proper rate. For example, Mr. Hernandez's wage statement with the check date August 21, 2021 shows that he was paid overtime on August 21, 2021 at the rate of \$14.2158, which makes no sense because his base rate was \$16.05.¹ It is impossible to tell from Mr. Hernandez's wage statements whether he was properly paid.

¹ See Ex. 1 (wage statement). Further, Mr. Hernandez does not have all of his wage statements in his possession and control. This wage statement is used as an exemplar, Mr. Hernandez acknowledges it is outside the one-year statute of limitations for a PAGA action.

Mr. Hernandez and other aggrieved employees received itemized wage statements that failed to comply with Labor Code § 226(a). Among other things, the wage statements issued to Mr. Hernandez and other aggrieved employees did not show the correct net and gross wages earned as they are missing the unpaid overtime wages as described above. The wage statements further violate Labor Code § 226(a)(9) by failing to list all applicable hourly rates in effect and the number of hours worked at each rate. As noted above, they do not correctly list hours worked over eight and half in a day as overtime and the overtime rate listed is incorrect. It is impossible to tell from the wage statements whether Mr. Hernandez and other aggrieved employees were properly paid. In violating Labor Code § 226(a), Automated Harvesting also violated Labor Code § 226.3.

Due to the violations described above, Mr. Hernandez and other aggrieved employees did not receive all wages in a timely manner as required by Labor Code § 204b. Moreover, those who no longer are employed by Automated Harvesting did not receive all wages due at the time of discharge, a violation of Labor Code §§ 201, 202, and 203. They still are owed unpaid overtime wages as described above.

Notice to Automated Harvesting of Attempt to Settle this Dispute:

This notice shall represent Mr. Hernandez's reasonable attempt to settle this dispute with Automated Harvesting prior to litigation. Under *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, this notice serves to apprise Automated Harvesting of Mr. Hernandez's mentioned grievances and the proposed remedies as detailed below, while affording Automated Harvesting a reasonable opportunity to meet Mr. Hernandez's demands.

Demand is hereby made that Automated Harvesting shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Automated Harvesting shall pay Mr. Hernandez and all other hourly employees employed California at any time during the past 48 months back pay and compensation for all of the above-referenced violations.
2. Automated Harvesting shall pay waiting time penalties equal to 30 days of pay to each former non-exempt employee who was not paid all wages due as described herein.
3. Automated Harvesting shall pay accrued interest to all employees on all sums owed (other than penalties) at the rate of ten percent per annum.
4. Automated Harvesting shall pay Labor Code § 226(e) penalties for each violation of Labor Code § 226(a).

5. Automated Harvesting shall pay the aggrieved employees all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and under PAGA, Labor Code §§ 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 201, 202, 203, 204b, 226(a), 226.3, 510, 1194, 1198, and 1199.

Conclusion:

If you have any questions, please feel free to telephone me at (415) 543-1305. In addition, should Automated Harvesting wish to discuss resolution of the issues raised in this letter, they should direct counsel to contact me at the same telephone number.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert Spencer', with a stylized flourish at the end.

ROBERT SPENCER

cc: Attn: Legal Dept.
Automated Harvesting, LLC
150 Main Street, Suite 500
Salinas, California 93901
Via Certified Mail, Receipt No. 7018 3090 0000 4450 1831

Automated Harvesting, LLC
c/o John Mazzei
Registered Agent for Service of Process
150 Main Street, Suite 400
Salinas, California 93901
Via Certified Mail, Receipt No. 7018 3090 0000 4450 1848

EXHIBIT 1



STATEMENT OF EARNINGS - DETACH ALONG THIS PERFORATION AND RETAIN FOR YOUR RECORDS
Automated Harvesting, LLC
150 Main St, Suite 500
Salinas, CA 93901
831-754-0471

GUADALUPE DELGADO HERNANDEZ	Paygroup AH2A	Check No 31899
10266 S. AVE. 4E	Location AHCA	Check Date 8/26/2021
YUMA, AZ 85365	Department AHOPS	Period Start 8/16/2021
	Commodity Z	Period End 8/22/2021
	Listing Z	Job AHHARV
Emp No 161013	Business Org	Pay Rate 16.0500

COMPANY MESSAGE

EARNINGS

Pay Type	Piece Units	Piece Rate	Period Start	Period End	Hours	Pay Rate	Current	YTD
Add'l. Avail Pay							5.50	181.50
Group Term Life							0.19	4.10
H2A INBOUND REM								117.83
Overtime								41.55
Production Bonus			8/21/2021	8/21/2021	1.08	14.2150	15.40	451.08
Production Bonus			8/16/2021	8/16/2021			5.85	
Production Bonus			8/17/2021	8/17/2021			25.87	
Production Bonus			8/18/2021	8/18/2021			31.55	
Production Bonus			8/19/2021	8/19/2021			36.44	
Production Bonus			8/20/2021	8/20/2021			27.40	
Regular Pay			8/16/2021	8/16/2021	7.92	16.0495	127.05	5,517.10
Regular Pay			8/17/2021	8/17/2021	7.17	16.0506	115.03	
Regular Pay			8/18/2021	8/18/2021	7.17	16.0506	115.03	
Regular Pay			8/19/2021	8/19/2021	8.17	16.0506	131.08	
Regular Pay			8/20/2021	8/20/2021	6.67	16.0459	107.00	
Regular Pay			8/21/2021	8/21/2021	7.17	16.0506	115.03	22,555.95
Total Hours					45.33			

DEDUCTIONS

TAXES

EMPLOYEE ACCRUALS

Deduction	Current	YTD	Tax Code	Current	YTD	Accrual Description	Current	Balance
Group Term Life	0.19							
H2A MEAL DEDUCT	92.19							
			4.10 CA Disability Employ	10.79	194.13	Sick-Arizona	0.00	40.00
			3.112.01					
NET PAY DISTRIBUTION								
GROSS			TAXES		DEDS		NET PAY	
CURRENT	0.00		0.00		0.00		0.00	0.00
YTD	0.00		0.00		0.00		0.00	0.00
Check Amount							Total Net Pay	
							0.00	
							0.00	

EXHIBIT 3

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Attorneys for Plaintiff
GUADALUPE HERNANDEZ

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 12/20/2022 12:39 PM
By: Thomas Castillo, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

GUADALUPE HERNANDEZ, on behalf of
all aggrieved employees

Plaintiff,

v.

AUTOMATED HARVESTING, LLC; and
DOES 1 through 50, inclusive,

Defendants.

) Case No: 22CV002717

) REPRESENTATIVE ACTION

) **SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

-) **1. UNFAIR BUSINESS PRACTICES;**
) **2. VIOLATIONS OF THE LABOR CODE;**
) **3. PENALTIES; and**
) **4. ATTORNEYS' FEES.**

1 Plaintiff Guadalupe Hernandez on behalf of all aggrieved employees, complains against
2 Defendants Automated Harvesting, LLC, and Does 1 through 50 (all referred to collectively as
3 “Defendants” or “AUTOMATED HARVESTING”) as follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
6 other statutes, California Labor Code §§ 201-203, 204b, 226, 510, 1194, 1198, and 1199. In
7 particular, Plaintiff has complied with all California Labor Code § 2699.3 requirements for
8 commencing a civil action under the California Private Attorneys General Act of 2004, California
9 Labor Code §§ 2698, *et seq.* (“PAGA”).

10 2. This Court has personal jurisdiction over the parties because, at all relevant times,
11 Plaintiff was a California resident who worked in California for Defendants and Defendants
12 systematically and continuously have conducted business in the State of California.

13 3. Venue is proper in this Court under California Code of Civil Procedure § 395.5
14 because Defendants’ principal place of business listed on its most recent statement of information
15 filed with the Secretary of State is located in Monterey County at 20520 Spence Road, Salinas,
16 California 93908.

17 **II. PARTIES AND BACKGROUND**

18 4. Plaintiff Guadalupe Hernandez is an adult who worked for Defendants as a non-
19 exempt hourly employee. He worked for Defendants as an hourly lettuce cutter from approximately
20 April 2021 through November 2021 in Salinas, California.

21 5. Defendant Automated Harvesting, LLC is a Delaware limited liability company
22 doing business throughout California and is a “person” as defined by California Labor Code § 18
23 and California Business and Professions Code § 17201. In addition, it is an “employer” as that
24 term is used in the California Labor Code and in the California Industrial Welfare Commission’s
25 Orders regulating wages, hours, and working conditions.

26 6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
27 through 50, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will
28 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is

1 informed and believes and on that ground alleges that each of the fictitiously-named Defendants is
2 responsible in some manner for the occurrences alleged and that Plaintiff's damages and other
3 losses as alleged are proximately caused by those occurrences.

4 7. Plaintiff brings this action on behalf of the state of California and all aggrieved
5 employees who worked as hourly non-exempt employees employed in agricultural occupations by
6 AUTOMATED HARVESTING in California during the applicable statute of limitations, Plaintiff
7 sees all applicable penalties, interest, attorneys' fees, costs and other sums for each violation of: (a)
8 California Labor Code §§ 510, 511, 1194, 1198 and 1199 and the applicable IWC Wage Order
9 (failure to pay overtime wages), (b) policy and practice of violating California Labor Code §§ 226
10 and 226.3 (failure to provide accurate itemized wage statements); (c) California Labor Code §§
11 201-203 (failure to pay former aggrieved employees all wages due and owing at the time of
12 discharge or voluntary quit); and (d) California Labor Code § 204 (failure to pay aggrieved
13 employees in a timely manner).

14 **III. FACTUAL ALLEGATIONS**

15 8. AUTOMATED HARVESTING provides harvesting services at locations
16 throughout the State of California, including but not limited to Salinas, California.

17 9. At all relevant times, Plaintiff was employed by AUTOMATED HARVESTING as
18 an hourly non-exempt employee in an agricultural occupation as defined by § 2(D) of IWC Wage
19 Order 14-2001. During his employment with AUTOMATED HARVESTING, Plaintiff worked a
20 forty-hour workweek over six days, however he often worked more, including overtime.

21 10. Labor Code §§ 510 and 1194 and IWC Wage Order 14-2001 requires employers to
22 pay overtime to their employees. Pursuant to IWC Wage Order 14-2001 § 3(A)(2), employers with
23 more than 25 employees:

- 24 (a) Starting January 1, 2019, an employee shall not be employed more than nine
25 and one-half (9 and 1/2) hours per workday or fifty-five (55) hours per
26 workweek unless the employee receives one and one-half (1 and 1/2) times
27 such employee's regular rate of pay for all hours worked over nine and one-
28 half (9 and 1/2) hours in any one workday or more than fifty-five (55) hours

in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 and 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 and 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 and 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 and 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 and 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

11. Plaintiff alleges that Defendant employed over 25 people at all times relevant to this action and that Defendants had a policy and practice of failing to pay Plaintiff and aggrieved employees overtime as required by IWC Wage Order 14-2001, § 3(A)(2). A review of Plaintiff's wage statements shows that he was not always paid overtime for hours worked over eight and a half in a day in 2021. Further, Plaintiff alleges that Defendants had a policy and practice of failing to pay Plaintiff and aggrieved employees overtime at the proper rate. For example, Plaintiff's wage statement with the check date August 21, 2021 is attached hereto as Exhibit 1. This wage statement shows that Defendant paid Plaintiff overtime on August 21, 2021 at the rate of \$14.2158, which makes no sense because his base rate was \$16.05. It is impossible to tell from Plaintiff's wage

1 statements whether he was properly paid.

2 12. Labor Code § 226 provides that every employer is required, “semimonthly or at the
3 time of each payment of wages,” to give each employee an itemized wage statement that includes
4 “gross wages earned.” Defendants had a policy and practice of violating Labor Code § 226 by
5 failing to provide complete and accurate itemized wage statements to Plaintiff and the aggrieved
6 employees in that the wage statements provided did not, among other things, include the accurate
7 hours worked and the correct gross wages earned. The wage statements further violate Labor Code
8 § 226(a)(9) by failing to list all applicable hourly rates in effect and the number of hours worked at
9 each rate. As noted above, the wage statements do not correctly list hours worked over eight and
10 half in a day as overtime and the overtime rate listed is incorrect. It is impossible to tell from the
11 wage statements whether Defendants properly paid overtime to Plaintiff and aggrieved employees.

12 13. Defendants had a policy and practice of violating California Labor Code §§ 201-
13 203 by failing to pay Plaintiff and aggrieved employees all wages due and owing at the time of
14 discharge or voluntary quit. Plaintiff and aggrieved employees still are owed wages, including
15 unpaid overtime wages as well as compensation for Defendants’ failure to pay Plaintiff and
16 aggrieved employees overtime and the proper rate.

17 **IV. REPRESENTATIVE ACTION ALLEGATIONS**

18 14. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
19 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
20 employees whom performed work for AUTOMATED HARVESTING within the state of
21 California and were who were not paid overtime for all hours worked and/or were not paid overtime
22 at the proper rate;

23 15. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
24 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
25 employees whom performed work for AUTOMATED HARVESTING in the State of California
26 who did not receive complete and accurate itemized wage statements in violation of Labor Code §
27 226(a).

28 16. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code

1 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
2 employees whom performed work for AUTOMATED HARVESTING in the State of California
3 who were not paid all wages due at the time of discharge or voluntary quit in violation of Labor
4 Code §§ 201-203.

5 17. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
6 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt agricultural occupation
7 employees whom performed work for AUTOMATED HARVESTING in the State of California
8 who were not paid all wages in a timely manner as required by Labor Code § 204b.

9 18. There is a well-defined community of interest in the question of law and fact
10 affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees'
11 claims against Defendants involve questions of common or general interest, including, but not
12 limited to, the following: (1) whether Defendants had a policy and practice of failing to pay
13 aggrieved employees overtime for all applicable hours worked and/or failed to pay overtime at the
14 proper rate; (2) whether Defendants had a policy and practice of violating Labor Code § 226 by
15 failing to provide required information on wage statements, such as accurately the gross wages
16 earned and the actual hours worked by each employee, as well as all applicable hourly rates in
17 effect and the hours worked at each rate.; (3) whether Defendants had a policy and practice of
18 failing to pay departing aggrieved employees all wages due at the time of discharge or voluntary
19 quit in violation of Labor Code §§ 201-203; (4) and whether Defendants had a policy and practice
20 of failing to pay aggrieved employees in a timely manner as required by Labor Code § 204b.

21 19. Plaintiff's claims are typical of the claims of the members of the aggrieved
22 employees whom Plaintiff seeks to represent on a representative basis and his interests are
23 consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly
24 and adequately represent the interests of the aggrieved employees whom he seeks to represent
25 because Plaintiff is also an aggrieved employee and his claims are typical of those of the aggrieved
26 employees. Plaintiff has retained attorneys who are experienced in the prosecution of class and
27 representative actions, and Plaintiff intends to prosecute this action vigorously.

28 20. Common questions of law and fact exist as to all aggrieved employees that

predominate over any other questions affecting only individual aggrieved employees.

21. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees.

V. FIRST CAUSE OF ACTION
(UNPAID OVERTIME –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

22. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

23. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

24. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

25. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 510, 1194, 1198 and 1199.

26. By the actions alleged herein, Defendants failed to pay Plaintiff and other aggrieved employees overtime for all applicable hours worked and/or failed to pay overtime at the proper rate in violation of Labor Code §§ 510, 511, 1194, 1198 and 1199.

27. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 510, 511, 1194, 1198 and 1199.

28. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §§ 1194 and 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

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VI. SECOND CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

29. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

30. Labor Code § 2699(f) permits “aggrieved employees,” acting on their own behalf and on behalf of the State of California and other current and former employees, to recover certain penalties.

31. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

32. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226(a).

33. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 226(a) as it relates to Plaintiff and the other aggrieved employees. As alleged above, Defendants employed and employ a policy and practice of violating Labor Code § 226(a) by failing to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved employees. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state accurately the gross wages earned and the actual hours worked by each employee, as well as all applicable hourly rates in effect and the hours worked at each rate.

34. Therefore, Plaintiff, for himself and all current and former aggrieved employees on behalf of the State of California, demand the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants’ violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f) penalties.)

35. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

//

VII. THIRD CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

36. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

37. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

38. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

39. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

40. By their actions as alleged herein, Defendants have failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

41. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

42. Plaintiff further seek reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

VIII. FOURTH CAUSE OF ACTION

(LABOR CODE § 204b –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

43. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

44. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

45. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged

1 violator and against whom one or more of the alleged violations was committed.

2 46. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
3 action against Defendants for violations of Labor Code § 204.

4 47. By their actions as alleged herein, Defendants have failed to comply with Labor
5 Code § 204 as they relate to Plaintiff and the other aggrieved employees.

6 48. Therefore, Plaintiff, for himself and all current and former aggrieved employees,
7 demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

8 49. Plaintiff further seek reasonable attorneys' fees and costs under Labor Code §
9 2699(g)(1).

10 Wherefore, Plaintiff prays for relief as set forth below.

11 **PRAYER FOR RELIEF**

12 Plaintiff prays for relief as follows:

- 13 i. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and
14 each current and former aggrieved employee for each violation of Labor
15 Code §§ 510, 1194, 1198, and 1199 (failure to pay overtime) during the
16 applicable limitations period preceding the original filing of the Complaint
17 and up to and including the present and until the date of compliance with the
18 law;
- 19 ii. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each
20 current or former aggrieved employee and on behalf of the State of
21 California for each violation of Labor Code § 226(a) (failure to provide
22 itemized wage statements) during the applicable limitations period
23 preceding the original filing of the Complaint. (Should Labor Code § 226.3
24 be found not to apply to Defendants' violations of Labor Code § 226(a),
25 Plaintiff alternatively seeks the civil penalties specified by Labor Code §
26 2699(f) for Plaintiff and each current or former aggrieved employee and on
27 behalf of the State of California for each violation of Labor Code § 226(a)
- 28

(failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)

iii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;

iv. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each aggrieved employee for each violation of Labor Code § 204b (failure to pay wages in a timely manner) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;

v. For reasonable attorneys' fees and costs as allowed by Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5;

vi. For all interest as required by Labor Code § 218.6 and other applicable law;

vii. For all costs of this suit as allowed by law, including Labor Code §§ 218.5, and 2699(g)(1); and

viii. For such other and further relief as the Court may deem proper.

Dated: December 20, 2022

Respectfully submitted,

KELLER GROVER LLP

By: 
ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiff and all Aggrieved Employees

PROOF OF SERVICE

I, JOEY GONZALEZ , am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **December 20, 2022**, in the case of *Hernandez v. Harvesting, LLC* Monterey Superior Court of Case Number 22CV002717 I served the foregoing document(s):

SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) below, using the following means:

Andrew Levin
andy.levin@ogletree.com

Attorneys for Defendant
AUTOMATED HARVESTING, LLC

Michael Wilson
michael.wilson@ogletree.com

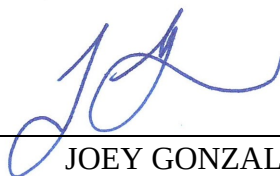
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OGLETREE DEAKINS
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ

EXHIBIT 4

Keller Grover

Automated Harvesting Transaction Detail by Account

	Date	Name	Class	Amount
Case Expenses Receivable				
\$FedEx				
	07/09/2023	FedEx	Automated Harvesting	38.59
Total for \$FedEx				\$ 38.59
\$Filing & Court Fees				
	09/11/2022	LWDA	Automated Harvesting	75.00
	09/14/2022	One Legal, Inc.	Automated Harvesting	1,494.06
	10/02/2022	One Legal, Inc.	Automated Harvesting	175.02
	10/04/2022	Superior Court	Automated Harvesting	3.60
	10/07/2022	One Legal, Inc.	Automated Harvesting	16.57
	11/17/2022	One Legal, Inc.	Automated Harvesting	16.57
	11/20/2022	One Legal, Inc.	Automated Harvesting	128.69
	12/11/2022	One Legal, Inc.	Automated Harvesting	134.86
	12/14/2022	One Legal, Inc.	Automated Harvesting	12.87
	12/15/2022	CA EFILE	Automated Harvesting	3.60
	12/16/2022	One Legal, Inc.	Automated Harvesting	134.61
	12/18/2022	One Legal, Inc.	Automated Harvesting	37.32
	12/21/2022	One Legal, Inc.	Automated Harvesting	16.57
	12/21/2022	One Legal, Inc.	Automated Harvesting	16.57
	12/21/2022	One Legal, Inc.	Automated Harvesting	129.46
	8/5/2023	One Legal, Inc.	Automated Harvesting	17.04
	8/11/2023	One Legal, Inc.	Automated Harvesting	102.95
	8/17/2023	One Legal, Inc.	Automated Harvesting	17.04
Total for \$Filing & Court Fees				\$ 2,532.40
\$General				
	07/12/2023	Nathan Clark - damage consultant fees	Automated Harvesting	66.50
	08/01/2023	Nathan Clark - damage consultant fees	Automated Harvesting	119.00
	8/17/2023	Keller Grover Photocopies	Automated Harvesting	44.20
Total for \$General				\$ 229.70
\$Mediation Fee				
	12/20/2022	Mark S. Rudy, A Professional Corp.	Automated Harvesting	12,500.00
Total for \$Mediation Fee				\$ 12,500.00
\$Postage				
	08/30/2022	Joey Gonzalez	Automated Harvesting	4.80
	8/17/2023	Keller Grover Postage	Automated Harvesting	2.20
Total for \$Postage				\$ 7.00
\$Research				
	7/2/2023	LexisNexis	Automated Harvesting	26.99
	8/5/2023	LexisNexis	Automated Harvesting	18.80
Total for \$Research				\$ 45.79
\$Wire Transfers				
	12/20/2022		Automated Harvesting	30.00
Total for \$Wire Transfers				\$ 30.00
Total for Case Expenses Receivable				\$ 15,383.48

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On October 10, 2023, in the case of *Hernandez v. Automated Harvesting, LLC, et al.*, Monterey County Superior Court Case Number 22CV002717, I served the foregoing document(s):

DECLARATION OF ROBERT SPENCER IN SUPPORT OF MOTIONS FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE AND FOR AN ORDER AWARDING ATTORNEYS' FEES AND COSTS, SERVICE PAYMENT, AND SETTLEMENT ADMINISTRATION FEES

on the interested party(ies) below, using the following means:

Andrew Levin
andy.levin@ogletree.com

Attorneys for Defendant
AUTOMATED HARVESTING, LLC

Michael Wilson
michael.wilson@ogletree.com

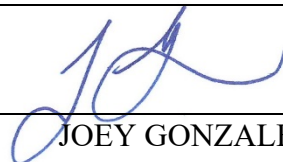
Patricia Hernandez
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ