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**BRADLEY/GROMBACHER, LLP**  
Marcus J. Bradley, Esq. (SBN 174156)  
mbradley@bradleygrombacher.com  
Kiley L. Grombacher, Esq.(SBN 245960)  
kgrombacher@bradleygrombacher.com  
31365 Oak Crest Drive, Suite 240  
Westlake Village, California 91361  
Telephone: (805) 270-7100  
Facsimile: (805) 270-7589

Attorneys for Plaintiff, Mireya Macias

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

MIREYA MACIAS, an individual, on her  
own behalf and on behalf of all others  
similarly situated,

Plaintiff,

v.

SUNRISE GROWERS, INC, a Delaware  
corporation; and DOES 1 through  
10, inclusive,

Defendants.

Case No.: 56-2019-00531335-CU-OE-VTA

**CLASS ACTION**

[Assigned to Hon. Jeffrey G. Bennett,  
Dept. 21]

**CLASS AND PAGA ACTION  
SETTLEMENT AGREEMENT**

Complaint Filed: July 31, 2019

1 **I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS**

2 This Settlement Agreement sets forth the terms of the settlement of a class and Private  
3 Attorneys’ General Act (“PAGA”) action filed by Mireya Macias (“Plaintiff”), on behalf of  
4 current and former non-exempt employees who work(ed) for Defendant Sunrise Growers,  
5 Inc. (“Defendant” or “Sunrise”) (Defendant and Plaintiff shall be referred to collectively as  
6 the “Parties”) in California during the Class Period, as defined below. The First Amended  
7 Complaint alleges causes of action against Defendant for: (1) failure to pay all wages; (2)  
8 missed meal and rest breaks; (3) failure to pay all wages timely; (4) failure to provide accurate  
9 wage statements; (5) Pay Card violations; (6) violation of California Business & Professions  
10 Code section 17200, *et seq.*; and (7) recovery of civil penalties under the California Labor  
11 Code Private Attorneys General Act (“PAGA”), California Labor Code sections 2698-2699.5.

12 Under the terms of the Parties’ Settlement Agreement, and after final approval and  
13 entry of judgment pursuant to California Rule of Court 3.769, Defendant will pay a gross  
14 settlement amount of five hundred thousand dollars (\$500,000) (the “Gross Settlement  
15 Amount”), plus the employer’s share of applicable payroll taxes. Under no circumstances will  
16 Defendant be required to pay any additional monies in order to receive the release of claims  
17 as set forth herein, with the exception of any employer payroll tax obligations (which shall be  
18 paid outside of the Gross Settlement Amount) The Settlement will be administered by a third-  
19 party settlement administrator with experience administering class and PAGA action  
20 settlements of this type. Until distribution, the Gross Settlement Amount will be held in a  
21 Qualified Settlement Fund established by the Settlement Administrator. This is a non-  
22 reversionary, opt-out settlement, and Class Members (as defined in Section II) will receive a  
23 settlement payment unless they timely submit a valid Request for Exclusion. Settlement Class  
24 Members shall not be required to submit a claim form.

25 The Parties agree and propose the following disbursements be made from the Gross  
26 Settlement Amount, subject to Court approval at the Final Fairness and Approval Hearing:

- 27 A. Settlement Administration Costs, estimated not to exceed \$39,000.

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- B. Class Counsel’s Attorneys’ Fees, to be approved by the Court, in an amount not to exceed \$166,666.67, which is one-third of the Gross Settlement Amount;
- C. Class Counsel’s Costs, as approved by the Court, in an amount not to exceed \$12,000;
- D. Service and Release Awards to Plaintiff Mireya Macias in the amount of \$7,500.00, on an IRS 1099 basis, in exchange for her agreement to a general release under California Civil Code section 1542 and as payment for her time and efforts in pursuing this Action;
- E. An allocation of \$30,000 to Plaintiff’s PAGA claims (the “PAGA Amount”), to be distributed as follows:
  - 1. Payment of \$22,500 to the California Labor and Workforce Development Agency (the “LWDA Payment”), which represents the Labor and Workforce Development Agency’s (“LWDA”) 75% share of the total \$30,000.
  - 2. The other 25% of the PAGA Amount (\$7,500) will be distributed on a pro rata basis to those Class members who were employed by Defendant at any time during the PAGA Period (defined below).
- F. The remainder of the Gross Settlement Amount (the “Net Settlement Amount”) will be distributed to Settlement Class Members based on the methodology discussed in section IV.K.1. It is estimated that the Net Settlement Amount will be approximately \$252,333.33 after deductions for Class Counsel’s Attorneys’ Fees, Class Counsel’s Costs, Settlement Administration Costs, the Service and Release Award, and the PAGA Amount.

Defendant represents that the Class consisted of approximately 5,504 members as of June 1, 2021.

1 **II. DEFINITIONS**

2 The following defined terms as used in this Agreement shall have the meanings set  
3 forth below:

4 A. “Action” means this putative class and representative action pending in  
5 Ventura County Superior Court titled *Mireya Macias v. Sunrise Growers, Inc.*, Case No. 56-  
6 2019-00531335-CU-OE-VTA.

7 B. “Agreement” or “Stipulation” means this Class and PAGA Action Settlement  
8 Agreement.

9 C. “Class” means all individuals who were employed by Defendant in California  
10 as non-exempt employees during the applicable Class Period (as defined below).

11 D. “Class Counsel” means Marcus J. Bradley and Kiley L. Grombacher of  
12 Bradley/Grombacher, LLP, 31365 Oak Crest Drive, Suite 240; Westlake Village,  
13 California 91361.

14 E. “Class Counsel’s Attorneys’ Fees” means the amount to be awarded to Class  
15 Counsel from the Gross Settlement Amount for their attorneys’ fees for their work in this  
16 Action, subject to Court approval at the Final Fairness and Approval Hearing. Class Counsel’s  
17 Attorneys’ Fees will not exceed \$166,666.67, which is one-third of the Gross Settlement  
18 Amount.

19 F. “Class Counsel’s Costs” means the amount to be awarded to Class Counsel  
20 from the Gross Settlement Amount to reimburse Class Counsel for their reasonable costs and  
21 expenses incurred in the Action, subject to Court approval at the Final Fairness and Approval  
22 Hearing. Class Counsel’s Costs will not exceed \$12,000.

23 G. “Class Data” means each Class Member’s full name, social security number,  
24 last known address, and telephone number(s), along with the number of weeks that each Class  
25 Member worked for Defendant during the Class Period and/or PAGA Period, to the extent  
26 this information is in Defendant’s reasonable possession.

27 H. “Class Member” is a person who is a member of the Class.  
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1 I. "Class Period" means the period from May 15, 2018 through preliminary  
2 approval of this settlement.

3 J. "Complaint" means the operative complaint on file in the Action.

4 K. "Court" means the Superior Court of the State of California, in and for the  
5 County of Ventura, where the Action is pending.

6 L. "Defendant" means Defendant Sunrise Growers, Inc.

7 M. "Defendant's Counsel" means Amber S. Healy and Lauren S. Gafa of  
8 Atkinson, Andelson, Loya, Ruud & Romo, 12800 Center Court Drive, Suite 300, Cerritos,  
9 CA 90703, (562) 653-3200.

10 N. "Effective Date" means the date of entry of the "Final Approval Order" if no  
11 valid objection is filed. If a timely, valid objection to the settlement is filed, the "Effective  
12 Date" will be the later of (1) 65 days following entry of the Final Approval Order, or (2) if an  
13 appeal, review, or writ is sought from the Final Approval Order, the date on which (i) the  
14 highest reviewing court renders its decision denying the petition or writ challenging the Final  
15 Approval Order or renders its decision affirming the Final Approval Order and (ii) the Final  
16 Approval Order is no longer subject to further review.

17 O. "Employer's Withholding Share" means Defendant's share of any applicable  
18 federal, state, and local taxes and required withholdings, including without limitation, FICA,  
19 Medicare tax, FUTA, and state unemployment taxes.

20 P. "Final Approval Order" means the Order Granting Final Approval of Class  
21 Action Settlement and Judgment entered by the Court.

22 Q. "Final Fairness and Approval Hearing" means the hearing on Plaintiff's  
23 Motion for Final Approval of Class and PAGA Action Settlement at which the Court will be  
24 asked to give final approval to the settlement terms set forth herein and to enter judgment.

25 R. "Gross Settlement Amount" means the five hundred thousand dollars  
26 (\$500,000), which Defendant will pay under this Settlement.

27 S. "LWDA Payment" means 75% of the PAGA Amount. The LWDA Payment  
28 will be paid to the LWDA.

1 T. “Net Settlement Amount” means the amount remaining from the Gross  
2 Settlement Amount after payments of Court–approved Class Counsel’s Attorney’s Fees and  
3 Class Counsel’s Costs, Service and Release Awards to the Representative Plaintiff, Settlement  
4 Administration Costs, and the PAGA Amount. It is estimated that the Net Settlement Amount  
5 will be at least 252,333.33.

6 U. “Notice of Settlement” means the “Notice of Proposed Class Action Settlement  
7 and Final Approval Hearing,” the form of which is attached hereto as **Exhibit A**.

8 V. “Notice of Objection” means any written objection to this Settlement sent by a  
9 Settlement Class Member to the Settlement Administrator as specified herein and in the  
10 Notice of Settlement.

11 W. “PAGA Amount” means the \$30,000 portion of the Gross Settlement Amount  
12 that Parties allocated to settlement of Plaintiff’s PAGA claims.

13 X. “PAGA Employee” means a member of the Class who was employed by  
14 Defendant at any time during the PAGA Period.

15 Y. “PAGA Employee Portion” means \$7,500, which is 25% of the PAGA  
16 Amount.

17 Z. “PAGA Period” means the period from July 30, 2018 through preliminary  
18 approval of this settlement.

19 AA. “PAGA Released Claims” means any and all claims for civil penalties  
20 recoverable by Plaintiff, individually and as the representatives acting as proxy or agent of the  
21 LWDA, a State of California Executive Branch Agency, for violations that were alleged in,  
22 or arise out of the facts alleged in the Complaint and/or the July 30, 2019 letter submitted by  
23 Plaintiff to California’s Labor and Workforce and Development Agency with respect to failure  
24 to pay all wages; missed meal and rest breaks; failure to pay all wages timely; failure to  
25 provide accurate, itemized wage statements; and pay card violations, including claims under  
26 Labor Code sections 200, 201, 202, 203, 204, 212, 226, 226.3, 226.7, 510, 512, 558, 1194,  
27 1194.2, 1197, 1197.1, 1198, 2698-2699, and the applicable Wage Orders. The express purpose  
28 of this Agreement and the judgment to be entered by the Court following approval of this

1 settlement is to forever bar Plaintiff, the LWDA, and any other individual or entity acting on  
2 behalf of or purporting to act on behalf of the LWDA from asserting any of the PAGA  
3 Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent  
4 provided by law, including but not limited to under the holding of *Arias v. Superior Court*, 46  
5 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California, and any Aggrieved  
6 Employee to bring a PAGA claim on behalf of the LWDA is completely and forever  
7 foreclosed.

8 BB. "Parties" means the Representative Plaintiff on behalf of herself and all  
9 Settlement Class Members, and Defendant.

10 CC. "Preliminary Approval Date" is the date the Court grants preliminary approval  
11 of this Settlement pursuant to California Rule of Court 3.769(c).

12 DD. "Qualified Settlement Fund" or "QSF" means a federally insured bank account  
13 to be established by the Settlement Administrator into which all payments from Defendant  
14 related to this Settlement will be deposited, and from which all payments authorized by the  
15 Court will be made. The QSF will be established prior to Defendant's deposit of the Gross  
16 Settlement Amount.

17 EE. "Qualifying Pay Period" means the number of pay periods each PAGA  
18 Employee worked for Defendant during the PAGA Period.

19 FF. "Qualifying Workweek" means the number of weeks that each Class Member  
20 worked for Defendant during the Class Period.

21 GG. "Released Claims," as determined by the Court, means all causes of action and  
22 factual or legal theories that were alleged, or could have been alleged, in the Complaint or  
23 arise from facts alleged in the Complaint, including all claims under Labor Code sections 200,  
24 201, 202, 203, 204, 212, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198,  
25 2698-2699, the applicable Wage Orders, Business & Professions Code section 17200 *et. seq.*,  
26 all damages, penalties, interest, and other amounts recoverable under said claims, causes of  
27 action or legal theories of relief. The time period governing these Released Claims shall be  
28 the Class Period only. Provided, however, the Released Claims shall not include the PAGA

1 Released Claims, which are defined separately. Claims and damages that were not alleged in  
2 the Complaint (or any subsequent operative Complaint), and could not be alleged based on  
3 the fact and legal theories alleged, and do not arise from the facts alleged in the Complaint are  
4 specifically excluded from the release. Following Court approval of this Settlement, the  
5 PAGA Employees will no longer be “aggrieved employees” for purposes of PAGA as it  
6 relates to the Released Claims. In addition, the Parties, including the PAGA Employees and/or  
7 Class Members, further stipulate and agree that even if any PAGA Employee and/or Class  
8 Member is determined to be an “aggrieved employee” for purposes of PAGA as it relates to  
9 the Released Claims, said PAGA Employee and/or Class Member waives any potential right  
10 to any individual relief or penalty prescribed by PAGA relating to the Released Claims.

11 HH. “Released Parties” means Defendant and each of its past or present divisions,  
12 d/b/a’s, officers, directors, shareholders, employees, agents, principals, heirsrepresentatives,  
13 accountants, auditors, consultants, insurers and reinsurers, and its respective successors and  
14 predecessors in interest, subsidiaries, parent companies and attorneys, and/or any individual  
15 or entity which could be jointly liable with Defendant for the claims alleged.

16 II. “Representative Plaintiff” means Plaintiff Mireya Macias.

17 JJ. “Request for Exclusion” means a written and signed request by a Class  
18 Member to be excluded from the Settlement Class that is submitted in accordance with the  
19 procedure and deadline set forth herein, also known as an “opt-out request.” Any Class  
20 Member that is also a PAGA Employee is not entitled to opt out of, or request exclusion, from  
21 the PAGA portion of the Settlement.

22 KK. “Response Deadline” means the date that is thirty (30) calendar days after the  
23 mailing of the Notices of Settlement. Provided, for Notices of Settlement that are re-mailed  
24 to a different address, the Response Deadline will be the earlier of: (1) thirty (30) calendar  
25 days after re-mailing, and (2) ten (10) days before the initial date set by the Court for the Final  
26 Fairness and Approval Hearing.

27 LL. “Service and Release Award” means the payment to be made to the  
28 Representative Plaintiff for her service to the Class and for the broader general release she is



1 providing to Defendant, which is in addition to whatever payment Plaintiff otherwise would  
2 be entitled to receive as a Settlement Class Member. The Service and Release Award  
3 requested by the Representative Plaintiff will not exceed \$7,500.

4 MM. "Settlement" means the disposition of the Action and all related claims  
5 effectuated by this Agreement.

6 NN. "Settlement Administration Costs" means the fees and costs incurred or  
7 charged by the Settlement Administrator in connection with the execution of its duties under  
8 this Agreement including, but not limited to fees and costs associated with: (1) establishing  
9 and maintaining the QSF; (2) preparing, issuing and/or monitoring reports, filings, and notices  
10 (including the cost of printing, translating and mailing all notices and other documents to the  
11 Class Members) required to be prepared in the course of administering the Settlement; (3)  
12 computing the amount of the settlement payments, taxes, and any other payments to be made  
13 under this Agreement; (4) calculating and handling inquiries about the calculation of  
14 individual settlement payments; (5) establishing and operating a settlement payment center  
15 website, address, and phone number to receive Class Members' inquiries about the Settlement;  
16 (6) providing a due diligence declaration for submission to the Court prior to the final approval  
17 hearing; (7) printing and providing Settlement Class Members and the Plaintiff with W-2 and  
18 1099 forms as required under this Agreement and applicable law; (8) preparing, issuing, and  
19 filing any tax returns and information returns and any other filings required by any  
20 governmental taxing authority or other governmental agency; and (9) for such other tasks as  
21 the Parties mutually agree or the Court orders the Settlement Administrator to perform. The  
22 Settlement Administration Costs will not exceed \$39,000.00. Settlement Administration Costs  
23 will be paid out of the Gross Settlement Amount.

24 OO. "Settlement Administrator" refers to Phoenix Settlement Administrators.

25 PP. "Settlement Class" means all Class Members who have not submitted a timely,  
26 valid, and complete Request for Exclusion, and is inclusive of PAGA Employees.

27 QQ. "Settlement Class Member" is a person who is a member of the  
28 Settlement Class.

1 **III. BACKGROUND**

2 During the Class Period, Defendant operated a commercial frozen fruit processing  
3 facility, with facilities in Santa Maria and Oxnard, California. The Santa Maria processing  
4 facility ceased operating in April 2021, thus, there are two remaining locations in Oxnard.  
5 Plaintiff contends that during the Class Period, she and other non-exempt employees of  
6 Defendant were not paid for all of their work, were not provided with compliant meal and rest  
7 breaks, were not paid their wages timely, were not provided compliant wage statements, and  
8 were not provided wages in the form of a negotiable instrument (pay cards). Plaintiff also  
9 alleges a violation of California's Business and Professions Code section 17200 and seeks  
10 civil penalties under the Private Attorneys General Act of 2004.

11 The Parties have undertaken significant investigation and informal discovery during  
12 the prosecution of this Action. Such discovery and investigation includes extensively  
13 interviewing the Representative Plaintiff, Defendant's production and Plaintiff's counsel's  
14 review of personnel records, policies, as well as time and pay records for Class Members  
15 during the Class Period, and other detailed information relevant to the Class Members' claims.  
16 Counsel for the Parties have investigated the law as applied to the facts discovered regarding  
17 the alleged claims of the Class and potential defenses thereto, and the potential damages  
18 claimed by the Class.

19 The Class Period at issue in this matter is limited by a prior class settlement. In *De*  
20 *Jesus v. Frozsun, Inc.*, in which plaintiffs brought a class action on April 19, 2013, on behalf  
21 of all hourly non-exempt production employees of Frozsun—defendant Sunrise's previous  
22 dba. The claims alleged, and covered by the class release in that Action, included: (1) failure  
23 to pay regular wages; (2) failure to pay overtime wages; (3) failure to provide meal periods  
24 and rest breaks; (4) failure to pay wages due at termination of employment; (5) failure to  
25 provide accurate itemized wage statements; and (6) engaged in unfair business practices. The  
26 settlement class release period in that action was April 19, 2009, through May 14, 2018. All  
27 six claims overlap the current action, and directly cutoff the maximum class period for those  
28 claims.

1           The Parties' attorneys have engaged in extensive discussions about the strengths and  
2 weaknesses of the claims and defenses in the Action. On June 1, 2021, the Parties attended a  
3 full-day mediation before an experienced and well-regarded mediator, Eve Wagner, Esq. The  
4 Parties reached an agreement regarding the resolution of this Action, which is embodied in  
5 the terms of this Agreement.

6           Plaintiff and Class Counsel have concluded, after considering the sharply disputed  
7 factual and legal issues involved in this Action, the risks attending further prosecution, and  
8 the substantial benefits to be received pursuant to the compromise and settlement of the Action  
9 as set forth in this Agreement, that this Settlement is in the best interests of the Representative  
10 Plaintiff and the Settlement Class, and is fair and reasonable.

11           This Settlement contemplates: (i) entry of an order preliminarily approving the  
12 Settlement and approving certification of a provisional Class for settlement purposes only;  
13 (ii) dissemination of a notice to Class Members about the settlement; (iii) entry of a Final  
14 Approval Order granting final approval of the Settlement; and (iv) entry of the Final Approval  
15 Order.

#### 16 **IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

##### 17 **A) Preliminary Approval of Settlement.**

18           Following the execution of this Agreement by all Parties, or at such other time  
19 specified by the Court, Class Counsel will submit this Stipulation to the Court as part of  
20 Plaintiff's motion for preliminary approval of the settlement. Plaintiff's motion will include  
21 such briefing and evidence as may be required for the Court to determine that this Agreement  
22 is fair and reasonable, as required by California Code of Civil Procedure section 382 and  
23 California Rule of Court 3.769. Class Counsel will provide Defendant's counsel with the  
24 opportunity to review and comment on all drafts of all papers to be filed in connection with  
25 the motion for preliminary approval (notice of motion, memorandum of points and authorities,  
26 declarations, and settlement notice) before filing such motion with the Court. Plaintiff's  
27 motion for preliminary approval will also include a proposed order that is mutually agreed-  
28 upon by the Parties. Defendant shall not oppose Plaintiff's motion for preliminary approval

1 of the settlement to the extent it is consistent with the terms and conditions of this Agreement.  
2 Defendant may, however, provide a written response to any characterization of the law or  
3 facts contained in the motion for preliminary approval.

4         The Parties have agreed to the certification of the Class for the sole purposes of  
5 effectuating this Settlement. Should the Settlement be terminated for any reason, or should  
6 the Settlement not be approved by the Court or the judgment not become final, the fact the  
7 Parties were willing to stipulate to class certification as part of the Settlement will have no  
8 bearing on, and will not be admissible in connection with, the issue of whether a class should  
9 be certified in a non-settlement context in this Action, and in any of those events, Defendant  
10 expressly reserves the right to oppose class certification. Additionally, if the Settlement does  
11 not become final, this Agreement and all negotiations, court orders, and proceedings related  
12 thereto shall be without prejudice to the rights of all Parties hereto, and evidence relating to  
13 the Agreement and all negotiations shall not be admissible in the Action or otherwise. The  
14 Parties further agree that if, for any reason, the Settlement is not approved, the certification  
15 for purposes of this Settlement will have no force or effect and will be immediately revoked.

16             **B) Cooperation.**

17         The Parties agree to fully cooperate with each other to accomplish and implement the  
18 terms of this Agreement, including but not limited to, execution of such documents and to  
19 take such other reasonably necessary actions to fulfill and/or implement the terms of this  
20 Agreement. The Parties shall use their best efforts, including all efforts contemplated by this  
21 Agreement and any other efforts that may become necessary by Court order or otherwise, to  
22 effectuate this Agreement and the terms set forth herein. As soon as practicable after execution  
23 of this Agreement, Class Counsel, with the cooperation of Defendant and Defense Counsel,  
24 shall take all necessary and reasonable steps to secure the Court's final approval of this  
25 Settlement Agreement. No party, nor any of its attorneys or agents, shall solicit or encourage  
26 any Class Member to opt-out of or object to the Settlement.

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1           **C)     Notice of Settlement.**

2           Within twenty-one (21) calendar days following the Court’s order granting  
3 preliminary approval of the Settlement, Defendant will provide the Settlement Administrator  
4 with the Class Data in an electronic format acceptable to the Settlement Administrator. This  
5 information will remain confidential and will not be disclosed to anyone, except as required  
6 to applicable taxing authorities, pursuant to Defendant’s express written authorization, by  
7 order of the Court, or as otherwise provided for in this Agreement.

8           Using the Class Data, the Settlement Administrator will: (1) confirm the number of  
9 Class Members and Qualifying Workweeks, (2) finalize and print the Notice of Settlement;  
10 (3) check all addresses against the National Change of Address database; and (4) within fifteen  
11 (15) calendar days of receiving the Class Data, send to each Class Member via First-Class  
12 United States mail the Notice of Settlement, with the information in English and Spanish, to  
13 the most recent address known for each Class Member.

14           **D)     Re-Sending Class Notices.**

15           For any Notice of Settlement that is returned as undeliverable, the Settlement  
16 Administrator will perform a utility database search or other skip trace. The returned Notices  
17 of Settlement will be re-mailed to the new addresses obtained for such Class Members. Such  
18 searching and re-mailing will be completed within ten (10) calendar days of the date that  
19 Notices of Settlement were originally returned as undeliverable.

20           **E)     Requests for Exclusion (Opt-Outs).**

21           Any Class Member who wishes to be excluded from the Settlement must notify the  
22 Settlement Administrator in writing of his or her desire to be excluded by mailing his or her  
23 own Request for Exclusion to the Settlement Administrator that clearly expresses such desire,  
24 acknowledges they will not receive any money from the settlement, and is signed by such Class  
25 Member. Any such Request for Exclusion shall include the Class Member’s name (and former  
26 names, if any during her/his employment), current address, telephone number, and last four  
27 numbers of the Class Member’s social security number.

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1 To be valid, the Request for Exclusion must be postmarked by no later than the  
2 Response Deadline.

3 Any Class Member who submits a valid and timely Request for Exclusion shall be  
4 barred from participating in this Settlement, shall be barred from objecting to this Settlement,  
5 and shall receive no benefit from the Class Settlement. However, notwithstanding a valid  
6 Request for Exclusion from the Class Settlement, all PAGA Employees shall receive their  
7 share of the PAGA Employee Portion and will be deemed to have released the PAGA  
8 Released Claims.

9 Any Class Member who fails to submit a timely, complete, and valid Request for  
10 Exclusion shall be barred from opting-out of the Settlement. It shall be conclusively presumed  
11 that, if a Request for Exclusion is not postmarked on or before the Response Deadline, the  
12 Class Member did not make the request in a timely manner. Under no circumstances shall the  
13 Settlement Administrator have the authority to extend the deadline for Class Members to  
14 submit a Request for Exclusion.

15 Unless a Class Member submits a timely, complete, and valid Request for Exclusion,  
16 he or she shall be deemed a Settlement Class Member and shall be bound by the terms and  
17 conditions of this Agreement. The releases provided for in this Agreement shall conclusively  
18 preclude any Settlement Class Member from asserting any of the Released Claims against any  
19 of the Released Parties in any judicial, administrative, or arbitral forum.

20 The Settlement Administrator shall promptly provide Class Counsel and Defendant's  
21 Counsel with copies of all Requests for Exclusion that it receives.

22 **F) Declaration of Compliance.**

23 At the time determined by Class Counsel, the Settlement Administrator shall provide  
24 Class Counsel and Defendant's Counsel with a declaration attesting to completion of the  
25 notice process set forth in this Section IV, including the number of notices sent and returned,  
26 an explanation of efforts to resend undeliverable notices, and copies of all Requests for  
27 Exclusion, which declaration shall be filed with the Court by Class Counsel along with their  
28 papers requesting final approval of the Settlement.

1           **G)     Sufficient Notice.**

2           Compliance with the procedures described in this Section IV shall constitute due and  
3 sufficient notice to Class Members of this Settlement and of the Final Fairness and Approval  
4 Hearing, shall satisfy the requirements of due process, and nothing else shall be required of  
5 the Representative Plaintiff, Class Counsel, Defendant, Defendant's Counsel, or the  
6 Settlement Administrator to provide notice of the Settlement and the Final Fairness and  
7 Approval Hearing.

8           **H)     Objections to Settlement.**

9                   1. Procedure and Deadline for Objections.

10           In order for any Class Member to object to the Settlement, he or she must send to the  
11 Settlement Administrator, postmarked no later than the Response Deadline, a Notice of  
12 Objection, signed by the objecting Class Member, or his or her attorney, along with all  
13 supporting papers (if any). The date the signed Notice of Objection was postmarked shall be  
14 conclusively determined according to the records of the Settlement Administrator. The  
15 Settlement Administrator shall send any Notices of Objections it receives to Defendant's  
16 counsel and Class Counsel within three (3) business days of receipt. The Court retains final  
17 authority with respect to the consideration and admissibility of any Notice of Objection.

18           If a Class Member submits both an objection and opt-out request, the Settlement  
19 Administrator shall make reasonable attempts to clarify the intentions of the Class Member.  
20 If the Class Member fails to clarify their position, the opt-out request shall be disregarded,  
21 the Settlement Administrator shall send the objection to Defendant's Counsel and Class  
22 Counsel, the claim will be paid, and the Class Member will become a Settlement Class  
23 Member and be bound by the judgment. A Class Member who does not submit a valid and  
24 timely Request for Exclusion and who objects to the Settlement will still be considered a  
25 Settlement Class Member.

26                   2. Responses to Objections.

27           Class Counsel and Defendant's counsel shall file any written objections from Class  
28 Members submitted to the Settlement Administrator, and Class Counsel's and Defendant's

1 Counsel's responses to such objections, at least five (5) court days before the Final Fairness  
2 and Approval Hearing.

3 **I) Pro-Rata Increase in Settlement Fund.**

4 If, as reflected in the Class Data delivered to the Settlement Administrator, the total  
5 number of Class Member Qualifying Workweeks though June 1, 2021 exceeds 65,000, the  
6 Gross Settlement Amount will increase *pro rata* for each workweek over 65,000—meaning  
7 if there is a 1% increase above 65,000, Defendant would be required to pay an additional 1%  
8 (“Escalator Payment”).

9 **J) Final Fairness and Approval Hearing.**

10 On or before the date set by the Court, Class Counsel will file a motion for final  
11 approval of this Settlement pursuant to California Rule of Court 3.769. Class Counsel will  
12 provide Defendant's counsel with the opportunity to review and comment on drafts of all  
13 papers to be filed in connection with the motion for final approval (notice of motion,  
14 memorandum of points and authorities, and declarations) before filing such motion with the  
15 Court. Plaintiff's motion for final approval will also include a proposed order that is mutually  
16 agreed-upon by the Parties. Defendant shall not oppose Class Counsel's motion for final  
17 approval of the settlement to the extent it is consistent with the terms and conditions of this  
18 Agreement. Defendant may, however, provide a written response to any characterization of  
19 the law or facts contained in the motion for final approval.

20 On the date set by the Court, the Final Fairness and Approval Hearing shall be held  
21 before the Court in order to: (1) determine whether the Court should give this Settlement final  
22 approval; (2) determine whether Class Counsel's application for attorneys' fees and costs, and  
23 request for the Service and Release Award to the Representative Plaintiff, should be granted;  
24 (3) determine whether the Court should approve the payment of fees to the Settlement  
25 Administrator and the PAGA Settlement Amount; and (4) consider any timely Objections to  
26 Settlement, including Class Counsel's and Defendant's counsel's responses thereto. Upon  
27 final approval, the Court shall enter a Final Approval Order (in a form submitted by Class  
28 Counsel and approved by Defendant's counsel) which has the effect of adjudicating all claims



1 set forth in the Complaint and implementing the release of Released Claims and PAGA  
2 Released Claims, as set forth in this Agreement. The Final Approval Order will be posted on  
3 the Settlement Administrator’s website. The posting of the Final Approval Order on the  
4 Settlement Administrator’s website will constitute notice of entry of the judgment, as required  
5 by California Rule of Court 3.771(b).

6 **K) Settlement Payments to Settlement Class Members.**

7 1. Calculation of Settlement Payments.

8 The Net Settlement Amount shall be divided among and distributed to individual  
9 Settlement Class Members using the following formula:

$$\begin{aligned} & \text{(Individual Settlement Class Member’s Qualifying Workweeks} \\ & \div \text{All Settlement Class Members’ Qualifying Workweeks)} \\ & \times \text{Net Settlement Amount} \end{aligned}$$

13 The Settlement Administrator shall have the authority and obligation to make  
14 payments, credits, and disbursements, including payments and credits in the manner set forth  
15 herein, to Settlement Class Members calculated in accordance with the methodology set out  
16 in this Agreement and orders of the Court.

17 The Parties acknowledge and agree the formula used to calculate individual settlement  
18 payments does not imply that all the elements of damages alleged in the Action are not being  
19 considered. The above formula was devised as a practical and logistical tool to simplify the  
20 settlement process.

21 2. Inclusion of Qualifying Workweeks and Estimated Settlement Payment  
22 Information in Notice of Settlement.

23 The Notice of Settlement sent to each Class Member shall state the amount of the Class  
24 Member’s Qualifying Workweeks during the Class Period, and Qualifying Pay Period during  
25 the PAGA Period, as reflected in the Class Data. The Notice of Settlement shall provide an  
26 estimate of (a) each Class Member’s number of Qualifying Workweeks during the Class  
27 Period; (b) each PAGA Employee’s share of the PAGA Employee Portion; (c) each Class  
28 Member’s estimated settlement payment as a member of the Settlement Class; and (d) each

1 PAGA Employee's estimated settlement payment, as calculated by the Settlement  
2 Administrator.

3 The estimated settlement payment included in the Notice of Settlement will be  
4 calculated by assuming that no Class Members will be excluded from the Settlement.

5 3. Eligibility.

6 Settlement Class Members (but not Class Members who exclude themselves of the  
7 Settlement), will receive a settlement payment from the Net Settlement Fund, distributed  
8 through the Settlement Administrator. All PAGA Employees will still receive a check for their  
9 share of the PAGA Employee Portion, regardless of whether they submit a valid Request for  
10 Exclusion.

11 4. Disputes about Qualifying Workweeks.

12 If a Class Member disagrees with the number of Qualifying Workweeks, as stated in  
13 his or her Notice of Settlement, he or she may dispute that figure by informing the Settlement  
14 Administrator of the number of Qualifying Workweeks and/or Pay Periods he or she claims  
15 to have worked during the Class Period and/or PAGA Period, and provide any supporting  
16 documentation (such as, without limitation, payroll or time keeping records, and paycheck  
17 stubs) on or before the Response Deadline. If there is a dispute, the Settlement Administrator  
18 will consult with Class Counsel and Defendant's counsel to determine whether an adjustment  
19 is warranted. However, Defendant's records shall be presumed to be accurate. The Settlement  
20 Administrator shall determine any such disputes, subject to Court approval. The Settlement  
21 Administrator shall be obligated to resolve any disputes regarding the number of Qualifying  
22 Workweeks submitted by a Class Member within ten (10) calendar days, but by no later than  
23 the date of the Final Approval Hearing. If a dispute arises after settlement checks have been  
24 distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay  
25 any amounts in excess of the Settlement Amount under this Agreement).

26 5. Allocation of Settlement Payments.

27 Payment to each Settlement Class Member shall be allocated as follows: twenty  
28 percent (20%) shall be attributed to wages, to be reported on a W-2 form; and eighty percent

1 (80%) shall be reported as penalties and interest. The amount of penalties and interest will be  
2 reported on an IRS Form 1099. Shares of the PAGA Employee Portion shall be exclusively  
3 1099 income.

4           6. Payment of Payroll Taxes.

5           The amount paid to each Settlement Class Member attributable to wages shall be  
6 subject to all applicable taxes and other withholdings, and shall be net of the Settlement Class  
7 Member's share of all federal, state, and local taxes and required withholdings, including  
8 without limitation, FICA, Medicare tax, FUTA, and state unemployment taxes. The  
9 Employer's Withholding Share shall be paid by Defendant separately and in addition to  
10 Defendant's payment of the Gross Settlement Amount.

11           For each Settlement Class Member, the Settlement Administrator shall determine the  
12 Employer's Withholding Share. Information related to the Employer's Withholding Share for  
13 each Settlement Class Member shall be provided to Defendant by the Settlement  
14 Administrator. If Defendant disagrees with the Settlement Administrator's determination of  
15 the Employer's Withholding Share, it will communicate with and share information  
16 reasonably necessary to reach a good faith determination of the correct Employer's  
17 Withholding Share.

18           7. Payments to Settlement Class Members.

19           Within twenty-one (21) calendar days of Defendant's deposit of the Gross Settlement  
20 Amount with the Settlement Administrator, the Settlement Administrator will make the  
21 settlement payments to Settlement Class Members and PAGA Employees based on the  
22 payment formula set forth herein.

23           8. Distribution of PAGA Employee Portion.

24           The PAGA Employee Portion will be divided among and distributed to all PAGA  
25 Employees based upon the number of pay periods they worked during the PAGA Period  
26 pursuant to the following formula:  
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**(Individual PAGA Employee’s Qualifying Pay Periods  
during PAGA Period ÷ All PAGA Employees’ Qualifying Pay  
Periods during PAGA Period) x \$7,500**

Settlement Class Members who are also PAGA Employees will receive their shares of the PAGA Employee Portion included in the same checks that include their individual Settlement Class Member payments. Class Members who exclude themselves from the Class Settlement will still receive their shares of the PAGA Employee Portion and such Class Members will still be bound by the PAGA Release, notwithstanding their exclusion from the Settlement Class.

**L) The Settlement Administrator.**

The Settlement Administrator will perform the duties specified in this Agreement and any other duties incidental to such obligations. The Settlement Administrator’s duties shall include, without limitation: establishing the QSF, preparing, translating and distributing the Notice of Settlement; calculating and directing the disbursement of payments to Settlement Class Members, Class Counsel, the Class Representative and the LWDA; calculating and timely paying any and all payroll taxes from the wages portion of the Net Settlement Amount to the appropriate tax authorities, as required under this Agreement and applicable law; handling inquiries about the calculation of individual settlement payments; preparing and filing any tax returns and information returns and any other filings required by any governmental taxing authority or other governmental agency; providing weekly status reports to the Parties’ counsel; advising Defendant’s counsel and Class Counsel of any Class Members who submit Notices of Objections and/or Requests for Exclusion; providing a due diligence declaration for submission to the Court prior to the final approval hearing; printing and providing Settlement Class Members and Representative Plaintiff with W-2 and 1099 forms as required under this Agreement and applicable law; arranging for and remitting funds from any uncashed settlement payment to the designated recipient, as determined by the Court; and for such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

1 The Settlement Administrator shall establish a settlement payment center address,  
2 telephone number, and email address to receive Class Members' inquiries about the Notice of  
3 Settlement, requests to be excluded from the Settlement, and settlement payments.

4 In addition, the Settlement Administrator shall establish a static website and, on the  
5 website, post this Agreement, any preliminary approval order, and the Final Approval Order  
6 and Judgment. Posting of the Final Approval Order and Judgment on such website shall  
7 constitute notice of judgment to the Settlement Class, as required by California Rule of Court  
8 3.771(b).

9 The Parties confirm, and Class Counsel and Defendant's Counsel confirm that they do  
10 not have any financial interest in the Settlement Administrator or otherwise have a relationship  
11 with the Settlement Administrator that could create a conflict of interest.

12 **M) Time for Payment by Defendant.**

13 Defendant shall deliver the Gross Settlement Amount and Employer's Withholding  
14 Share to the third party administrator within thirty (30) calendar days after the Effective Date.

15 **N) Payments to Class Counsel, Representative Plaintiff, LWDA, and**  
16 **Settlement Administrator.**

17 Subject to Court approval, within fifteen (15) calendar days of Defendant's deposit of  
18 the Gross Settlement Amount with the Settlement Administrator, the Settlement  
19 Administrator shall make payment from the QSF to: (1) the Representative Plaintiff for the  
20 Service and Release Awards approved by the Court; (2) to the LWDA for the LWDA Amount,  
21 as approved by the Court; and (3) to the Settlement Administrator for the Settlement  
22 Administration Costs, as approved by the Court. These payments will each be reported on an  
23 IRS Form 1099.

24 **O) Un-cashed/Un-deposited Settlement Payment Checks.**

25 If any Settlement Class Member's settlement payment check has not been cashed or  
26 deposited within ninety (90) calendar days after disbursement, the Settlement Administrator  
27 shall attempt to contact each individual to advise them to cash their checks, and to offer to  
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1 replace any checks reported as either lost or stolen. In attempting to contact such persons, the  
2 Settlement Administrator will send notices: (1) by mail to the individuals' last known  
3 addresses (as provided by Defendant) after first checking those addresses against the NCOA  
4 database and skip tracing; and/or (2) by telephoning or emailing such persons, in the event  
5 that Defendant provides telephone numbers and/or email addresses for such persons.

6 If a Class Member's check is not cashed within 180 calendar days, the check will be  
7 void and a stop payment order may be placed on the check. In such event, the Settlement  
8 nevertheless will be binding upon the Settlement Class Member. The funds represented by all  
9 uncashed settlement checks will be transmitted by the Settlement Administrator to the  
10 California State Controller's Unclaimed Property Fund in the name of the individual  
11 Settlement Class Member. However, if the Court disapproves of the forgoing and instead  
12 determines that pursuant to Code of Civil Procedure section 384, funds from uncashed  
13 settlement checks must be distributed to a qualifying *cy pres*, the Parties agree that the *cy pres*  
14 recipient shall be Ventura County Legal Aid, Inc.

15 **P) Class Counsel Attorneys' Fees and Costs.**

16 Defendant will not oppose Class Counsel's application for an award of attorneys' fees  
17 of up to \$166,666.67, which is one-third of the Gross Settlement Amount.

18 Defendant will not oppose Class Counsel's application for an award of their reasonable  
19 litigation expenses and costs in an amount not to exceed \$12,000.

20 Class Counsel's Attorney's Fees and Class Counsel's Costs, as awarded by the Court,  
21 shall be paid from the Gross Settlement Amount. Payment of Class Counsel's Attorney's  
22 Fees shall be made within five (5) calendar days of Defendant's deposit of the Gross  
23 Settlement Amount with the Settlement Administrator.

24 To the extent the Court does not approve any or the entire amount of Class Counsel's  
25 Attorney's Fees and/or Class Counsel's Costs, it shall not affect the terms of the Parties'  
26 settlement; and any such unapproved amounts shall remain part of the Gross Settlement  
27 Amount and shall be distributed in accordance with the provisions of this Stipulation.  
28 Approval of the Settlement by the Court shall not be contingent on approval of the amounts

1 of Class Counsel’s Attorney’s Fees and/or Class Counsel’s Costs requested by Class Counsel,  
2 and any modification by the Court of Class Counsel’s Attorney’s Fees and/or Class Counsel’s  
3 Costs shall not be grounds to appeal the final approval of this settlement.

4 **Q) Service and Release Award to Representative Plaintiff.**

5 The Representative Plaintiff’s Service and Release Awards as approved by the Court,  
6 shall be paid from the Gross Settlement Amount.

7 The Representative Plaintiff shall be responsible for all portions of federal, state, and  
8 local tax liabilities that may result from the payment of the Service and Release Award and  
9 agrees that Defendant shall bear no responsibility for any such tax liabilities.

10 To the extent the Court does not approve any or all of the amount of the Service and  
11 Release Award sought by the Representative Plaintiff, any amounts not awarded by the Court  
12 will remain part of the Gross Settlement Amount and will be distributed in accordance with  
13 the terms of this Stipulation and the Parties agree that the Settlement shall remain binding  
14 with such modification(s) and its terms will otherwise be unchanged. Any modification by the  
15 Court of the Service and Release Award sought by the Representative Plaintiff shall not be  
16 grounds to appeal the final approval of this settlement.

17 **R) Taxes.**

18 1. Withholding and Reporting Requirements.

19 The Settlement Administrator shall be responsible for ensuring that all taxes required  
20 to be withheld from the wage portions of each Settlement Class Member’s individual  
21 settlement payment, along with the Employer’s Withholding Share, are timely paid to the  
22 appropriate tax authorities. The Settlement Administrator’s responsibilities in this regard will  
23 also include the following: (a) filing all Federal, state, and local employment tax returns, tax  
24 withholding returns, and any other tax returns associated with the taxes, (b) timely and proper  
25 filing of all required Federal, state, and local information returns (e.g., 1099s, W-2s, etc.) with  
26 the appropriate taxing authorities, and (c) completion of any other steps necessary for  
27 compliance with any tax obligations of the settlement fund under Federal, state and/or local  
28 law. To verify the Settlement Administrator’s compliance with the foregoing withholding and

1 reporting requirements, as soon as administratively practicable, the Settlement Administrator  
2 shall provide a signed declaration stating it filed all applicable tax returns and information  
3 returns (including all 1099 and W-2 information returns), and include a final accounting  
4 adequate to demonstrate full compliance with all tax withholding, payment and reporting  
5 obligations.

6                   2. Circular 230 Disclaimer.

7           Each party to this Agreement (for purposes of this section, the “Acknowledging  
8 Party”; and each party to this Agreement other than the Acknowledging Party, and “Other  
9 Party”) acknowledges and agrees that:

- 10           a. No provision of this Agreement, and no written communication or disclosure  
11           between or among the Parties or their attorneys and other advisers, is or was  
12           intended to be, nor shall any such communication or disclosure constitute or be  
13           construed or be relied upon as, tax advice within the meaning of United States  
14           Treasury Department Circular 230 (31 CFR Part 10, as amended);
- 15           b. The Acknowledging Party (1) has relied exclusively upon his, her, or its own,  
16           independent legal and tax advisers for advice (including tax advice) in  
17           connection with this Agreement; (2) has not entered into this Agreement based  
18           upon the recommendation of any other party or any attorney or advisor to any  
19           other party; and (3) is not entitled to rely upon any communication or  
20           disclosure by any attorney or adviser to any other party to avoid any tax penalty  
21           that may be imposed on the Acknowledging Party; and
- 22           c. No attorney or adviser to any other party has imposed any limitation that  
23           protects the confidentiality of any such attorney’s or adviser’s tax strategies  
24           (regardless of whether such limitation is legally binding) upon disclosure by  
25           the Acknowledging Party of the tax treatment or tax structure of any  
26           transaction, including any transaction contemplated by this Agreement.

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**V. RELEASE**

**A) Settlement Class Member Release.**

It is the desire of the Representative Plaintiff, Settlement Class Members (except those who exclude themselves from the Settlement), and Defendant to fully, finally, and forever settle, compromise, and discharge the Released Claims. Upon entry of the Final Approval Order and Defendant’s payment of the Gross Settlement Amount and Employer’s Withholding Share, and except as to such rights or claims as may be created by this Settlement Agreement, the Settlement Class Members, on behalf of themselves, and each of their heirs, representatives, successors, assigns, agents, dependents, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, attorneys, and successors-in-interest—whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity—shall be deemed to have, and by operation of the final judgment shall have, fully released and discharged the Released Parties from any and all Released Claims that accrued during the Class Period.

**B) PAGA Employee Release.**

Regardless of whether they submitted a valid Request for Exclusion, all PAGA Employees shall fully, finally, and forever settle, compromise, and discharge the PAGA Released Claims. Upon entry of the Final Approval Order and Defendant’s payment of the Gross Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, all PAGA Employees, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the final judgment shall have, fully released and discharged the Released Parties from any and all PAGA Released Claims.

**VI. RELEASES & COVENANANTS BY THE REPRESENTATIVE PLAINTIFF**

Upon entry of the Final Approval Order and Defendant’s payment of the Gross Settlement Amount and Employer’s Withholding Share, and except as to such rights or claims as may be created by this Settlement Agreement, the Representative Plaintiff fully release and forever discharge Defendant and the Released Parties, from any and all claims, causes of

1 action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations,  
2 attorney’s fees, costs, and any other form of relief or remedy in law, equity, or whatever kind  
3 or nature, whether known or unknown, suspected or unsuspected, exclusive only of any  
4 workers compensation claims or any other claims which cannot be released as a matter of law,  
5 including but not limited to (1) all Released Claims and PAGA Released Claims, (2) the  
6 Action and any claims arising out of or related to the Action, (3) any claims under federal,  
7 state or local law for or relating to wages, benefits, compensation, vacation or other paid time  
8 off, and claims for liquidated damages, penalties, or costs and fees associated therewith, (4)  
9 wrongful termination, discrimination, harassment, and/or retaliation, (5) any act, omission, or  
10 occurrence or claim arising out of or related to the Action or Plaintiff’s employment or  
11 termination thereof with Defendant taking place on or before the Effective Date of the  
12 Settlement, and (6) and any other form of relief or remedy of any kind, nature, or description  
13 whatsoever, whether premised on statute, contract, tort, or other theory of liability under state,  
14 federal, or local law.

15 The Representative Plaintiff hereby agrees that, notwithstanding section 1542 of the  
16 California Civil Code (“Section 1542”), all claims that the Representative Plaintiff may have,  
17 known or unknown, suspected or unsuspected, are hereby released as of the Effective Date.  
18 Section 1542 provides:

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

24 The Representative Plaintiff expressly waives the provisions of Section 1542 with full  
25 knowledge and with the specific intent to release all known or unknown, suspected or  
26 unsuspected, claims arising on or before the Effective Date of the Settlement, and therefore  
27 specifically waives the provisions of any statute, rule, decision, or other source of law of the  
28 United States or of any state of the United States or any subdivision of a state which prevents  
release of unknown claims.

1 **VII. MISCELLANEOUS PROVISIONS**

2 **A) No Admission of Liability or Wrongdoing.**

3 Defendant has denied, and continues to deny, all of the allegations, claims, and  
4 contentions alleged by Plaintiff in this Action. Defendant has expressly denied, and continues  
5 to deny, all charges of wrongdoing or liability against it arising out of any of the conduct,  
6 statements, acts, or omissions alleged in the Action. Defendant contends that it complied with  
7 California and federal wage and hour laws, and has dealt legally and fairly with Plaintiff and  
8 Class Members. Defendant further denies that, for any purpose other than settling this Action,  
9 these claims are appropriate for class or representative treatment. Nevertheless, Defendant has  
10 concluded that further proceedings in the Action would be protracted and expensive, and that  
11 it is desirable that the Action be fully and finally settled in the manner and upon the terms and  
12 conditions set forth in this Agreement in order to dispose of burdensome and protracted  
13 litigation, to permit the operation of Defendant's business without further expensive litigation  
14 and the distraction and diversion of its personnel with respect to matters at issue in the Action,  
15 and for Parties to buy their respective peace. Defendant has also taken into account the  
16 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.  
17 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be  
18 settled in the manner and upon the terms and conditions set forth in this Agreement.

19 **B) Acknowledgment the Settlement is Fair and Reasonable.**

20 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the  
21 Action, and have arrived at this Settlement after arm's-length negotiations by experienced  
22 counsel with the assistance of an experience mediator. The Parties further acknowledge they  
23 are each represented by competent counsel and they have had an opportunity to consult with  
24 their counsel regarding the fairness and reasonableness of this Settlement.

25 **C) Amendments.**

26 This Settlement Agreement may only be modified or changed by a writing signed by  
27 the Parties, and any modification(s) or change(s) shall be approved by the Court if the  
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1 modification(s) or change(s) were made after the Court approved this Agreement. This  
2 Agreement, including any subsequent modification(s) or change(s) hereto, may not be  
3 discharged except by performance in accordance with its terms or by a writing signed by  
4 the Parties.

5 **D) Integrated Agreement.**

6 After this Agreement is signed and delivered by all Parties to the Action and their  
7 counsel, this Agreement and Exhibits will constitute the entire agreement between the Parties  
8 to the Action relating to the Settlement, and it will then be deemed that no oral representations,  
9 warranties, covenants, or inducements have been made to any Party concerning this  
10 Agreement and Exhibits other than the representations, warranties, covenants, and  
11 inducements expressly stated in this Agreement and Exhibits. No rights under this Agreement  
12 and Exhibits may be waived except in writing as provided above.

13 **E) No Inducements.**

14 The Parties acknowledge they are entering into this Agreement as a free and voluntary  
15 act without duress or undue pressure or influence of any kind or nature whatsoever, and that  
16 neither Plaintiff nor Defendant have relied on any promises, representations, or warranties  
17 regarding the subject matter hereof other than as set forth in this Agreement.

18 **F) No Prior Assignment.**

19 The Parties hereto represent, covenant, and warrant that they have not directly or  
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
21 any person or entity any portion of any liability, claim, demand, action, cause of action, or  
22 rights herein released and discharged except as set forth herein.

23 **G) No Retaliation or Advice.**

24 Defendant agrees not to retaliate against any Class Member, and Defendant will not  
25 induce or offer any advice to any current or former employee to opt-out of, or object to,  
26 the Settlement.  
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1           **H) Attorney’s Fees.**

2           Except as otherwise specifically provided for herein, each party shall bear her or its  
3 own attorney fees, costs and expenses, taxable or otherwise, incurred by them in or arising out  
4 of the Action, and shall not seek reimbursement thereof from any other party to  
5 this Agreement.

6           **I) Action to Enforce Agreement.**

7           In any suit or court action to enforce the terms of this Agreement, the prevailing party  
8 shall be entitled to recover from the other their attorneys’ fees and costs, including expert  
9 witness fees

10          **J) Applicable Law.**

11          This Agreement shall be construed under and governed by the laws of the State of  
12 California. This Settlement shall be deemed to have been entered into in the County of  
13 Ventura, California, and all questions of validity, interpretation or performance of any of its  
14 terms or of any rights or obligations of the Parties to this Settlement shall be governed by  
15 California law. If any legal or equitable action is necessary to enforce the terms of this  
16 Settlement, it shall be brought in the State of California, County of Ventura.

17          **K) Entry of Judgment Pursuant to Terms of Settlement.**

18          The Parties agree that upon the Settlement of this case, the Court may enter judgment  
19 pursuant to the terms of this Settlement and specifying the Gross Settlement Amount. The  
20 Court will retain jurisdiction over the Parties to enforce the Settlement until performance in  
21 full of the terms of the Settlement.

22          **L) Notices.**

23          All notices, requests, demands, and other communications required or permitted to be  
24 given pursuant to this Agreement shall be in writing, and shall be delivered personally, by  
25 first class mail, or by electronic mail (“email”) to Class Counsel or Defendant’s Counsel at  
26 their respective addresses as set forth at the beginning of this Agreement or at any new address  
27 as to which counsel have advised the Court and the other Parties.

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1           **M)     Binding on Successors.**

2           This Agreement shall be binding and shall inure to the benefit of the Parties to the  
3 Action and their respective present and former heirs, trustees, executors, administrators,  
4 representatives, owners, co-owners, officers, directors, managers, members, co-employers,  
5 payroll providers, shareholders, agents, employees, insurers, reinsurers, attorneys,  
6 accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries,  
7 parent companies, subsidiaries, affiliates, related companies, joint venturers, predecessors,  
8 successors, and assigns.

9           **N)     Execution in Counterparts.**

10          This Agreement, and any amendments hereto, may be executed by handwritten or  
11 electronic signature and in any number of counterparts, each of which when executed and  
12 delivered shall be deemed to be an original, and all of which taken together shall constitute  
13 the same instrument.

14          **O)     Warranties and Representations.**

15          With respect to themselves, each of the Parties to this Action and or their agent or  
16 counsel represents, covenants, and warrants that they have full power and authority to enter  
17 into and consummate all transactions contemplated by this Stipulation and have duly  
18 authorized the execution, delivery, and performance of this Stipulation.

19          **P)     Representation by Counsel.**

20          The Parties to this Action acknowledge they have been represented by counsel  
21 throughout all negotiations preceding the execution of this Agreement, and that this  
22 Agreement has been executed with the consent and advice of counsel.

23          **Q)     Signatories.**

24          It is agreed that because the Class Members are so numerous, it is impossible or  
25 impractical to have each Class Member execute this Agreement. The Notice of Settlement  
26 will advise all Class Members of the binding nature of the release, and the release shall have  
27 the same force and effect as if this Agreement was executed by each member of the Settlement  
28 Class.

1           **R)    Non–Evidentiary Use.**

2           Neither this Agreement nor any of its terms, nor any statements or conduct in  
3 the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any  
4 Class Member (including any individual who requested to be excluded from the  
5 Class), Defendant, or its, her, his, or their respective counsel, in the Action, except as is  
6 reasonably necessary to effectuate this Agreement’s purpose and terms. This Agreement may  
7 be used by Defendant and the Released Parties to prove or defend against any claim released  
8 herein by any Class Member in any judicial, quasi–judicial, administrative, or governmental  
9 proceeding.

10           **S)    Captions and Interpretations.**

11           Section, subsection, and paragraph titles or captions contained herein are inserted as a  
12 matter of convenience and for reference only and in no way define, limit, extend, or describe  
13 the scope of this Agreement or any provision thereof.

14           **T)    Media or Press.**

15           Plaintiff and Defendant, and their respective counsel, recognize and accept that the  
16 Parties to this Agreement desire that the terms of this Agreement, the fact of the Class and  
17 Representative Settlement embodied in this Agreement, the disposition of the Action, the  
18 Action, and all matters relating to the litigation of the Action, including discovery proceedings  
19 therein, and evidence obtained during the course of the Action, shall not be discussed with or  
20 presented to the media or press.

21           **U)    Terminating this Agreement.**

22           The Parties intend this Agreement to be binding and enforceable pursuant to Code of  
23 Civil Procedure section 664.6. Pending Court approval, and other than as provided in  
24 section VII.V herein, if either Party seeks to, and successfully terminates this Agreement  
25 because any of the material conditions set forth in this Agreement are not met and satisfied,  
26 this Agreement shall, at the option of the non–breaching party, terminate and shall be  
27 ineffective, void, and of no further force and effect, and shall not be used or be admissible in  
28 any subsequent proceeding, either in this Court or in any other court or forum. Further, any

1 conditional class certification shall be considered void, and neither this Agreement,  
2 conditional class certification, nor any of the related negotiations or proceedings, shall be of  
3 any force or effect, and the Parties shall stand in the same position, without prejudice, as if  
4 this Agreement had been neither been entered into nor filed with the Court. The Party that  
5 terminates the Agreement shall be responsible for all Settlement Administrator fees and costs  
6 actually incurred.

7 **V) Nullification.**

8 If (a) the Court should for any reason fail to approve this Agreement in the form agreed  
9 to by the Parties, (b) the Court should for any reason fail to enter a judgment with prejudice  
10 of the Action, or (c) the approval of the Agreement and judgment is reversed, modified, or  
11 declared or rendered void, then the Agreement and conditional class certification shall be  
12 considered null and void, and neither the Agreement, conditional class certification, nor any  
13 of the related negotiations or proceedings, shall be of any force or effect, and all parties to the  
14 Agreement shall stand in the same position, without prejudice, as if the Agreement had been  
15 neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may  
16 attempt in good faith to cure any perceived defects in this Agreement to facilitate approval.

17 **W) Invalidation.**

18 Invalidation by the Court of any material portion of the Agreement shall invalidate the  
19 Class Agreement in its entirety, unless the Parties subsequently agree in writing that the  
20 remaining provisions of the Agreement are to remain in full force and effect.

21 **X) Severability.**

22 If any term or provision of this Settlement is held to be invalid or unenforceable, the  
23 remaining portions of this Settlement will continue to be valid and will be performed,  
24 construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable  
25 term will be deemed amended and limited in accordance with the intent of the Parties, as  
26 determined from the face of the Agreement, to the extent necessary to permit the maximum  
27 enforceability or validation of the term or provision.

28



1           **Y) Stay Upon Appeal.**

2           In the event of a timely appeal from the approval of the Settlement and judgment, the  
3 judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement  
4 Amount or take any other actions required by this Agreement until all appeal rights have been  
5 exhausted by operation of law.

6           **Z) Class Member Participation.**

7           If more than fifteen percent (15%) of the Settlement Class Members submit elections  
8 to opt-out of the Settlement or the number of Class Members that opt-out collectively  
9 represent 5% or more of the Net Settlement Amount, then Defendant at its sole discretion may  
10 terminate, nullify, and void this Settlement. Should either of these thresholds for opt-outs be  
11 exceeded, the Settlement Administrator shall notify counsel for all parties via email  
12 immediately, and Defendant’s Counsel shall have 30 calendar days to provide Plaintiff’s  
13 Counsel written notice of termination of this Settlement under this paragraph.

14           **AA) Duty to Support and Defend the Settlement.**

15           The Parties agree to abide by all of the terms of the Agreement in good faith and to  
16 support the Agreement fully, and to use their best efforts to defend this Agreement and  
17 Settlement from any legal challenge, whether by appeal or collateral attack.

18           **BB) Mutual Preparation and Drafting.**

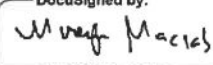
19           The Parties have had a full opportunity to negotiate the terms and conditions of this  
20 Settlement. The Parties agree that the terms and conditions of this Settlement are the result of  
21 lengthy, intensive, arm’s-length negotiations between the Parties and that neither Plaintiff nor  
22 Defendant shall be considered the “drafter” of this Agreement for purposes of having terms  
23 construed against that Party. This Agreement will not be construed more strictly against one  
24 Party merely by virtue of the fact that it may have been prepared by counsel for one of the  
25 Parties, it being recognized that, because of the arm’s-length negotiations between the Parties,  
26 all Parties have contributed to the preparation of this Agreement. If any of the dates in this  
27 Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the  
28 next business day.

1 **VIII. EXECUTION**

2 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this  
3 Agreement on the date next to their signatures or the signature of their representatives. BY  
4 SIGNING BELOW, THE PARTIES AGREE TO THIS AGREEMENT AND ITS TERMS.  
5 The date of this Agreement shall be the date of the latest signature.:

6  
7 Approved as to form and content:

8  
9 Dated: 8/31/2021, 2021

DocuSigned by:  
  
\_\_\_\_\_  
F8F9FCC7112A4B4...  
Plaintiff Mireya Macias

10  
11 Dated: \_\_\_\_\_, 2021

Defendant Sunrise Growers, Inc.

12 By: \_\_\_\_\_

13 Its: \_\_\_\_\_

14  
15 Approved as to form only:

16 Dated: \_\_\_\_\_, 2021

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

17  
18 By: \_\_\_\_\_

19 Amber S. Healy

Lauren S. Gafa

20 Attorneys for Defendant Sunrise Growers, Inc.

21  
22 Dated: 9/1, 2021

BRADLEY/GROMBACHER, LLP

23  
24 By:  \_\_\_\_\_

25 Marcus J. Bradley, Esq.

Kiley L. Grombacher, Esq.

Lirit A. King, Esq.

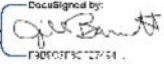
26 Attorneys for Plaintiff Mireya Macias  
27  
28

1 **VIII. EXECUTION**

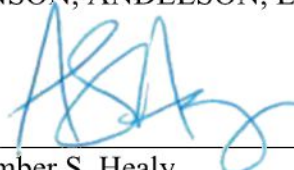
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3 Agreement on the date next to their signatures or the signature of their representatives. BY  
4 SIGNING BELOW, THE PARTIES AGREE TO THIS AGREEMENT AND ITS TERMS.  
5 The date of this Agreement shall be the date of the latest signature.:

6  
7 Approved as to form and content:

8  
9 Dated: \_\_\_\_\_, 2021 \_\_\_\_\_  
10 Plaintiff Mireya Macias

11 Dated: 10/26/2021, 2021 Defendant Sunrise Growers, Inc.  
12 By:  \_\_\_\_\_  
13 Its: CAO & Secretary \_\_\_\_\_

14  
15 Approved as to form only:

16 Dated: October 26, 2021 ATKINSON, ANDELSON, LOYA, RUUD & ROMO  
17  
18 By:  \_\_\_\_\_  
19 Amber S. Healy  
20 Lauren S. Gafa  
21 Attorneys for Defendant Sunrise Growers, Inc.

22  
23 Dated: \_\_\_\_\_, 2021 BRADLEY/GROMBACHER, LLP  
24  
25 By: \_\_\_\_\_  
26 Marcus J. Bradley, Esq.  
27 Kiley L. Grombacher, Esq.  
28 Lirit A. King, Esq.  
Attorneys for Plaintiff Mireya Macias