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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

MARIA DEL CARMEN ESPINOZA, an
individual,

Plaintiff,

vs.

JUAN C. GUTIERREZ dba J.C. GUTIERREZ
LABOR SERVICE, an individual; VISALIA
CITRUS PACKING GROUP INC., a California
corporation; VCPG LAND, LLC, a California
Limited Liability Company; and DOES 1 through
100,

Defendants.

Case No.: VCU286326

*[Assigned for all purposes to the Hon.
Bret Hillman, Dept. 07]*

**DECLARATION OF DANIEL J.
BROWN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 13, 2022
Time: 8:30 a.m.
Dept.: 07

Complaint Filed: March 3, 2021
Trial Date: None Set

1 I, DANIEL J. BROWN, declare as follows:

2 1. I am the principal of the law firm of Stansbury Brown Law, PC and counsel for
3 the named plaintiff Maria Del Carmen Espinoza (“Plaintiff”) and the proposed Settlement Class
4 in the above-captioned matter. I am a member in good standing of the bar of the State of
5 California and am admitted to practice in this Court. I have personal knowledge of the facts stated
6 in this declaration and could testify competently to them if called upon to do so.

7 2. I am a 2015 graduate of UCLA School of Law. I was admitted to the California
8 State Bar in December 2015 after passing the bar exam on my first attempt. Since that time, I
9 have practiced exclusively in the area of employment litigation. From December 2015 to June
10 2017, I worked for the law firm Rastegar Law Group, APC, an employment litigation firm in
11 Torrance, California. The vast majority of my work at Rastegar Law Group, APC, focused on
12 representing employees in wage and hour class actions. I was also the lead attorney on individual
13 claims for wrongful termination, harassment, discrimination, and retaliation. While non-
14 exhaustive, the type of work I performed included: conducting client intakes, performing pre-
15 filing research and analysis, drafting complaints, attending court hearings, corresponding with
16 opposing counsel, drafting and responding to written discovery, preparing for and taking and
17 defending depositions, analyzing payroll and timekeeping records and employee handbooks,
18 drafting and opposing motions for remand, demurrers and motions to dismiss, motions to compel,
19 drafting mediation briefs, attending mediations, drafting long-form settlement agreements,
20 drafting motions for preliminary and final settlement approval, and overseeing the claims and/or
21 opt-out processes.

22 3. In June 2017, I voluntarily resigned from the Rastegar Law Group, APC, in order
23 to accept a position with the Haines Law Group, APC, an employment litigation firm specializing
24 in employment class action litigation. During my employment at the Haines Law Group, APC, I
25 played a significant role in the class actions that I was staffed on. In particular, I received a wide-
26 array of wage and hour class action experience performing the following types of tasks: drafting
27 oppositions to demurrers, motions to strike and/or dismiss; remanding actions back to state court
28 from federal court; drafting and responding to written discovery; drafting and opposing discovery

1 related motions; arguing discovery related motions; interviewing putative class members and
2 obtaining declarations in connection with class certification; drafting motions for class
3 certification; conducting exposure analyses to assess the strengths and weaknesses of asserted
4 claims, the likelihood of prevailing at class certification and potential damages resulting from
5 such claims; drafting mediation briefs; serving as the primary contact for opposing counsel;
6 deposing corporate witnesses and putative class members; and defending the depositions of
7 named plaintiffs. In short, I played an integral role in all aspects of litigation from the inception
8 of a matter through and beyond class certification.

9 4. In June 2019, I started my own law firm, Stansbury Brown Law, focusing almost
10 exclusively on employment litigation. Currently, over eighty-five percent (85%) of my practice
11 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently
12 responsible for prosecuting over thirty (30) wage and hour class actions. The following is a non-
13 exhaustive list of wage and hour class actions in which I have played a significant role in
14 prosecuting the litigation, which have received final approval: *Spinks v. Suja Life, LLC.*, Case No.
15 37-2014-00036496-CU-OE-CTL, California Superior Court, County of San Diego, Judge
16 Richard E.L. Strauss presiding (approved as class counsel in wage and hour class action on behalf
17 of non-exempt employees of a juice manufacture involving claims for unpaid wages, meal and
18 rest period violations, and other claims); *Galvan v. Amvac Chemical Corporation*, Case No. 30-
19 2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Judge William D.
20 Claster presiding (granted final approval of settlement on behalf of non-exempt employees of a
21 chemical manufacturing company involving claims for unpaid overtime and waiting time
22 penalties); *Blank v. Coty, Inc., et al.*, Case No. BC624850, California Superior Court, County of
23 Los Angeles, Judge William F. Highberger presiding (granting final approval of a class of
24 employees of a beauty products manufacturer involving claims for unpaid overtime, meal period
25 violations, and wage statement violations); *Lira v. Discus Dental, LLC, et al.*, Case No.
26 CIVDS1620402, California Superior Court, County of San Bernardino, Judge David Cohn
27 presiding (approved as class counsel in a wage and hour class action on behalf of non-exempt
28 employees of a manufacturer of dental products involving claims for unpaid overtime, minimum

1 wage violations, meal period violations, wage statement and waiting time penalties); *Nieto v.*
2 *Emtek Products, Inc.* Case No. BC652704, California Superior Court, County of Los Angeles,
3 Judge Shepard Wiley, Jr. presiding (approved as class counsel in a wage and hour class action on
4 behalf of non-exempt employees of a manufacturer of door hardware involving claims for meal
5 and rest period violations, and for waiting time, wage statement, and for penalties pursuant to the
6 Private Attorneys General Act (“PAGA”)); *Frank Gonzalez III v. Prime Communications*, Case
7 No. BC702262, California Superior Court, Judge Kenneth R. Freeman presiding (granting final
8 approval to a wage and hour class action on behalf of non-exempt employees against a cell phone
9 provider for meal and rest period violations, off-the-clock violations, and for derivative penalties);
10 *Fierro v. Universal City Studios LLC*, Case No. BC642460, California Superior Court, County of
11 Los Angeles, Judge Maren E. Nelson presiding (granting final approval of a wage and hour class
12 action on behalf of current and former non-exempt employees against an amusement park
13 involving claims for meal and rest period violations, failure to indemnify, failure to pay all
14 minimum and overtime wages, and for waiting time, wage statement, and PAGA penalties);
15 *Stephen et al. v. PSC Industrial Outsourcing, LP*, Case No. BC10752, California Superior Court,
16 County of Los Angeles, Judge Shepard Wiley Jr. presiding (granting final approval in and wage
17 and hour class action on behalf of current and former non-exempt employees of an industrial
18 cleaning company for meal and rest period violations, unpaid wages, failure to reimburse business
19 expenses, and waiting time, wage statement, and PAGA penalties); *Duran v. Prada USA Corp.*,
20 Case No. BC644319, California Superior Court, Los Angeles County, Judge Maren E. Nelson
21 presiding (approved as class counsel in a wage and hour class action on behalf of current and
22 former employees of a clothing store involving claims for unlawful claw back of earned
23 commissions, meal and rest period violations, failure to reimburse necessary business expenses,
24 and derivate claims for penalties); *Honorato Lopez v. Moon Valley Nursey, Inc.*, Case No.
25 BC668161, California Superior Court, Los Angeles County, Judge John Shepard Wiley, Jr.
26 (approved as class counsel in a wage and hour class action on behalf of current and former
27 employees of a commercial nursery involving claims for failure to pay for all hours worked,
28 automatically deducting work time for meal periods regardless if taken, rest period violations,

1 and derivate claims for penalties); *Alfaro v. Orange Automotive d/b/a Kia of Orange*, Case No,
2 30-2017-00945105-CU-OE-CXC, California Superior Court, County of Orange, Judge Randall
3 J. Sherman presiding (approved as class counsel in a wage and hour class action on behalf of
4 current and former employees of a car dealership involving claims for minimum wage violations,
5 meal and rest period violations, failure to reimburse business expenses, wage statement violations,
6 waiting time penalties, and PAGA penalties); *Lemus v. Promenade Imports, LLC*, California
7 Superior Court, County of Orange, Judge William Claster presiding (granting final approval in a
8 wage and hour class action on behalf of current and former non-exempt employees of a car
9 dealership involving claims for minimum wage violations, meal and rest period violations, failure
10 to reimburse business expenses, and claims for derivative penalties); *Garcia v. Fabrica*
11 *International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC, California Superior Court,
12 County of Orange, Judge William Claster presiding (approved as class counsel in a wage and
13 hour class action on behalf of current and former non-exempt employees of a high-end residential
14 carpets and custom rugs company involving claims for meal and rest period violations, regular
15 rate miscalculation, unlawful rounding policy, and claims for derivative penalties); *Vazquez, et*
16 *al. v. Kraft Heinz Foods Company*, Case No. 16-CV-02749-WGH (AGS), United States District
17 Court, Southern District of California, Honorable William Q. Hayes presiding (certifying
18 subclasses of employees for meal period violations, failure to pay for all hours worked, and a
19 derivate waiting time class); *Perez v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905,
20 California Superior Court, County of Riverside, Judge Craig G. Reimer presiding (granting final
21 approval of a wage and hour class action on behalf of current and former non-exempt employees
22 of a car dealership involving claims for minimum wage violations, failure to pay all overtime
23 wages, meal period violations, rest period violations, wage statement violations, and civil
24 penalties under the PAGA); *Gonzalez v. Lacey Milling Company*, Case No. 19C-0361, California
25 Superior Court, County of Kings, Judge Kathy Cuiffini presiding (approved as class counsel in a
26 wage and hour class action on behalf of current and former non-exempt employees of flour
27 packing company involving claims for meal and rest period violations, unlawful rounding policy,
28 and claims for derivate penalties); *Manuel Alberto Alvino v. Family Ranch, Inc. et al.*, Case No.

1 19CECG04356, California Superior Court, County of Fresno, Honorable Kristi Culver Kapetan
2 presiding (PAGA only approving a wage and hour PAGA only settlement on behalf of current
3 and former agricultural workers involving claims of unpaid non-productive and rest and recovery
4 time, meal and rest period violations, facially deficient wage statements, and waiting time
5 violations); *Massey v. Louidar*, Case No. RIC1905130, California Superior Court, County of
6 Riverside, Honorable Sunshine Sykes, presiding (approved as class counsel in a wage and hour
7 class action on behalf of current and former non-exempt employees of a restaurant involving
8 claims for minimum wage and overtime violations, meal and rest period violations, and claims
9 for derivative penalties); *Jesse Alvarez v. Associa Developer Services, Inc., et al.*, Case No.
10 RIC1905170, California Superior Court, County of Riverside, Honorable Sunshine S. Sykes
11 presiding (approved as class counsel in a wage and hour class action on behalf of current and
12 former non-exempt employees of a property management company involving claims off-the-
13 clock work, unpaid overtime, on-duty meal and rest periods, and claims for derivative penalties);
14 *Saul Tamayo Diaz v. Antonini Bros.*, Case No. STK-CV-UOE-2020-0000823, California Superior
15 Court, County of San Joaquin, Honorable George J. Abdallah presiding (approved as class
16 counsel in a wage and hour case on behalf of current and former non-exempt truck drivers for
17 unpaid minimum wages, meal and rest period violations, and derivative wage statement, waiting
18 time, and PAGA civil penalties); *Manuel Alberto Alvino v. Aguayo Contracting, Inc.*, Case No.
19 VCU281300, Superior Court of California, County of Tulare, Honorable David C. Mathias,
20 presiding (approved as class counsel in a wage and hour class action on behalf of current and
21 former agricultural workers for unpaid wages, meal and rest period violations, and derivate
22 penalties); *Nazario Martinez v. JNM Contracting, Inc., et al.*, Case No. VCU282822, Superior
23 Court of California, County of Tulare, Honorable Nathan D. Id presiding (approved as class
24 counsel in a wage and hour class and representative action on behalf of current and former non-
25 exempt agricultural workers for unpaid wages, meal and rest period violations, and derivate
26 penalties); *Gabriel Valles v. Fresno Fab-Tech, Inc.*, Case No. 19CECG04218, Superior Court of
27 California, County of Fresno, Honorable D. Tyler Tharpe presiding (approved as class counsel in
28 a wage and hour class action on behalf of metal fabricators for unpaid wages, meal and rest period

violations, and associated penalties); *Maria E. Herrera De Quilo v. Yergat Packing Company, Inc.*, Case No. MCV085367, Superior Court of California, County of Madera, Honorable Michael J. Jurkovich presiding (approved as class counsel in a wage and hour class action on behalf of current and former agricultural workers for unpaid wages, meal violations, and derivative penalties); *Juan Olivares v. Brickley Construction Company, Inc.*, Case No. CIVSB2025107, Superior Court of California, County of San Bernardino, Honorable David Cohn presiding (approved as class counsel in wage and hour class action on behalf of construction workers for off-the-clock violations, regular rate violations, meal and rest period violations and related penalties); *Nora Ambris Cruz v. WMJ Farms, Incorporated*, Case No. VCU282915, Superior Court of California, County of Tulare, Honorable David C. Mathias presiding (approved as class counsel in a wage and hour class action on behalf of current and former agricultural workers for unpaid wages, meal and rest period violations, and derivative penalties).

5. I have also been named a California Super Lawyers' Rising Star in the area of employment litigation three years in a row from 2019 to 2022. I was also recognized by TopVerdict for being part of a team that secured one of the top 50 labor and employment law settlements in California in 2019. I am also active in the California employment and consumer law community. I am a member of the Consumer Attorneys Association of Los Angeles ("CAALA") and the California Employment Lawyers Association ("CELA") for which I serve on the CELA Wage and Hour Committee. I also participate in the CELA mentor program to provide mentorship and guidance to young attorneys interested in employment law. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is an excellent result for the Settlement Class.

6. Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service ("JCGLS") is a registered farm labor contractor ("FLC"), located in Tulare County, in the business of providing agricultural workers to harvest crops for JCGLS' farm clients, namely Visalia Citrus Packing Group, Inc. ("VCPG" or "Client-Employer") (collectively JCGLS and VCPG are referred to herein as "Defendants"). Client Employer is a farming business that engaged JCGLS to provide

1 agricultural workers to harvest agricultural goods on its fields. Plaintiff, an agricultural worker,
2 was employed by JCGLS on a seasonal basis until approximately April 2020 to harvest citrus
3 fruit on Client-Employer's fields. As stated, JCGLS is an FLC that contracted with Client-
4 Employer for the purposes of providing its employees within the putative class to harvest
5 agricultural goods. Plaintiff like the vast majority of non-exempt employees, worked for
6 Defendants on a piece rate basis. Plaintiff was subject to Defendants' wage and hour policies
7 that are at issue in this action. Plaintiff's claims are therefore typical of those held by the members
8 of the proposed Settlement Class. Like other Settlement Class Members, Plaintiff was employed
9 by Defendants as a non-exempt employee and was compensated via Defendants' pay plans during
10 the Class Period. Plaintiff alleges that she was not paid for all hours worked, including non-
11 productive time and rest and recovery time when working on a piece-rate basis, and did not
12 receive all legally compliant meal or rest periods or premium pay in lieu thereof. Plaintiff further
13 asserts that she did not receive all earned wages at the time of her separation of employment and
14 received non-compliant wage statements.

15 7. Plaintiff filed an individual wage and hour complaint ("Complaint") against
16 Defendants on March 3, 2021 in Tulare County Superior Court, Case No. VCU286326, which
17 alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages;
18 (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting
19 time penalties; and (7) unfair competition. Plaintiff filed a First Amended Class Action
20 Complaint ("FAC") on May 21, 2021, to add an additional cause of action for civil penalties
21 under the Private Attorneys General Act ("PAGA") pursuant to Labor Code Sections 2698 *et*
22 *seq.* After further investigation, on July 26, 2021, Plaintiff filed the operative Second Amended
23 Class and Representative Action Complaint ("SAC"), to allege class action allegation.

24 8. After agreeing to participate in early mediation, Defendants informally produced
25 all time and pay records, except for 2019 for which they did not have records, for Settlement
26 Class members, key class data points, and other documents and information relevant to the
27 claims alleged in advance of mediation. After the detailed review of the payroll and time records
28 and other documents and policies produced by Defendants, my office drew on our extensive
experience in similar cases to assess strengths and weaknesses of Plaintiff's case.

1 9. I transmitted Defendants’ mediation production to my expert, Bennett Berger a
2 Partner and Senior Data Analyst at Berger Consulting Group. I asked Mr. Berger to perform
3 specific analyses using the records that Defendants produced. The damages analysis discussed in
4 ¶¶ 15-21 of this declaration is based on Mr. Berger’s analysis. Mr. Berger received his Bachelors
5 of Art in Business Management Economics from the University of California, Santa Cruz in
6 2011. He has been engaged in over 1,750 employment and labor law class-action litigation
7 matters to consult on data collection and analysis since 2013. All of the cases he has worked on
8 required extensive use of Excel and data analysis including but not limited to writing formulas
9 and custom equations to determine individual and/or class-wide violation rates. He has
10 experience processing and analyzing electronic time and payroll records in a variety of native
11 formats including XLSX, CSV, Kronos as well as processing PDF records in a way they can be
12 electronically analyzed. He has been hired to determine and analyze claims for rounding, meal
13 breaks, rest breaks, overtime, off-the-clock, regular rate of pay, reimbursement claims, driving
14 time calculations, derivative penalties, and other wage and hour claims. His experience within
15 Excel consists of using standard Excel functions, building custom Visual Basic for applications
16 (VBA) macros, using pivot tables, writing complex conditional formulas, and utilizing other
17 Excel capabilities to analyze class-action cases.

18 10. When I transmitted the time and pay data to my hired expert, Mr. Berger, I
19 requested that Mr. Berger confirm the date range of the data provided, and extrapolate: (i) the
20 number of pay periods and shifts worked by the class, (ii) the average rate of pay for the class,
21 (iii) various shift lengths, (iv) the amount of unpaid wages, and (v) other relevant information.
22 As discussed in detail below, this discovery allowed the Parties to assess the merits and value of
23 Plaintiff’s claims and Defendants’ defenses thereto, if a settlement could not be reached.
24 Moreover, as part of settlement negotiations, the Parties subsequently engaged in months of
25 confirmatory discovery regarding JCGLS’s financials.

26 11. On February 25, 2022, after extensive research and analysis, including Class
27 Counsel’s detailed analysis of Defendant’s potential exposure with the help of a retained
28 economics expert, a full-day mediation was held with Justice Steven Vartabedian (Ret.) a well-

1 respected wage and hour class action mediator. During mediation, the Parties vigorously debated
2 their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal
3 basis for the claims and defenses for the claims alleged in the SAC. After a full day mediation,
4 the Parties accepted a mediator's proposal and thereafter engaged in months of continued
5 negotiations and additional confirmatory discovery, before ultimately reaching a settlement.
6 Thereafter, the Parties signed the Stipulation of Settlement ("Settlement"). The Settlement took
7 into consideration JCGLS' claims of inability to finance a substantially larger settlement and
8 subsequent review of JCGLS' financial records. Following JCGLS' representation of his
9 financial position, JCGLS turned over financials to an agreed to third party forensic accountant
10 who is a certified public accountant and has consulted in numerous litigation matters. After that
11 review took place, the Parties further meet and conferred and agreed to increase the MSA from
12 \$400,000 to \$415,000. A true and correct copy of the Settlement executed thereafter is attached
13 hereto as **Exhibit A**. The proposed Class Notice Packet, composed of the Notice of Class Action
14 Settlement ("Class Notice") and Request for Exclusion and Objection Forms are attached hereto
as **Exhibits B, C and D**.

15 12. The monetary terms of the Settlement are summarized below:

16 Maximum Settlement Amount ("MSA"):	\$415,000.00
17 Minus Court-approved attorneys' fees (1/3 of MSA):	\$138,000.00
18 Minus Court-approved, verified costs (up to):	\$15,000.00
19 Minus Court-approved Class Representative Enhancement Payment:	\$5,000.00
20 Minus Settlement Administrator costs:	\$17,500.00
21 Minus PAGA Payment to the LWDA:	\$3,750.00
22 Net Settlement Fund ("NSF"):	\$235,750.00

23 13. Defense counsel represents that the Settlement Class consists of approximately
24 1,748 current and former employees who worked a total of 14,699 weekly pay periods. Therefore,
25 the average Individual Settlement Payment is projected to be approximately \$134.86, or \$16.03
26 per weekly pay period worked. After deducting amounts for the Court-approved attorneys' fees
27 and verified costs, the Class Representative Enhancement Payment to Plaintiff, Settlement
28 Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendants

1 to pay a Net Settlement Amount (“NSA”) amount of approximately \$235,750.00 to all Class
2 Members who do not timely opt out (“Settlement Class Members”).

3 14. The Settlement provides that the employer’s share of payroll taxes shall be paid
4 separately from, and in addition to, the Maximum Settlement Amount. Moreover, the Parties
5 have agreed to allocate 20% of the Individual Settlement Awards as unpaid wages and 80% as
6 penalties and interest. Accordingly, since premium payments may ultimately be considered
7 wages subject to W-2 withholdings for which Defendants face potential tax liability for not
8 deducting payroll taxes, the Parties determined that a portion of those premiums will be treated
9 as wages for the purposes of Individual Settlement Award allocations. Therefore, the Parties
10 determined that the appropriate allocation of the Individual Settlement Awards was 20% wages
11 and 80% penalties and interest for tax purposes.

12 15. Plaintiff alleges that during the relevant time period, Plaintiff and Class members
13 performed uncompensated work as Defendants failed to compensate their piece-rate employees
14 for non-productive time and failed otherwise compensate for all hours worked. After Class
15 Counsel’s investigation and discussion with Class Members, Plaintiff determined that piece-rate
16 employees were required to spend a substantial amount of unproductive time on work duties and
17 activities that were not “directly related” to the activities that were being compensated on a piece-
18 rate basis, and therefore this time needed to be separately compensated, which includes pre-shift
19 and post-shift work. After conducting an investigation of this claim for mediation, I determined
20 that 53% of pay periods did not contain payment for any non-productive time and estimated 30
21 minutes of off the clock work, i.e., non-productive time and other off the clock work, per weekly
22 pay period. Accordingly, I calculated Defendants’ exposure on this claim as follows: 7,806 pay
23 periods * .5 hours of off the clock work/nonproductive time per pay period * \$11.75 average
24 minimum wage rate = \$45,860. Defendants argue that Plaintiff’s claims for uncompensated time
25 is not amenable to class treatment because piece-rate employees worked in different positions
26 and at different farm locations, and it would require an unmanageable series of mini-trials to
27 determine whether a piece-rate employee actually worked uncompensated non-productive time.
28 In light of these defenses, I discounted the maximum amount for this claim by 75% for risk of
non-certification, and an additional 40% for a risk of being unsuccessful on the merits, or having

1 the amount of exposure for off the clock work reduced, to arrive at an estimated exposure of
2 \$6,879.

3 16. Plaintiff alleges that JCGLS failed to maintain or enforce any written meal period
4 policies. Although the timekeeping records generally contain a meal period notation, Plaintiff
5 assumes the notation is fabricated and therefore and assumes a meal period violation on 100% of
6 shifts over 6.0 hours. Plaintiff estimates Defendants' maximum exposure for first meal period
7 violations as follows: 54,381 shifts with non-complaint first meal periods * \$28.06 average rate
8 of pay = \$1,525,930.00. Plaintiff also alleged that she and the Class did not receive second meal
9 periods, but after reviewing the data produced for mediation, Plaintiff determined that Class
10 Members rarely, if ever, worked shifts of 10.0 hours or more, entitling them to a second meal
11 period, and Plaintiff already assumes a first meal period violation on such shifts, and an employee
12 can only collect one meal period premium per shift regardless of the number of meal period
13 violations. Thus, Plaintiff assigned zero value to second meal period portion of this claim.
14 Defendants maintain that JCGLS has always provided legally compliant meal periods to Class
15 Members and maintained and enforced lawful *verbal* meal period policies which provide for
16 timely first meal periods. Defendants further argue that this claim would not be certified due to
17 the lack of any common evidence tying together the reason that Class Members experienced a
18 first meal period violation. Defendants also argue that the presence of these affirmative defenses
19 as to the voluntariness of a particular meal period decision would preclude class certification.
20 Therefore, I discounted the maximum amount that the Settlement Class could potentially recover
21 for meal period violations by 65% for a risk of non-certification, and an additional 70% for a risk
22 of losing on the merits, or having exposure reduced due to Defendants' waiver arguments, to
23 arrive at an estimated exposure amount of \$160,222.

24 17. Plaintiff argues that JCGLS did not authorize duty free rest periods to the Class
25 and did not have any written rest period policies. Moreover, Plaintiff asserts JCGLS also failed
26 to pay any rest period premium wages per Labor Code Section 226.7. I calculated Defendants'
27 maximum exposure for rest period violations as follows, assuming a 100% rest period violation
28 on all shifts over 3.5 hours: 61,136 shifts with non-complaint rest periods * \$28.06 average rate
of pay = \$1,715,476. However, Defendants contend that JCGLS maintained legally-compliant

1 *verbal* rest period policies and practices throughout the Class Period and authorized and
2 permitted all rest periods to Class Members. Defendants further argue that Plaintiff's rest period
3 claim is inherently unsuited for class treatment as there are no records of whether or not rest
4 periods were taken, therefore requiring an individualized inquiry into whether each Class
5 Member failed to take rest periods on each shift, which would devolve into an unmanageable
6 series of mini-trials. In light of these defenses, I discounted the maximum amount for this claim
7 by 80% for risk of non-certification, and an additional 75% for a risk of being unsuccessful on
8 the merits, to arrive at an estimated exposure of \$85,773.

9 18. Plaintiff alleges that throughout the Class Period, JCGLS paid the putative class
10 on a piece-rate only basis. JCGLS' payroll records indicate that although it did compensate for
11 rest and recovery time, it failed to always pay this time at the proper regular rate of pay. Based
12 on the information provided by JCGLS, JCGLS failed to separately compensate rest periods at
13 the proper regular rate of pay on approximately 32.5% of pay periods. Therefore, I calculated
14 Defendants' liability on this claim as follows: 14,699 piece-rate pay periods with rest period
15 payments compensated below the regular rate of pay * \$28.06 average underpayment per pay
16 period= \$412,453. Defendants countered that throughout the Class Period JCGLS maintained
17 and enforced its policy requiring compensation for all time worked including rest and recovery
18 time. Moreover, Defendants argue that variations of the amount of underpayment between
19 putative class members and pay periods would require individual inquiries that would prohibit
20 class certification. In light of these defenses, I discounted the maximum amount for this claim by
21 50% for risk of non-certification, and an additional 30% for a risk of being unsuccessful on the
22 merits, or having the amount of the underpayment reduced, to arrive at an estimated exposure of
23 \$144,358

24 19. With respect to wage statement violations, Plaintiff contends that for each pay
25 period in which there is a meal or rest period violation, or failure to pay all wages owed, Plaintiff
26 and Class Members would have received a non-compliant wage statement in violation of Labor
27 Code Section 226. These types of derivative claims are routinely certified. Plaintiff's data analysis
28 reflected that there were approximately 2,854 total wage statements issued during the relevant
period. I calculated Defendants' maximum exposure for wage statement violations as follows:

1 2,854 initial violations x \$50 for initial penalty = \$142,700. Based on Defendants' arguments
2 that: (i) no violations occurred, (ii) any alleged violations were not "knowing and intentional" as
3 required by Labor Code § 226(e), (iii) no injury was suffered, and (v) the decision in *Maldonado*
4 *v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, which holds that there is no wage statement
5 violation when the wage statements accurately reflect the compensation received by an
6 employee, I discounted the calculated exposure by 45% for a risk of non-certification and an
7 additional 55% for a risk of being unsuccessful on the merits, to arrive at an estimated total of
8 \$41,739.

9 20. Plaintiff alleges that Defendants are also liable for waiting time penalties as a
10 result of their failure to pay all off the clock work and premium wages owed. There are
11 approximately 823 Class Members who separated their employment with Defendants within the
12 three-year statute of limitations period applicable to Labor Code § 203. The estimated average
13 waiting time penalty per former employee was calculated at \$5,148 (\$28.60 average hourly rate
14 of pay * 6 hours per day * 30 days), resulting in a total maximum exposure of \$4,236,804 (823
15 former employees x \$5,148). To the extent that Plaintiff's waiting time penalty claim was
16 derivative of her unpaid wage claims, Defendants argues that not all former employees (if any)
17 did, in fact, experience under payment of wages (and therefore Plaintiff's exposure was
18 overstated). Defendants also contends that because it possessed good-faith defenses to the
19 underlying claims, any failure to pay wages was not "willful" as a matter of law. As a result, I
20 discounted the maximum exposure by 75% to account for the risk of non-certification of the
21 claims upon which the waiting time penalties rely, and an additional 95% for failing to prevail
22 on the merits, including establishing willfulness, to arrive at an estimated exposure of \$52,960.

23 21. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing
24 alleged Labor Code violations. The specific statutory violations upon which Plaintiff bases the
25 claim under PAGA are: (i) Labor Code sections 204, 510, 558, 1194, and 1198 for failing to pay
26 all overtime wages owed; (ii) Labor Code sections 1194, 1194.2, 1197 for failing to pay all
27 minimum wages owed; (iii) Labor Code sections 226.7, 512, and 558 for meal period violations;
28 (iv) Labor Code sections 226.7, 516, and 558 for rest period violations; (v) Labor Code section
226(e) for failing to provide accurate, itemized wage statements; and (vi) Labor Code sections

1 201 through 203 for failing to pay all wages owed upon termination. Based on the violations
2 addressed above, Plaintiff contends that Defendants are liable for PAGA civil penalties for each
3 of the 3,278 pay periods worked during the PAGA period. Accordingly, Plaintiff calculates
4 Defendants' exposure at \$327,800 (3,278 pay periods * \$100 for initial violation). *Id.*; see *Amaral*
5 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies
6 until the employer is notified that it is violating a Labor Code provision). However, Defendants
7 asserts a number of credible defenses to Plaintiff's claims. First, these penalties derive from the
8 underlying wage and hour violations discussed above, which Defendants vigorously dispute.
9 Defendants also maintains that given its good faith defenses, this Court would exercise its
10 discretion to substantially reduce any PAGA penalties if it were to find Defendants liable for any
11 of Plaintiff's claims. Defendants further allege that none of the violations would be deemed
12 knowing and intentional as there is no evidence to suggest Defendants intentionally violated the
13 Labor Code and that JCGLS's *verbal* policies and procedures demonstrate that JCGLS acted in
14 good faith in regards to paying the putative class members all wages due. For these reasons,
15 Defendants argues the Court would drastically reduce any award of PAGA penalties as
16 "confiscatory." Therefore, I discounted the maximum PAGA exposure by 65% for risk of losing
17 on the merits, and an additional 80% to account for the possibility of this Court reducing
18 penalties, to arrive at an estimated exposure of \$22,946. Further, neither the Court nor a jury has
19 made a factual finding of a violation of any Labor Code provision such that approving an amount
20 that is less than the statutory maximum is appropriate. As discussed above the Parties specifically
21 negotiated the payment, like the other terms of the settlement, and ultimately agreed to resolve
the PAGA claim for \$5,000.00 at mediation.

22 22. Using these estimated figures for each of the claims described above, I predicted
23 that the potential recovery for the Settlement Class would be approximately \$514,877. The
24 proposed settlement of \$415,000 therefore represents approximately 80.6% of the reasonably
25 forecasted recovery for the Settlement Class. Preliminary approval is appropriate since the
26 Settlement will provides monetary relief to Class Members, which is consistent with what Class
27 Counsel believes could have been recovered had the case proceeded through trial. Further, the
28 average Individual Settlement Amount of \$134.86 is in line with the average payments achieved

1 in other wage and hour class action settlements.

2 23. My office will also apply for an attorneys' fees award of one-third of the MSA,
3 which is currently estimated to be \$138,000.00 and up to \$15,000.00 in verified costs
4 reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking
5 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class
6 Counsel's efforts in this case include conducting pre-filing investigation, legal research and
7 analysis regarding the merits of Plaintiff's claims, Plaintiff's ability to recover penalties under
8 the PAGA, propounding informal discovery, reviewing documents and data provided by
9 Defendant prior to mediation, drafting and filing Plaintiff's Complaint and LWDA notice letter,
10 drafting a mediation brief, preparing for and attending mediation, drafting the long-form
11 Settlement Agreement and Notice documents, reviewing and analyzing confirmatory discovery,
12 preparing the motion for settlement approval and supporting declarations, and otherwise
13 litigating the case. Given the potential for adverse outcomes, the contingent risk borne by Class
14 Counsel was great. The quality of Class Counsel's work, and the efficacy and dedication with
15 which it was performed, should be compensated. Class Counsel's previous experience in
16 litigating wage and hour class and representative actions also supports the reasonableness of the
17 fee request. Class Counsel is well-versed in wage and hour class and representative action
18 litigation. Class Counsel's experience in similar matters was integral in evaluating the strengths
19 and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to
20 compensate Class Counsel commensurate with their skill, reputation, and experience, the
21 requested fee award of \$138,000.00 is fair, reasonable and adequate, and should therefore be
22 approved. Class Counsel also expects to expend additional attorney time in attending the hearing
23 on this Motion, overseeing the Notice process and fielding questions from Class Members,
24 preparing the final approval papers, and attending the Final Approval hearing. In this case, I
25 have spent over approximately 198.3 hours on this case. I have been practicing law for over six
26 years on the widely used *Laffey* Matrix, my reasonable hourly rate is \$468. *Id.* Attached hereto
27 as **Exhibit F**, is a true and correct copy of the *Laffey* Matrix. Therefore, I have a lodestar of
28 approximately \$71,276.40. The hours spent include:

Work Categories	Daniel Brown Hours
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1	1. Case Review and Legal Research	28.8
2	2. Pleadings / Motion Practice	38.4
3	3. Preparation and Attendance for Mediation including data review and drafting brief	29.7
4	4. Litigation Strategy & Communications	13.6
5	5. Discovery / Meet and Confers with Defense Counsel	36.5
6	6. Settlement	5.3
7	TOTAL TIME	152.3
8	Hourly Rate	\$468.00
9	LODESTAR	\$71,276.40

24. My co-counsel, Mr. Nathan, dedicated 85.2 hours to this case and he has a reasonable hourly rate of \$825. *See Declaration of Reuben D. Nathan In Support of Motion for Preliminary Approval of Class Action Settlement (“Nathan Decl.”), ¶¶ 6, 24, 25.* Therefore, his lodestar is \$70,290.00. In total, Class Counsel has expended over 237.5 hours on this case and has a combined lodestar of approximately \$141,566.40. Accordingly, the fee request of \$138,000.00 equates to a negative lodestar of .97.

25. To date, my firm has incurred approximately \$6,318.38 in litigation costs. A true and correct copy of the itemized costs sheet to date is attached hereto as **Exhibit E**. Mr. Nathan’s firm has incurred costs of \$2,724.05. *See Reuben Decl., ¶ 7.* Therefore, Class Counsel’s total costs to date are \$9,042.43. As part of Plaintiff’s motion for final approval, Class Counsel will request only the reimbursement of costs reasonably incurred supported by declaration with an itemized cost sheet. The costs Plaintiff seeks are the types of costs routinely approved by courts. I anticipate additional charges pertaining to filing the instant motion and motion for final approval, and supplement filings requested by the Court, and the costs of any future appearance.

26. Plaintiff will seek a Class Representative Enhancement Payment of \$5,000, and I believe this Enhancement Payment is reasonable given Plaintiff’s effort in this case and the risks she undertook on behalf of the Settlement Class, including the risk that she could be held liable for Defendants’ costs if this case was unsuccessful. As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement Payment is intended to recognize the time and effort

1 Plaintiff expended on behalf of the Settlement Class, including providing substantial factual
2 information and documents to Class Counsel, attending multiple virtual meetings with Class
3 Counsel to discuss the claims and theories at issue in the litigation, actively participating in the
4 prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve
5 as the named plaintiff in this case.

6 27. Although the Parties engaged in significant formal and informal discovery in
7 advance of mediation, the Parties still had significant discovery to complete in formal litigation
8 had the matter not settled. This would have required expenditure of substantial time and resources
9 by both Parties that would have very likely spanned several years. Moreover, even if Plaintiff
10 was able to certify the classes, the Parties would incur considerably more attorney fees and costs
11 through a possible decertification motion, trial, and possible appeal. This settlement avoids those
12 risks and the accompanying expense.

13 28. My office submitted the Settlement to the Labor and Workforce Development
14 Agency ("LWDA"). Attached hereto as **Exhibit G** is a true and correct copy of my submission
15 of the Settlement to the LWDA.

16 I declare under penalty of perjury under the laws of the State of California and the United
17 States that the foregoing is true and correct. Executed on August 19, 2022, at Venice, California.

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Daniel J. Brown

EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Maria Del Carmen Espinoza (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class, defined below, on the one hand, and Defendants Juan C. Gutierrez dba J.C. Gutierrez Labor Service (“Gutierrez”), and Visalia Citrus Packing Group, Inc. (“VCPG”) (collectively Gutierrez and VCPG are referred to herein as “Defendants”) on the other. Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Daniel J. Brown of Stansbury Brown Law, PC and Reuben D. Nathan of Nathan & Associates, APC (“Class Counsel”). Gutierrez is represented by Alden J. Parker and Rebecca A. Hause-Schultz of Fisher & Phillips LLP. VCPG is represented by Patrick S. Moody and Catherine M. Houlihan of Barsamian & Moody, A Professional Corporation.

Plaintiff filed an individual complaint (“Complaint”) against Defendants on March 23, 2021 in Tulare County Superior Court, Case No. VCU286326, which alleges causes of action for: (1) minimum wage violations (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; and (7) unfair competition.

Plaintiff filed a First Amended Representative Action Complaint (“FAC”) on May 28, 2021, to add an additional cause of action for civil penalties under the Private Attorneys General Act (“PAGA”) pursuant to Labor Code Sections 2698 *et seq.* After further investigation, Plaintiff determined that it was appropriate for this action to proceed on a class action basis and after meeting and conferring with Defendants the Parties agreed to stipulate to Plaintiff filing a Second Amended Class and Representative Action Complaint (“SAC”), which this Court deemed filed on July 26, 2021. Together the Complaint, FAC, and SAC are referred to hereinafter as the “Lawsuit”.

Given the risks and uncertainties of litigation, the Parties have agreed to settle this Lawsuit on the terms set forth herein and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Lawsuit.

In addition, Defendants and Plaintiff conditionally enter into this Settlement Agreement contingent upon Class Counsel’s financial expert’s determination of Defendant Gutierrez’s financial condition. On March 3, 2022, the Parties accepted a mediator’s proposal for a tentative non-reversionary common fund settlement in the amount of \$400,000.00. The Parties have since met and conferred and on July 20, 2022, the Parties agreed to fully resolve this matter for \$415,000. The amount as agreed is subject to Defendant Gutierrez’s informal production of certain financial documentations for Plaintiff’s third-party forensic accountant’s review and determination of Defendant Gutierrez’s financial health and ability to pay an amount significantly more than the agreed to settlement amount. In the event Class Counsel is not satisfied with that review, Plaintiff may unilaterally terminate this Stipulation and it shall be deemed null and void, it shall be of no force or effect whatsoever, it shall not be referred to or used for any purpose whatsoever, and the negotiation, terms, and entry of it shall remain subject to the provisions of California Evidence Code sections 1119 and 1152.

1. Certification for Settlement Purposes. For the purposes of this Settlement Agreement only, the Parties stipulate to certification of the following Settlement Class:

Settlement Class – All current and former non-exempt employees of Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service in California who were subject to Wage Order 14 and worked at least one day performing work for Defendant Visalia Citrus Packing Group, Inc., at any time during the period of March 23, 2017, to April 18, 2022 (“Class Period”) (“Settlement Class” or “Settlement Class Members”)

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or Federal Rule of Civil Procedure Rule 23.

If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. Releases.

A. **Releases by Settlement Class Members.** Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendants, their past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the “Released Parties”) for all claims that were pled or could have been pled based on the factual allegations and class definition in the SAC for work performed by Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service for Defendant Visalia Citrus Packing Group, Inc., including: (a) minimum wage violations (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) wage statement violations; (f) waiting time penalties; (g) all claims arising out of unfair business practices under Business & Professions Code § 17200, *et seq.* that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC; and (i) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from March 23, 2017, through April 18, 2022 (“Class Period”). Specifically excluded from this release are any claims any individual might otherwise have in the putative wage and hour class action entitled *Juvenal Gaona Vargas v. Cal-Citrus Labor Service, Inc., et al.*, Case No. VCU282013 (“*Vargas Action*”). The *Vargas* action does not assert or contemplate any claims as to Defendant J.C. Gutierrez Labor Service.

B. **Plaintiff’s Release of Unknown Claims.** In light of her Class Representative Enhancement Payment, Plaintiff, Maria Del Carmen Espinoza, has agreed to

release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims and that she is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

However, to the extent that Plaintiff has claims that cannot be released as a matter of law (i.e., workers' compensation claims), then those claims will not be released.

- C. The Releases described above shall be null and void if the Settlement is not fully funded.

3. Settlement Payment. In exchange for the releases set forth in this Settlement Agreement, Defendants have agreed to pay Four Hundred Fifteen Thousand Dollars and Zero Cents (\$415,000.00) (the "Maximum Settlement Amount") with \$160,000 contributed by VCPG and the remaining \$255,000 contributed by Defendant J.C. Gutierrez Labor Service, resulting in full and complete settlement of this matter, as follows:

- A. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) court days after the date the Court enters an order granting final approval of the settlement or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review ("the Final Effective Date").
- B. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments to the Settlement Class;
 - (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, which, unless the scope of the work or class size increase significantly, will be a maximum of Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00);
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff's Enhancement Payment, subject to Court approval, in recognition of Plaintiff's general release of claims, contributions to the Lawsuit, and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full

force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding;

(4) Up to one-third of the Maximum Settlement Amount in attorneys' fees, which is currently estimated to be One Hundred Thirty-Eight Thousand Dollars and Zero Cents (\$138,000.00), plus up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, and it shall remain binding; and

(5) Five Thousand Dollars and Zero Cents (\$5,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) will be payable to the Settlement Class as the "PAGA Amount."

C. Defendants' share of payroll taxes shall be paid by Defendant Gutierrez separately from, and in addition to, the Maximum Settlement Amount.

D. **Escalator Clause.** Defendants represent that as of February 25, 2022, there were approximately 1,748 Settlement Class Members. If, as of April 18, 2022, the number of Settlement Class Members has increased by 17% or more (i.e., if there are 2,046 or more Settlement Class Members), then Defendants shall increase the Maximum Settlement Amount on a pro-rata basis equal to the increase in class size beyond 17% (e.g., if the actual class size were 25% greater than 2,046 Settlement Class Members, Defendants will increase the Maximum Settlement Amount by 25%).

4. **Settlement Award Procedures.** Settlement Class Members are not required to submit a claim form to receive their Individual Settlement Award. Individual Settlement Awards will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for the Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment. The remaining amount shall be known as the "Net Settlement Fund."

B. From the Net Settlement Fund, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Award.

Settlement Awards shall be based on the following formula:

- i. PAGA Amount: Each Class Member, regardless of whether they opt-out of other portions of the Settlement, who was employed by Gutierrez and performed work for Visalia Citrus Packing Group, Inc. during the pay period based on Gutierrez's records at any time from March 23, 2020, to April 18, 2022, shall receive a portion of the One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) of the Net Settlement Fund that has been designated as the "PAGA Amount" proportionate to the number of pay periods that he or she worked during the period from March 23, 2020, to April 18, 2022.
- ii. The remainder of the Net Settlement Fund shall be distributed to each participating Settlement Class Member based on their proportionate share of Eligible Workweeks (defined below) during the Class Period, by multiplying the remaining Net Settlement Fund by a fraction, the numerator of which is the participating Settlement Class Member's Eligible Workweeks during the Class Period, and the denominator of which is the total Eligible Workweeks of all participating Settlement Class Members during the Class Period.

An "Eligible Workweek" shall be any workweek in which the Class Member worked at least one day for Gutierrez performing work for Visalia Citrus Packing Group, Inc. during the workweek based on Gutierrez's records.

- C. Within ten (10) days following the funding of the Maximum Settlement Amount with the Settlement Administrator by Defendants, the Settlement Administrator will calculate Individual Settlement Award amounts and will: (i) prepare and mail Individual Settlement Awards to participating Settlement Class Members less applicable taxes and withholdings; (iii) transfer to the LWDA its share of the PAGA Amount; (iv) prepare and mail Plaintiff's Enhancement Payment; and, (v) wire to Stansbury Brown Law Class Counsel's attorneys' fees and verified costs;
- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each Individual Settlement Award shall be designated as wages subject to W-2 reporting and normal payroll withholdings; the remaining eighty percent (80%) of each Individual Settlement Award shall be designated as penalties and interest subject to IRS Form 1099 reporting with no withholdings. The Settlement Administrator shall be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class Member who receives an Individual Settlement Award must negotiate the settlement check within one hundred eighty (180) days from the date

of issuance. The one hundred eighty (180) day expiration of the settlement checks will be pre-printed on the front of the settlement check. Any funds payable to Settlement Class Members whose checks are not negotiated within one hundred eighty (180) days period will not be reissued, except for good cause and as mutually agreed by the Parties in writing. If a Settlement Class Member does not cash his or her settlement check within 180 days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Fund will be paid out to Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendants will not be required to pay any interest on such amounts. The Parties agree no unclaimed funds will result from the settlement.

- F. Neither Plaintiff nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by her or its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Class Counsel’s Attorneys’ Fees and Litigation Costs.** Defendants will not object to a request for a total award of attorneys’ fees to Class Counsel of one-third of the Maximum Settlement Amount, which is currently estimated to be One Hundred Thirty-Eight Thousand Dollars and Zero Cents (\$138,000.00), plus up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised, responses to any intervenors and any appeals necessitated by those objections or intervenors. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Plaintiff’s Enhancement Payment.** Defendants will not object to a request for a Class Representative Enhancement Payment for Plaintiff of Five Thousand Dollars and Zero Cents (\$5,000.00) in exchange for the general release of her claims, her time, and risks in prosecuting this case, and her service to the Settlement Class. This payment will be in addition to Plaintiff’s Individual Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Settlement Administrator. It is the intent of the Parties that the Enhancement Payment to the Plaintiff is for her services in connection with this Lawsuit and is not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancements constitute wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to

the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendants from the Enhancement paid under this Settlement Agreement. In addition, Plaintiff shall hold Defendants, Defendants' Counsel, Released Parties and Class Counsel harmless and indemnify Defendants, Defendants' Counsel, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendants by reason of any claims relating to the non-withholding of taxes from the Enhancement.

7. **Settlement Administrator.** Defendants will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator nor to Class Counsel seeking Court approval to pay up to Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00) from the Maximum Settlement Amount for its services. The Settlement Administrator shall be responsible for sending all required notices in both English and Spanish, calculating the Net Settlement Fund, calculating each Class Member's Individual Settlement Award amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E). The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after checks have been mailed to all Settlement Class Members.

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

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Daniel J. Brown of Stansbury Brown Law, PC and Reuben Nathan of Nathan & Associates as Class Counsel;
- C. Appointing Maria Del Carmen Espinoza as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice, Request for Exclusion Form, and Objection Form), and directing the mailing of same in English and Spanish; and
- G. Scheduling a Final Approval hearing.
- H. At the same time the Settlement is presented to the Superior Court for Preliminary Approval, Plaintiff shall submit the proposed settlement to the Labor Workforce Development Agency ("LWDA") pursuant to Labor Code § 2699(1)(2). Proof of this submission will be provided to Defendants' respective Counsel.
- I. If Final Approval is granted, Plaintiff shall submit a copy of the Superior Court's judgement within ten (10) days after entry of the judgement or order, pursuant to

Labor Code § 2699(1)(3). Proof of this submission will be provided to Defendants' respective Counsel.

9. **Notice Procedures.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within fourteen (14) days after entry of an order preliminarily approving this Settlement Agreement, Gutierrez will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Settlement Class Members, as well as the total workweeks worked by each member of the Settlement Class during the Class Period and PAGA Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet in English and Spanish to each Settlement Class Member, at their last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. The Settlement Administrator shall use its best professional efforts, including utilizing a "skip trace," to track any Settlement Class Member's mailing returned as undeliverable, and will re-send the Notice Packet promptly upon identifying updated mailing addresses through such efforts. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
- D. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have thirty (30) days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection.
- E. **Opt-Out/Request for Exclusion Procedures.** Any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").

- i. The Request for Exclusion Form must: (1) contain the name, address, telephone number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the class settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form fails to comply with items (1)-(3), it will not be deemed a valid Request for Exclusion from this settlement, except a Request for Exclusion Form not containing a Class Member's telephone number will be deemed valid. The date of the postmark on the Request for Exclusion Form, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement (although the PAGA settlement and release provisions will apply to each such individual, and such individual shall be entitled to their share of the PAGA Amount) or have any right to object, intervene, appeal or comment thereon. Any Settlement Class Member who does not submit a Request for Exclusion Form is automatically deemed a participating Settlement Class Member.
- F. **Objections.** Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel as well as filing them with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendants' counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) objections must be postmarked on or before the Response Deadline.
- G. **Challenges to Individual Settlement Award Calculations.** Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member's estimated Settlement Award as well as all of the information that was used from Gutierrez's records in order to calculate the Settlement Award, including the Settlement Class Member's number of Eligible Workweeks during the Class Period, and the number of pay periods worked during the PAGA Period. Settlement Class Members will have the opportunity, should they disagree with Gutierrez's records regarding the number of Eligible Workweeks and/or pay periods stated in their Notice Packet to challenge the data provided. In order to challenge Gutierrez's data, the Settlement Class Member must provide documentation and/or an explanation demonstrating that Gutierrez's data is incorrect and evidencing the correct number of Eligible Workweeks and or pay

periods that the Settlement Class Member believes they should have been credited with. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt.

- H. **Dispute Resolution.** The Settlement Administrator shall have the responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of Settlement Class Member's Individual Settlement Awards, the allocation of W-2 wages, and the number of Eligible Workweeks and/or pay periods. Where the information submitted by Gutierrez from its records differs from the information submitted by the Settlement Class Member, the Settlement Administrator shall request a conference call between the Settlement Administrator, Class Counsel, and defense counsel to discuss and resolve the dispute. In advance of the conference call, the Settlement Administrator shall email copies of all available information to all counsel. After consulting with the Parties to determine whether an adjustment is warranted, the Settlement Administrator will determine the eligibility for and amount of any Settlement Award. Such determination shall be binding upon the Settlement Class Member and the Parties.

10. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff and Class Counsel's application for Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, Class Counsel's costs and expenses, and the LWDA's share of the PAGA payment; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission.** Defendants deny that they have engaged in any unlawful activity, that they have failed to comply with the law in any respect, that they have any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the addresses set forth below, or such other addresses as the Parties may designate in writing from time to time:

if to Juan C. Gutierrez dba J.C.
Gutierrez Labor Service:

Alden J. Parker
Rebecca A. Hause-Schultz
FISHER & PHILLIPS LLP
621 Capitol Mall, Suite 1400
Sacramento, California 95814
Telephone: (916) 210-0391
Facsimile: (916) 210-0401
aparker@fisherphillips.com
rhause-schultz@fisherphillips.com

if to Visalia Citrus Packing
Group, Inc.:

Patrick S. Moody
Catherine M. Houlihan
BARSAMIAN & MOODY
A Professional Corporation
1141 W. Shaw Avenue, #104
Fresno, CA 93711
pmoody@theemployerslawfirm.com
choulihan@theemployerslawfirm.com

if to Plaintiff:

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

14. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

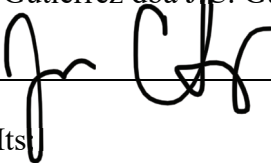
15. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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[SIGNATURES ON FOLLOWING PAGES]

EXECUTION BY PARTIES AND COUNSEL

DATED: **Aug 19, 2022** Juan C. Gutierrez dba J.C. Gutierrez Labor Service

By:  _____
Its:

DATED: Visalia Citrus Packing Group, Inc.

By: _____

Its:

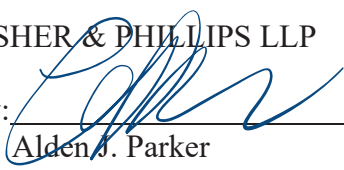
DATED: Maria Del Carmen Espinoza

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: August 19, 2022

FISHER & PHILLIPS LLP

By:  _____
Alden J. Parker
Rebecca A. Hause-Schultz
Attorneys for Defendant Juan C. Gutierrez dba
J.C. Gutierrez Labor Service

DATED: BARSAMIAN & MOODY
A Professional Corporation

By: _____
Patrick S. Moody
Catherine M. Houlihan
Attorneys for Defendant Visalia Citrus Packing Group,
Inc.

EXECUTION BY PARTIES AND COUNSEL

DATED:

Juan C. Gutierrez dba J.C. Gutierrez Labor Service

By: _____

Its:

DATED:

8/19/22

Visalia Citrus Packing Group, Inc.

By: RJH

Its: CFO

DATED:

Maria Del Carmen Espinoza

8-17-22

By: Yana Espinoza
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

FISHER & PHILLIPS LLP

By: _____

Alden J. Parker
Rebecca A. Hause-Schultz
Attorneys for Defendant Juan C. Gutierrez dba
J.C. Gutierrez Labor Service

DATED:


8/19/22

BARSAMIAN & MOODY
A Professional Corporation

By: Catherine M. Houlihan

Patrick S. Moody
Catherine M. Houlihan
Attorneys for Defendant Visalia Citrus Packing Group,
Inc.

DATED: August 17, 2022 STANSBURY BROWN LAW, PC

By: 
Daniel J. Brown
Attorneys for Plaintiff

DATED: August 18, 2022

NATHAN & ASSOCIATES, APC


By: 
Reuben D. Nathan
Attorneys for Plaintiff

EXHIBIT B

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT
Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.
Tulare Superior Court
Case No.: VCU286326

To: All current and former non-exempt employees of Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service in California who were subject to Wage Order 14 and worked at least one day performing work for Defendant Visalia Citrus Packing Group, Inc., at any time during the period of March 23, 2017, to April 18, 2022 (“Class Period”) (“Settlement Class” or “Settlement Class Members”).

PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in the matter of *Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.*, Tulare County Superior Court, Case No. VCU286326 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Juan C. Gutierrez dba J.C. Gutierrez Labor Service (“Gutierrez”) records show that you were employed by Gutierrez as a non-exempt employee subject to the requirements of Wage Order 14 and worked at least one day performing work for Defendant Visalia Citrus Packing Group, Inc. (“VCPG”) (Gutierrez and VCPG are collectively referred to herein as “Defendants”) in California between March 23, 2017, and April 18, 2022 (the “Class Period”). Wage Order 14 is a California regulation that sets working conditions for agricultural workers, including workers that harvest agricultural goods on farms like the farm(s) owned by VCPG. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court issues a Final Approval Order approving the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Maria Del Carmen Espinoza (“Plaintiff” or “Class Representative”) brought this Lawsuit against Defendants seeking to assert claims on behalf of a class of all current and former non-exempt employees subject to Wage Order 14 who were employed by Defendant Gutierrez and worked at least one day performing work for VCPG in California from March 23, 2017, to April 18, 2022. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

The Lawsuit alleges that Defendants: (i) failed to pay employees all earned minimum and overtime wages, (ii) failed to provide all legally required meal and rest periods, (iii) failed to provide accurate and itemized wage statements, (iv) failed to timely pay all weekly wages due or final wages due, and (v) as a result of the above-mentioned alleged violations, engaged in unlawful business practices and are liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Defendants deny that they have done anything wrong. Defendants also deny that they owe Settlement Class Members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement is a compromise of disputed claims and should not be considered as an admission of liability on the part of Defendants, by whom all liability is expressly denied.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of the Court not allowing the case to proceed as a class action, the risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

The Court has not ruled on Plaintiff’s claims. In granting preliminary approval of the Settlement the Court has determined only that there is sufficient evidence to suggest that the Settlement might be fair, adequate, and reasonable. A final determination on whether the Settlement is fair, adequate, and reasonable will be made at the Final Approval hearing.

Your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants’ policies strictly prohibit unlawful retaliation. Defendants will not take any adverse action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

<p>Attorneys for Plaintiff/Settlement Class:</p> <p>STANSBURY BROWN LAW, PC Daniel J. Brown dbrown@stansburybrownlaw.com 2610 ½ Abbot Kinney Blvd. Venice, California 90291 Tel: (323) 204-3124 www.stansburybrownlaw.com</p>	<p>Attorneys for Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service:</p> <p>FISHER & PHILLIPS LLP Alden J. Parker aparker@fisherphillips.com Rebecca A. Hause-Schultz rhause-schultz@fisherphillips.com 621 Capitol Mall, Suite 1400 Sacramento, California 95814 Telephone: (916) 210-0391 www.fisherphillips.com</p>
<p>Attorneys for Plaintiff/Settlement Class:</p> <p>NATHAN & ASSOCIATES, APC Reuben D. Nathan rnathan@nathanlawpractice.com 2901 W. Coast Hwy., Suite 200 Newport Beach, California 92663 Tel: (949) 270-2798 https://www.nathanlawpractice.com/</p>	<p>Attorneys for Defendant Visalia Citrus Packing Group, Inc.:</p> <p>BARSAMIAN & MOODY A Professional Corporation Patrick S. Moody pmoody@theemployerslawfirm.com Catherine M. Houlihan choulihan@theemployerslawfirm.com 1141 W. Shaw Avenue, #104 Fresno, CA 93711 Tel: (559) 248-2360 www.theemployerslawfirm.com</p>

What are the terms of the Settlement?

Defendants have agreed to pay \$415,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, payment of the State of California’s share of PAGA Penalties to the Labor and Workforce Development Agency, Class Counsel’s attorneys’ fees and expenses, Settlement administration costs, and the Class Representative’s Enhancement Payment.

The following deductions from the Maximum Settlement Amount will be requested by the Parties:

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for up to one-third of the Maximum Settlement Amount, which is currently estimated at \$138,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$15,000.00 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$17,500.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an Enhancement Payment in the amount of \$5,000.00 to compensate her for her service and extra work provided on behalf of the Class Members.

Payment to State of California. The Parties have agreed to allocate \$5,000.00 towards the Settlement of the PAGA claims in the Lawsuit. \$3,750.00 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$1,250 will be allocated to Class Members as part of the Net Settlement Fund described below.

Defendants Share of Payroll Taxes. Defendant Gutierrez’s share of payroll taxes shall be paid by Defendant Gutierrez separate and apart from the Maximum Settlement Amount.

Calculation of Class Members’ Settlement Awards. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Fund, which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion Form (“Settlement Class Members”) (described below). The Net Settlement Fund is estimated at approximately \$230,550.00, and will be divided as follows:

- (i) \$1,250.00 of the Maximum Settlement Amount has been designated as the “PAGA Amount.” Each Class Member who was employed by Gutierrez and worked at least one day for VCPG at any time from March 23, 2020, to April 18, 2022, shall receive a portion of the PAGA Amount based on the number of proportionate Eligible Workweeks he or she worked from March 23, 2020 to April 18, 2022.
- (ii) The remainder of the Net Settlement Fund will be distributed to each Settlement Class Member based on the proportionate number of Eligible Workweeks that he or she worked during the Class Period. An “Eligible Workweek” shall be any workweek in which the Class Member worked at least one day for Gutierrez performing work for Visalia Citrus Packing Group, Inc. during the workweek based on Gutierrez’s records.

Payment of the Settlement. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to all Class Members for their portion of the PAGA Amount regardless of whether they submit a Request for Exclusion Form. In addition, Settlement Class Members will receive additional compensation as part of their Individual Settlement Awards comprised of their portion of the Net Settlement Fund as described above.

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: 20% as “wages,” for which an IRS Form W-2 will be issued; and 80% as penalties and interest, for which an IRS Form 1099 will be issued. Class Members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of awards they receive under the Settlement.

Release. If the Court approves the Settlement, Plaintiff and every member of the Settlement Class (except those who opt out, as described below) will fully release and discharge Defendants, their past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the “Released Parties”) for all claims that were pled or could have been pled based on the factual allegations and class definition in the SAC for work performed by Juan C. Gutierrez dba J.C. Gutierrez Labor Service for Defendant Visalia Citrus Packing Group, Inc., including: (a) minimum wage violations (b) failure to pay all overtime wages; (c) meal period violations; (d) rest period violations; (e) wage statement violations; (f) waiting time penalties; (g) all claims arising out of unfair business practices under Business & Professions Code § 17200, et seq. that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC; and (i) all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from March 23, 2017, through April 18, 2022 (“Class Period”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of Eligible Workweeks you worked during the Class Period, the proportionate number of Eligible Workweeks you worked between March 23, 2017, and April 18, 2022, and whether you are entitled to a portion of the PAGA Amount, as stated in this Notice. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of Eligible Workweeks you worked during the Class Period and whether you are entitled to a portion of the PAGA Amount. The information contained in Gutierrez' records regarding each of these factors, along with your estimated Individual Settlement Award, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to <<ADMINISTRATOR CONTACT INFO>>. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make a determination as to whether an adjustment will be made.

According to Defendant Gutierrez' records:

- (a) you worked for Gutierrez in California from [REDACTED] to [REDACTED];
- (b) you worked [REDACTED] Eligible Workweeks between March 23, 2017, and April 18, 2022, for Gutierrez assigned to VCPG;
- (c) you worked [REDACTED] pay periods between March 23, 2020, and April 18, 2022, for Gutierrez assigned to VCPG.

Based on the above, your Individual Settlement Award is estimated at \$ [REDACTED]. The lowest Individual Settlement Award to a Settlement Class Member is estimated at [REDACTED]. The highest Individual Settlement Award to a Settlement Class Member is estimated at [REDACTED].

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by completing the Request for Exclusion Form included with this Notice, and sending it to the Settlement Administrator postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion Form, shall, upon receipt by the Settlement Administrator, not be a Settlement Class Member and shall be barred from participating in any portion of the Net Settlement Fund (except their applicable portion of the PAGA Amount).

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may complete the Objection Form or timely submit a written objection directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection must include your name, address, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, together with any evidence in support of your objection. Objection Forms or written objections must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also object by appearing at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 07 of the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, California 93291. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. All objections or other correspondence must state the name and number of the case, which is *Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.*, Case No. VCU286326.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 07 of the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, California 93291. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, California 93291, during regular court hours. You may also view the Settlement Agreement, complaint, and other relevant documents by going to the website: Phoenixclassaction.com/DelCarmenJCGutierrez You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR THEIR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting a Request for Exclusion Form, Objection Form, or any dispute is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIMINARY APPROVAL DATE>>.

EXHIBIT C

REQUEST FOR EXCLUSION FORM

Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.
Tulare County Superior Court
Case No. VCU286326

IF YOU **DO NOT** WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MAY **COMPLETE**, **SIGN** AND **MAIL** THIS FORM, POSTMARKED ON OR BEFORE **[INSERT DATE]**, ADDRESSED AS FOLLOWS:

<p>PHOENIX SETTLEMENT ADMINISTRATORS <i>Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.</i> CLASS ACTION ADMINISTRATOR ADDRESS ADDRESS PHONE FAX</p>
--

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.* Tulare County Superior Court, Case No. VCU286326.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *MARIA DEL CARMEN ESPINOZA V. JUAN C. GUTIERREZ DBA J.C. GUTIERREZ LABOR SERVICE, ET AL.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name Telephone Number

Address

Date Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____

EXHIBIT D

OBJECTION FORM

Maria Del Carmen Espinoza v. Juan C. Gutierrez dba J.C. Gutierrez Labor Service, et al.
Tulare Superior Court
Case No.: VCU286326

All objections must be mailed or delivered to the Settlement Administrator, Phoenix Settlement Administrators at <<INSERT ADMINISTRATOR CONTACT INFO>> on or before <<RESPONSE DEADLINE>>. All objections must be postmarked on or before <<RESPONSE DEADLINE>>.

Objecting Settlement Class Member Information:

Name	Telephone Number
------	------------------

Address

Date	Signature
------	-----------

Describe the Nature of Each Objection and Please Attach Additional Pages if Necessary:

EXHIBIT E

Stansbury Brown Law

Unbilled Charges

All Dates

DATE	TRANSACTION TYPE	NUM	POSTING	MEMO/DESCRIPTION	AMOUNT	BALANCE
0082 Del Carmen Maria v J.C. Gutierrez Labor Service						
01/28/2021	Billable Expense Charge		No	Certified Mail 226 Letter	41.70	41.70
03/23/2021	Billable Expense Charge		No	PGA Letter Filing Fee	75.00	116.70
03/23/2021	Billable Expense Charge		No	Filing Fee	435.00	551.70
03/23/2021	Billable Expense Charge		No	Court Service Fee	2.50	554.20
04/13/2021	Billable Expense Charge		No	Service 3/30/21	94.50	648.70
04/13/2021	Billable Expense Charge		No	Service 3/30/21	84.50	733.20
04/13/2021	Billable Expense Charge		No	Service 3/30/21	42.25	775.45
05/06/2021	Billable Expense Charge		No	Filing Fee	94.50	869.95
05/14/2021	Billable Expense Charge		No	cert mail	13.05	883.00
05/27/2021	Billable Expense Charge		No	Printing FAC	5.00	888.00
07/03/2021	Billable Expense Charge		No	Tulare County Filing 6/3	94.50	982.50
08/14/2021	Billable Expense Charge		No	Filing	259.50	1,242.00
08/14/2021	Billable Expense Charge		No	Filing	117.50	1,359.50
08/14/2021	Billable Expense Charge		No	Filing Fee	694.50	2,054.00
08/14/2021	Billable Expense Charge		No	Filing	94.50	2,148.50
01/08/2022	Billable Expense Charge		No	Filing Fee 358861	117.50	2,266.00
02/06/2022	Billable Expense Charge		No	Printing Data Analysis 2/6/22	30.50	2,296.50
02/06/2022	Billable Expense Charge		No	Printing Data Analysis	0.25	2,296.75
02/17/2022	Billable Expense Charge		No	Plaintiff's portion Mediation	1,543.50	3,840.25
03/04/2022	Billable Expense Charge		No	Court Filing 364462	94.50	3,934.75
03/05/2022	Billable Expense Charge		No	Labor Analysis	1,875.00	5,809.75
03/20/2022	Billable Expense Charge		No	Legal Research/Westlaw	34.91	5,844.66
03/24/2022	Billable Expense Charge		No	Court Filing 367653	117.50	5,962.16
04/07/2022	Billable Expense Charge		No	Court Call Ex Parte App 4/11	94.00	6,056.16
04/09/2022	Billable Expense Charge		No	Legal Research/Westlaw	56.16	6,112.32
08/13/2022	Billable Expense Charge		No	Legal Research/Westlaw	206.06	6,318.38
Total for 0082 Del Carmen Maria v J.C. Gutierrez Labor Service					\$6,318.38	
TOTAL					\$6,318.38	

EXHIBIT F

LAFFEY MATRIX

History

Case Law

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g.,DL v. District of Columbia, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

** “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.*

*** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.*

EXHIBIT G



Daniel Brown <dbrown@stansburybrownlaw.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: dbrown@stansburybrownlaw.com

Fri, Aug 19, 2022 at 2:28 PM

08/19/2022 02:27:30 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm