

Confidential Memorandum of Understanding (“MOU”)

*Victor Lopez v. Valley Custom Harvesting LLC
Sutter County Superior Court, Case No. CVCS20-0001035*

1. All terms in this MOU are subject to Court approval. This is a settlement of a wage-and-hour class/PAGA action following a mediation on December 8, 2021 before Russ Wunderli. This MOU does not constitute an admission by Defendant of any form of liability or allegation against it. This MOU is confidential (except for purposes of enforcement) other than as necessary to obtain Court approval and effectuate the terms of the Settlement.

2. The Class is defined as all individuals who are or were employed as nonexempt employees by Defendant in California from four years prior to the filing of the original Complaint through the date of preliminary approval. Defendant represents that, as of the date of mediation, the Class consists of approximately thirty-three (33) Class Members. Defendant represents that there are approximately three hundred sixteen (316) weeks worked in the Class Period through the date of the mediation. As part of this agreement, Defendant stipulates to certification of the class for settlement purposes only.

3. The non-reversionary Gross Settlement Amount (“GSA”) is one hundred fifty thousand dollars (\$150,000.00) to be paid out in accordance with the following payment plan: twenty-five thousand (\$25,000.00) by 1/1/22; twenty-five thousand (\$25,000.00) by the date of final approval; twenty-five thousand (\$25,000.00) by 9/1/22; twenty-five thousand (\$25,000.00) by 10/1/22; twenty-five thousand (\$25,000.00) by 11/1/22 and twenty-five thousand (\$25,000.00) by 12/1/22.

a. Defendant will not object to a request for attorneys’ fees by class counsel of up to 1/3 of the GSA;

b. Defendant will not object to reimbursement of class counsel’s out-of-pocket costs up to ten thousand dollars (\$10,000.00) from the GSA;

c. Defendant will not object to a request for a Class Representative enhancement award of seven thousand five hundred dollars (\$7,500.00) from the GSA. In exchange for the enhancement award, the long-form settlement agreement shall contain a general release of claims by Plaintiff under Civil Code section 1542. The Parties agree that Plaintiff’s settlement of his individual claims does not result in Plaintiff no longer being considered an aggrieved employee for purposes of his PAGA claims, and neither does it result in Plaintiff being deemed an unfit class representative for purposes of the Case. Defendant denies any liability or wrongdoing with regard to Plaintiff on his alleged individual claims.

d. The parties agree that reasonable settlement administration costs of up to ten thousand dollars (\$10,000.00) will also be deducted from the GSA and the parties agree that Phoenix Class Action Administration Solutions is a mutually acceptable settlement administrator;

e. The Parties agree that five thousand dollars (\$5,000.00) will be allocated to PAGA penalties. Of this amount, 75% shall go to the State of California, and 25% shall be redistributed to the PAGA Class;

4. The Net Settlement Amount (“NSA”), which is the GSA minus all the deductions referenced in paragraph 3 (a through e), shall be distributed pro rata on a “checks cashed” basis based on the proportional number of weeks worked by each Class Member during the Class Period. The Parties agree that all payments to Class Members, all attorney’s fees and costs, penalties, enhancement awards, and all claims administrations expenses shall be paid out of the GSA. There shall be no reversion to Defendant. There shall be no claims-process. Class Members will be provided with an estimate of their portion of the NSA as part of the class notice process. As part of the class notice, Class Members will be provided with the settlement terms and their right to opt out, object, appear at the fairness hearing or challenge their number of weeks worked as set out in the notice. The settlement administrator will calculate the number of weeks worked (“workweeks”) by Class Members during the Class Period, and the amount to be paid to Class members per workweek based on information to be provided by Defendant. The workweeks will be

calculated by the settlement administrator for each Class Member by dividing the total days worked in California as a Class member during the Class Period by seven. Partial workweeks will not be counted. Defendants' workweek data will be presumed to be correct unless a particular Class Member proves otherwise to the settlement administrator by credible written evidence. All workweek disputes will be resolved and decided by the settlement administrator, and the settlement administrator's decision on all workweek disputes will be final and non-appealable. The amount to be paid per workweek to eligible Class Members will be calculated by dividing the Net Settlement Amount by the total number of workweeks of all Class Members; any person who opts out of the Settlement is not a Class Member, and is ineligible to object to the Settlement or to participate in the Settlement. The class settlement notice to be sent to Class Members are to be mutually agreed upon by the Parties, will be exhibits to the Parties' joint stipulation of class action settlement and release, and will be presented for preliminary approval to the Court.

5. The Parties will work together in good faith to prepare and finalize a formal settlement agreement within twenty (20) days of the December 8 2021 mediation. The settlement agreement will be filed with the Court and may include additional but no contradictory terms, and counsel for the Plaintiff will prepare the first draft of the settlement agreement for review and comment by Defense Counsel. Defendant agrees not to oppose Plaintiff's Motion for Preliminary Approval to the extent it comports with this MOU and the long-form settlement agreement.

6. **Release.** Plaintiff and all other class members will release Defendants and all of its subsidiaries, affiliates, partners, members, agents, predecessors, successors, and assigns (the "Released Parties") to include all claims both potential and actual that were or may have been raised in the First Amended Complaint or that are reasonably related to the allegations in the First Amended Complaint as to all Class Members, including claims under Labor Code section 201, 202, 203, 204, 218.5, 226, 226.3, 226.7, 226.8, 510, 512, 520, 1021.51174, 1174.5, 11751194, 1197, 1198, 2802, 2698, 2699, 2699.3, 2699.5, California Industrial Welfare Commission Wage Orders, Cal. Code Regs., tit. 8, section 11040, *et seq.*, California Business and Professions Code section 17200, *et seq.*, and all class claims, representative claims, aggrieved employee claims, meal or rest periods, meal or rest period premiums, unpaid wages, overtime, minimum wages, and complete payments of wages at separation, termination or lay-off, failure to provide accurate and itemized wage statements, failure to reimburse for expenses, unfair competition based on the foregoing, unfair business practices based on the foregoing, unlawful business practices based on the foregoing, fraudulent business practices based on the foregoing, PAGA penalties based on the foregoing, waiting time penalties, civil penalties based on the foregoing, interest, fees, costs, and any other claims that may have been raised in the First Amended Complaint or that reasonably relate to the allegations therein from four (4) years prior to the filing of the original Complaint through the date of preliminary approval of the Settlement (collectively the "Released Claims"). The Release Period shall be the Class Period. "Released Parties" as referenced herein and as released in the Settlement shall collectively mean: (i) Defendant Valley Custom Harvest, LLC (ii) Defendant's past, present and future parents, subsidiaries and including, without limitation any corporation, limited liability company, partnership, trust, foundation and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past, present, and future owners, partners, directors, officers, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

7. For tax purposes, the parties agree to allocate payments to class members as follows: 15% to wages for which a Form W2 shall issue, and 85% to penalties and interest for which an IRS Form 1099 shall issue.

8. In the event that 10% of the Class opt out of the settlement, Defendants have the right (but not the obligation) to void the settlement. In the event that the total number class members increases by 10%, Plaintiff has the right (but not the obligation) to void the settlement. Should the Class size increase by 10% or more, the Settlement shall increase proportionately, i.e., Class size increases by ten (10%),

settlement will also increase by ten (10%) percent. The Defendant shall also have the option to cap the Class as of the day of mediation to avoid any increase.

9. Any funds associated with uncashed checks in the NSA shall be sent to the California Unclaimed Property Fund and approved by the Court.

10. Notwithstanding anything else contained herein, this agreement shall be enforceable under CCP 664.6 and admissible under California Evidence Code 1123(a). Regardless of any settlement privilege or other rules of evidence, this MOU may be admitted in Court for enforcement purposes only, even if a finalized settlement document cannot be agreed upon.

11. Plaintiff and his counsel agree to maintain confidentiality of this settlement and memorandum of understanding until a motion for preliminary approval is filed.

12. The parties to this MOU agree that the formal settlement agreement will contain an integration clause.

01 / 10 / 2022

Dated: December __, 2021

Victor Lopez

Victor Lopez
Class Representative

Harvir Thiara 01/20/22

Valley Custom Harvest, LLC
Harvir Thiara

Rupinder Takhar 01/20/22

Valley Custom Harvest, LLC
Rupinder Takhar