

# CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and Private Attorney General Act (“PAGA”) Settlement Agreement (“Agreement”) is made by and between plaintiffs Antonio Bonilla and Roberta Sanchez (“Plaintiffs”) and defendant Reiter Berry Farms, Inc. (“RBF”). The Agreement refers to Plaintiffs and RBF collectively as “Parties,” or individually as “Party.”

## 1. DEFINITIONS.

1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against RBF captioned *Antonio Bonilla and Roberta Sanchez v. Reiter Berry Farm, Inc.*, Case No. 21CV02962, initiated on December 10, 2021 and pending in Superior Court of the State of California, County of Santa Cruz. On February 4, 2022, Plaintiffs filed a First Amended Complaint adding a PAGA cause of action.

1.2. “Administrator” means ILYM Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means any and all current and former non-exempt employees of RBF who worked for RBF in California at any time from and including on November 12, 2020, through the date of preliminary approval of this settlement. Aggrieved employees do not include non-exempt employees who worked in the Santa Maria region from November 12, 2020 through July 31, 2021 and who were covered by a prior PAGA settlement, Santa Barbara County Superior Court Case No. 20CV01640.

1.5 “Class” means any and all current and former non-exempt employees of RBF who worked for RBF in California at any time from and including on December 10, 2017 through the date of preliminary approval of this settlement.

1.6. “Class Counsel” means Ian M. Silvers of Bisnar Chase LLP and Richard Alpers of Alpers Law Group, Inc.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in RBF’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from and including December 10, 2017, through the date of the Court's preliminary approval of the Settlement.

1.13. "Class Representative" means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as a Class Representatives.

1.14. "Class Representative Service Payment" means the payment to each Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Santa Cruz.

1.16. "RBF" means named Defendant Reiter Berry Farms, Inc.

1.17. "Defense Counsel" means Ana C. Toledo from Noland, Hamerly, Etienne & Hoss.

1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement (including any attorney's fees and costs, administration costs and service payment).

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means Six Million One Hundred Twenty Five Thousand Dollars (\$6,125,000) on a non-revisionary basis which is the total amount RBF agrees to pay under the Settlement (subject to the escalator clause, Paragraph 8 below). The following payments will be made from the Gross Settlement Amount: (1) Individual Class Payments; (2) Individual PAGA



Payments; (3) LWDA PAGA Payment; (4) Class Counsel Fees and Class Counsel Expenses; (5) Class Representative Service Payments; and (6) the Administration's Expenses Payment. As to that portion of Class Members' settlement payments that constitutes wages, any employer payroll taxes, including the employer FICA, FUTA, and SDI contributions, shall be paid by RBF separately from, and in addition to, the Gross Settlement Amount.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks (using whole numbers) worked during the Class Period.

1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods (using whole pay periods) worked during the PAGA Period.

1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.27. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Penalties, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for RBF for at least one day during the PAGA Period.

1.31. "PAGA Period" means the period from November 12, 2020, through the date of the Court's preliminary approval of the settlement.

1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.33. "PAGA Notice" means Plaintiffs' November 12, 2021 letter to RBF and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$50,000) and the 75% to LWDA (\$150,000) in settlement of PAGA claims.

1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. "Plaintiffs" means Antonio Bonilla aka Juan Daniel Garcia Hernandez and Roberta Sanchez aka Yessica Sanchez, the named plaintiffs in the Action.

1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Class and PAGA Settlement.

1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.41. "Released Parties" means: RBF and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries and affiliates.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member, in the form attached as **Exhibit B** or a document substantially similar.

1.43. "Response Deadline" means 30 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 10 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Workweek" means any week during which a Class Member worked for RBF for at least one day, during the Class Period.

## **2. RECITALS.**

2.1. On December 10, 2021, Plaintiffs commenced this Action by filing a Complaint alleging causes of action against RBF for (1) failing to pay for all wages owed (including minimum wage and overtime), (2) non-compliant meal periods and rest breaks; (3) non-complaint wage statements, (4) failure to pay all waiting time penalties, and (5) violation of California's Unfair Competition Law ("UCL"). On February 4, 2022, Plaintiffs filed a First Amended Complaint alleging an additional cause of action against RBF for PAGA violations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). RBF denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.



2.2. Pursuant to Labor Code section 2699.3, subd.(a), on November 12, 2021, Plaintiffs gave timely written notice to RBF and the LWDA by sending the PAGA Notice.

2.3. On June 13, 2024, the Parties participated in an all-day mediation presided over by David A. Lowe, at the end of which the case did not resolve. However, over the course of the next few months and numerous further discussions regarding the claims and resolution, the Parties were able to reach a resolution on September 20, 2024.

2.4. Prior to mediation, Plaintiffs obtained, through formal and informal discovery, a sample of time and pay records, policies, and datapoints including regarding the class and PAGA size and workweeks, as well as a contact information for a sample of employees, who Plaintiffs' counsel contacted. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, RBF promises to pay Six Million One Hundred Twenty-Five Thousand Dollars (\$6,125,000) (subject to the escalator clause) and no more as the Gross Settlement Amount for the claims in the Action, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. RBF has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to RBF.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$12,500 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). RBF will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative

Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: RBF will not oppose requests for (a) Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which is currently estimated to be \$2,143,750 (prior to any escalator clause), and (b) a Class Counsel Litigation Expenses Payment of not more than \$35,000. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds RBF harmless, and indemnifies RBF, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$95,000 for the initial mailing and \$35,000 on the second distribution if any occurs (which will come out of the redistributed amount) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than the above, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members (using whole workweeks) during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks (using whole workweeks).

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest, liquidated damages and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms, as required. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.



3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$200,000 to be paid from the Gross Settlement Amount, with 75% (\$150,000) allocated to the LWDA PAGA Payment and 25% (\$50,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$50,000) by the total number of PAGA Period Pay Periods (using full pay period) worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods (using full pay periods). Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks. Based on a review of its records to date, RBF estimates there are 15,000 Class Members who collectively worked a total of approximately 500,000 Workweeks.

4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, RBF will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. RBF has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which RBF must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. RBF shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay RBF's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 10 days after RBF funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment, as applicable. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members and Aggrieved Employees via First Class

U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. All Individual Class Payment and/or Individual PAGA Payment checks that are uncashed/unclaimed after 180 days from the date of the first distribution, will be cancelled. If the total uncashed/ unclaimed amount, is greater or equal to \$300,000, the Administrator will make a second distribution within 30 days. If the amount is less than \$300,000, it is agreed by the Parties that a second distribution is not economically feasible and such funds shall be donated to the cy pres recipient of Community Bridges (in Watsonville). If any checks remain uncashed after the Second Distribution, they shall be donated to the above cy pres without any further distribution.

The Second Distribution shall be made by taking the total uncashed funds (which already had employer's side taxes paid and subtracted from the wage portion of each employee's Individual Class Payment), subtracting the Administrator's costs for the second distribution (approved at the final accounting) and then dividing the remaining money proportionally among those Participating Class Members who cashed their checks by: (a) dividing that remaining money by the total number of Workweeks (using whole numbers) worked by all Participating Class Members who cashed their checks, and (b) multiplying the result by the number of Workweeks (using whole numbers) worked by each individual Participating Class Member who cashed his or her check. No tax withholding will be required for the Second Distribution as employer's side taxes were already paid on the initial distribution.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate RBF to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

**5. RELEASES OF CLAIMS.** Effective on the date when RBF fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the



Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

**5.1 Plaintiffs' Release.** Each Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences as of the date he/she signs the Agreement, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint ("Plaintiffs' Release.") Each Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now knows or believe to be true but agree, nonetheless, that each Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

**5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiffs' Release, each Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

*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.*

**5.2 Release by Participating Class Members:** All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint including any and all claims involving any alleged failure to: pay for all hours worked including regular wages and minimum wages (Labor Code §§ 204, 218, 1194, 1194.2, 226.2); pay overtime (Labor Code §§ 218, 510, 860-862, 1194); provide compliant meal periods and rest breaks or pay meal period and rest break premium wages (Labor Code §§ 226.7, 512; Wage Order 14); provide compliant wage statements (Labor Code §§ 226, 226.2, 1174); and pay all wages due at the time employment ends (Labor Code §§ 201, 202, 203). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

**5.3 Release by Participating and Non-Participating Class Members Who Are Aggrieved Employees:** All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint including any and all

claims involving any alleged failure to pay minimum wage, overtime, provide compliant meal periods and rest breaks, provide compliant wage statements and pay all wages due at the time employment ends.

**6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiffs agree to prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 RBF’s Declaration in Support of Preliminary Approval. Within 5 days of the full execution of this Agreement, RBF will confirm in writing to Plaintiffs’ Counsel that Defendant is not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement

6.2 Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice, Request for Exclusion Form and Objection Form;; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; and (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; and all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement (to the extent reasonably possible); obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

## **7. SETTLEMENT ADMINISTRATION.**



7.1 Selection of Administrator. The Parties have jointly selected ILYM Group to serve as the Administrator and verified that, as a condition of appointment, ILYM Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (QSF") under US Treasury Regulation section 468B-1. The QSF shall have its own Employer Identification Number for the purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Notice to Class Members.

7.3.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Workweeks in the Class Data.

7.3.2 Using best efforts to perform as soon as possible, and in no event later than 10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, Request for Exclusion Form and Objection Form with Spanish translation substantially in the form attached to this Agreement as **Exhibits A-C**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and the number of Workweeks used to calculate these amounts. Before mailing Class Notices, Request for Exclusion Form and Objection Form, the Administrator shall update Class Member addresses using the National Change of Address database.

7.3.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.3.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 10 days beyond the 30 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.3.5 If the Administrator, RBF or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such

persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 10 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

#### 7.4 Requests for Exclusion (Opt-Outs).

7.4.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 30 days after the Administrator mails the Class Notice (plus an additional 10 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.4.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge (absent good cause as found by the Court). If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.4.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.4.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.

7.5 Challenges to Calculation of Workweeks. Each Class Member shall have 30 days after the Administrator mails the Class Notice (plus an additional 10 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge (absent good cause as found by the Court). The Administrator shall promptly provide



copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

#### 7.6 Objections to Settlement.

7.6.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.6.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail, in the form attached as **Exhibit C** or a document substantially similar. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 30 days after the Administrator's mailing of the Class Notice (plus an additional 10 days for Class Members whose Class Notice was re-mailed).

7.6.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.7.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails, and the Administrator shall have staff available to speak with Class Members in both English and Spanish.

7.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks received and/or resolved, and

checks mailed for Individual Class Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

**7.7.4 Workweek Challenges.** The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge (absent good cause as found by the Court).

**7.7.5 Administrator's Declaration.** Not later than 10 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and include the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration in Court.

**7.7.6 Final Report by Settlement Administrator.** Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

**8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, RBF estimates that there are approximately 15,000 Class Members and 500,000 Total Workweeks during the Class period. If the number of Total Workweeks increases by more than 9% (*i.e.*, more than 545,000 Total Workweeks) as of the end of the Class Period, RBF will have the choice to either: (a) proportionally increase the Gross Settlement by the Workweeks worked in the Class Period in excess of 545,000; or (b) to shorten the Class Period to the day the number of Workweeks reaches 545,000. Should RBF elect option (b), then RBF shall notify Class Counsel of its election no later than the deadline for RBF to provide the class data to the Settlement Administrator.

**9. RBF'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, RBF may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if RBF withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, RBF will remain responsible for paying all Settlement Administration Expenses incurred to that point. RBF must notify Class Counsel and the Court of its selection to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.



**10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”) and Motion for Class Counsel Fee and Costs, Administration Costs and Class Representative Service Payment. Plaintiffs shall provide drafts of these documents to Defense Counsel not later than five days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court’s concerns and to obtain

Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

**11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

## **12. ADDITIONAL PROVISIONS.**

**12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by RBF that any of the allegations in the Operative Complaint have merit or that RBF has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that RBF's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, RBF reserves the right to contest certification of any class for any reasons, and RBF reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest RBF's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

**12.2 Confidentiality Prior to Preliminary Approval.** Plaintiffs, Class Counsel, RBF and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, RBF and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.



12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5 Attorney Authorization. The Parties warrant that they have authorized their respective counsel to take all appropriate action required or permitted to be taken by the Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties will cooperate and direct their counsel to cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8 No Tax Advice. Neither Plaintiffs, Class Counsel, RBF nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles. 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by RBF in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court.

12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Ian M. Silvers, Esq.  
**BISNAR|CHASE LLP**  
1301 Dove Street, Suite 120  
Newport Beach, California 92660  
Telephone: (949) 752-2999  
Facsimile: (949) 752-2777  
isilvers@bisnarchase.com

Richard C. Alpers, Esq.  
**ALPERS LAW GROUP, INC**  
P.O. Box 1540  
Aptos, CA 95001  
Telephone: (831) 240-0490  
Facsimile: (855) 870-1129  
rca@alperslawgroup.com

To RBF:

Ana C. Toledo, Esq.  
**NOLAND. HAMERLY, ETIENNE & HOSS**  
333 Salinas Street  
Salinas, CA 93902-2510  
Telephone: (831) 424-1414  
Facsimile: (831) 424-1975  
atoledo@nheh.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.



12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

12.20 Enforceable Under 664.6. This is a binding and enforceable agreement. Notwithstanding anything else contained herein, this Agreement shall be enforceable under California Code of Civil Procedure section 664.6 and admissible under California Evidence Code section 1123(a). Regardless of any settlement privilege or other rules of evidence, this Agreement may be admitted in Court and is enforceable even if a finalized settlement document cannot be agreed upon.

Antonio Cruz Bonilla  
Plaintiff ANTONIO BONILLA

Date: 12-16-2024

Roberta Sanchez  
Plaintiff ROBERTA SANCHEZ

Date: 12-16-2024

Defendant REITER BERRY FARMS, INC

[Signature]  
By: for Kyle Bunstein

Date: 12/10/24

APPROVED AS TO FORM:

BISNAR CHASE LLP

Ian M. Silvers  
Ian Silvers  
Counsel for Plaintiffs

Date: 12/18/2024

NOLAND, HAMERLY, ETIENNE & HOSS

[Signature]  
Ana C. Toledo  
Counsel for Defendant REITER  
BERRY FARMS, INC.

Date: 12/11/24