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13 UNITED STATES DISTRICT COURT FOR THE
14 EASTERN DISTRICT OF CALIFORNIA

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17 FRANCISCO RODRIGUEZ, JESUS
HERNANDEZ INFANTE, MARCO GARCIA,
18 JUAN MANUEL BRAVO, ESTELA
PATIÑO, JOSE F. OROZCO, and ANTONIO
19 ORTIZ, on behalf of themselves and other
members of the general public generally
20 situated,

21 Plaintiffs,

22 v.

23 DANELL CUSTOM HARVESTING, LLC, a
California company, RANCE DANELL, ERIC
24 DANELL, DAVID DANELL, and JUSTIN
DANELL,

25 Defendants.

Case No.: 1:16-cv-01848-SAB

**AMENDED STIPULATION AND
AGREEMENT TO SETTLE CLASS
AND COLLECTIVE ACTION**

1 This Settlement Agreement is made and entered into by and between (1) DANELL
2 CUSTOM HARVESTING, LLC, RANCE DANELL, ERIC DANELL, DAVID DANELL, and
3 JUSTIN DANELL (collectively “Defendants”), and (2) FRANCISCO RODRIGUEZ, JESUS
4 HERNANDEZ INFANTE, MARCO GARCIA, JUAN MANUEL BRAVO, ESTELA PATIÑO,
5 JOSE F. OROZCO, and ANTONIO ORTIZ (“Named Plaintiffs”), individually and on behalf of all
6 members of the Settlement Class hereinafter defined, subject to final approval of the Court. This
7 Settlement Agreement accurately sets forth the Parties’ Class and Collective Action Settlement in
8 the amount of one million five hundred thousand dollars (\$1,500,000) to resolve all claims of the
9 Settlement Class for alleged failure to provide meal and rest breaks and to pay wages, penalties,
10 reimbursement of work-related expenses, attorneys’ fees and costs, as detailed below.

11 DEFINITIONS

12 As used herein, the following terms shall have the following meanings:

- 13 1. **“Agreement”** or **“Settlement Agreement”** means this Stipulation and Agreement to
14 Settle Class and Collective Action, including the attached Exhibits.
- 15 2. **“Claims Administrator”** means CPT Group Class Action Administrators.
- 16 3. **“The Action”** means the civil action styled *Rodriguez, et al. v. Danell Custom*
17 *Harvesting, LLC, et al.*, which was filed in the United States District Court for the Eastern District
18 of California, Case Number 1:16-cv-01848-DAD-SAB.
- 19 4. **“Class Counsel”** means the Law Offices of John E. Hill.
- 20 5. **“Class Notice”** and **“FLSA Notice”** means the notices of the proposed Settlement
21 Agreement to be directed to members of the Settlement Class and the FLSA collective action
22 pursuant to the terms of the Preliminary Approval Order. The Class Notice and FLSA Notice shall
23 be substantially in the form of Exhibit A hereto.
- 24 6. **“Class Period”** shall mean any time between December 7, 2012 and the Preliminary
25 Approval Order.
- 26 7. **“Court”** means the United State District Court for the Eastern District of California.
- 27 8. **“Defendants”** means Danell Custom Harvesting, LLC, Rance Danell, Eric Danell,
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1 David Danell, and Justin Danell.

2 9. “**Effective Date**” means the latter of: (i) if no appeal is filed, the expiration date of
3 the time for filing or noticing any appeal from the Order and Final Judgment; (ii) if there is an
4 appeal of the Order and Final Judgment, the day after the appeal is dismissed or denied or the Order
5 and Final Judgment are affirmed on appeal and the expiration date for filing an appeal or a petition
6 for writ of certiorari to the United States Supreme Court; (ii) if an appeal or a petition for writ of
7 certiorari has been filed with the United States Supreme Court, the day after the appeal or a petition
8 for writ of certiorari has been dismissed or denied by the Supreme Court; or (iv) if the United States
9 Supreme court grants review of any appeal or petition for writ of certiorari, the day after affirmance
10 of the Order and Final Judgment by the United States Supreme Court.

11 10. “**Eligible Settlement Class Member**” means a member of the Settlement Class who
12 is eligible to receive a Settlement Award pursuant to the Settlement Agreement.

13 11. “**Implementation Schedule**” means the dates for implementing the Settlement
14 Agreement to be agreed upon separately by the Parties. The Implementation Schedule shall be
15 substantially in the form of Exhibit D hereto.

16 12. “**Named Plaintiffs**” means FRANCISCO RODRIGUEZ, JESUS HERNANDEZ
17 INFANTE, MARCO GARCIA, JUAN MANUEL BRAVO, ESTELA PATIÑO, JOSE F.
18 OROZCO, and ANTONIO ORTIZ.

19 13. “**Net Settlement Fund**” means the amount remaining in the Settlement Fund after
20 service awards are made to the Named Plaintiffs and payments are made to the Claims
21 Administrator, the California Labor and Workforce Development Agency (“LWDA”) and Class
22 Counsel, as provided in this Settlement Agreement.

23 14. “**Order and Final Judgment**” means the final judgment and order of dismissal with
24 prejudice to be entered by the Court.

25 15. “**Parties**” means the Named Plaintiffs and Defendants.

26 16. “**Preliminary Approval Order**” means the order to be entered by the Court upon the
27 Named Plaintiffs’ motion, preliminarily approving the Settlement Agreement and authorizing the
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1 Class Notice.

2 17. **“Released Claims”** means any and all claims, debts, liabilities, demands, obligations,
3 penalties, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action, whether
4 known or unknown, during the Relevant Time Period, as defined below, and that were alleged in the
5 Complaint filed on December 7, 2016, on behalf of the Named Plaintiffs and the Settlement Class
6 Members, based on the facts stated in the Complaint, including, but not limited to allegations, that:
7 (1) Defendants failed to compensate all straight time worked by Settlement Class Members; (2)
8 Defendants failed to pay overtime compensation under the Fair Labor Standards Act (FLSA) and the
9 California Labor Code; (3) Defendants failed to provide meal periods, or compensation in lieu
10 thereof, in violation of California Labor Code sections 226.7 and 512 and the applicable Industrial
11 Welfare Commission Wage Order; (4) Defendants failed to authorize and permit rest periods, or
12 compensation in lieu thereof, in violation of California Labor Code section 226.7 and the applicable
13 Industrial Welfare Commission Wage Order; (5) Defendants failed to provide itemized employee
14 wage statements, in violation of California Labor Code sections 226, 1174, and 1175 and the
15 applicable Industrial Welfare Commission Wage Order; (6) Defendants failed to timely pay wages
16 due at termination, in violation of California Labor Code sections 201-203 and 205; (7) Defendants
17 engaged in unlawful business practices in violation of California Business and Professions Code
18 section 17200, et seq; (8) Settlement Class Members are entitled to PAGA penalties pursuant to
19 California Labor Code Sections 2698, et seq.; (9) Settlement Class Members are entitled to
20 declaratory relief to determine whether the practices alleged in the Complaint are unlawful; (10)
21 Settlement Class Members are entitled to injunctive relief to halt any practices alleged in the
22 Complaint that are unlawful; (11) Settlement Class Members are entitled to restitutionary damages
23 under California Business & Professions Code sections 17200, et seq.; (12) Defendants are liable for
24 attorneys’ fees and/or costs incurred to prosecute this action on behalf of Settlement Class
25 Members, including fees incurred for the services of Class Counsel; and (13) Defendants are liable
26 for any other remedies, penalties, and interest under California Labor Code sections 201, 202, 203,
27 205, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 2699, and the applicable Industrial
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1 Welfare Commission Wage Order. If a person opt-outs of the Class after receiving the Class
2 Notice, his or her California claims will not be released and will not be barred by res judicata in any
3 future legal proceedings. If a person does not submit a consent to join/opt-in to the FLSA action,
4 that person's FLSA claim will not be released, regardless of whether he or she is part of the Class
5 Settlement.

6 18. **"Released Parties"** means Defendants and their past and present parents,
7 subsidiaries, related entities, and affiliates, and their respective present and former officers,
8 directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants,
9 auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries,
10 administrators, trustees, partners, predecessors, successors and assigns.

11 19. **"Relevant Time Period"** is December 10, 2012 to the date of the Preliminary
12 Approval Order.

13 20. **"Settlement Award"** means the gross payment that each Eligible Class Member
14 shall be entitled to receive under the terms of the Settlement Agreement.

15 21. **"Settlement Class"** or **"Settlement Class Members"** means all persons who are or
16 were employed in California by Defendants as non-exempt (i) mechanics, (ii) maintenance workers,
17 (iii) farm equipment operators, (iv) truck drivers, and (v) weighers at any point during the Class
18 Period and who do not properly and timely opt out of the Settlement Class by having requested
19 exclusion. This definition excludes all workers who previously settled and released their claims in
20 the California Labor Commissioner.

21 22. **"Settlement Fairness Hearing"** means the hearing to follow appropriate notice to
22 the Settlement Class and an opportunity for members of the Settlement Class to object to the
23 settlement, at which time the Parties will request that the Court approve the fairness, reasonableness
24 and adequacy of the terms and conditions of the proposed settlement, enter the Order and Final
25 Judgment, and take other appropriate action.

26 23. **"Settlement Fund"** means the \$1,500,000.00 to be paid by Defendants Danell
27 Custom Harvesting, LLC, Rance Danell, Eric Danell, David Danell, and Justin Danell under the
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1 terms of this Settlement Agreement. The Parties understand and agree that this amount does not
2 include the employer's share of payroll taxes, but includes all other amounts that must be paid by
3 Defendants under this settlement.

4 **RECITALS**

5 24. On December 7, 2016, the Named Plaintiffs, individually and on behalf of a
6 purported class of similarly-situated individuals, commenced an action against Defendants in the
7 United States District Court for the Eastern District of California, entitled *Rodriguez, et al. v. Danell*
8 *Custom Harvesting, LLC, et al.*, Case Number 1:16-cv-01848-DAD-SAB. In this Action, the
9 Named Plaintiffs alleged causes of action against Defendants based on alleged (i) violations of the
10 FLSA, California Labor Code and California Industrial Welfare Commission wage orders; (ii)
11 unfair and unlawful business practices in violation of the California Unfair Competition Law; and
12 (iii) violations of the Private Attorney General Act ("PAGA"). In support of the causes of action set
13 forth in the pleadings, the Named Plaintiffs allege that Defendants breached various statutory duties
14 and obligations to the Named Plaintiffs and members of the Settlement Class in connection with
15 services provided by those individuals to Defendants. Through the Action, the Named Plaintiffs
16 seek to recover, on behalf of themselves and members of the Settlement Class, compensatory
17 damages for unpaid wages, liquidated damages, statutory penalties, PAGA penalties, restitution,
18 interest, attorneys' fees and costs.

19 25. Defendants deny any liability or wrongdoing of any kind whatsoever associated with
20 the Released Claims as alleged in the Action and further deny that the claims alleged by the Named
21 Plaintiffs are appropriate for class or representative treatment for any purpose other than settling the
22 Action. With respect to the Released Claims, Defendants contend, among other things, that they
23 have complied at all times with the California Labor Code, FLSA, the California Business and
24 Professions Code and all other laws, statutes and orders alleged in the Action.

25 26. No motion for conditional or class certification has yet been filed.

26 27. Since its initial filing, the Parties have engaged in discovery and investigation and
27 made efforts to resolve the case. On September 14, 2017, Defendants and the Named Plaintiffs
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1 participated in a lengthy mediation before an experienced wage and hour and class action mediator,
2 Jeffrey A. Ross, in Oakland, California. The mediation included extensive discussion and
3 examination of the Parties' respective positions on the legal and factual issues raised by the Action.
4 This good faith mediation, during which Defendants were represented by counsel of record and the
5 Named Plaintiffs were present and represented by Class Counsel, resulted in a settlement several
6 weeks later.

7 28. The Named Plaintiffs recognize the expense and length of proceedings necessary to
8 continue the litigation against Defendants through trial and through any possible appeals. The
9 Named Plaintiffs have also taken into account the uncertainty and risk of the outcome of further
10 litigation, and the difficulties and delays inherent in such litigation. The Named Plaintiffs are also
11 aware of the burdens of proof necessary to establish liability, Defendant's defenses thereto, and the
12 difficulties in establishing damages for the Settlement Class. The Named Plaintiffs have also taken
13 into account the settlement negotiations conducted in the Action to date, the substantial information
14 provided through informal discovery, and the payroll and time card information provided by
15 Defendants. Based on the foregoing, the Named Plaintiffs have determined that this Settlement
16 Agreement is a fair, adequate and reasonable settlement, and that it is in the best interests of the
17 Settlement Class.

18 29. Defendants have concluded that any further defense of the Action would be
19 protracted and expensive. Substantial amounts of time, energy and resources of Defendants have
20 been and, unless this settlement is made, will continue to be devoted to the defense of the claims
21 asserted in the Action. Defendants have, therefore, agreed to settle in the manner and upon the
22 terms set forth in this Settlement Agreement in order to put to rest the claims as set forth in the
23 Action.

24 30. In consideration of the covenants and agreements set forth herein, Named Plaintiffs,
25 the Class, and Defendants, themselves and through their undersigned counsel, agree to the
26 settlement of this Action, subject to Court approval, under the following terms and conditions. This
27 settlement contemplates the (a) entry of an Order of Preliminary Approval of a Class Action
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1 Settlement; (b) entry of a Final Order Approving Settlement of Class Action; and (c) dismissal of
2 the Action on the merits with prejudice upon receipt of all settlement payments in accordance with
3 this Settlement Agreement. The Judgment and Final Order will have the same effect for FLSA
4 claim purposes for Settlement Class Members who opt in to the FLSA collective action, pursuant to
5 Paragraph 39.4 below.

6 NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the undersigned,
7 that the Action shall be settled as to the Named Plaintiffs, the Settlement Class and Defendants,
8 subject to final approval of the Court, upon and subject to the following terms and conditions:
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10 BASIC SETTLEMENT TERMS

11 31. It is hereby agreed, by and between the Named Plaintiffs and Defendants, through
12 their respective counsel of record, and subject to the approval of the Court, in consideration of the
13 benefits inuring to the Parties hereto, and without admission of any liability or wrongdoing
14 whatsoever by Defendants, that on the Effective Date, each member of the Settlement Class shall be
15 deemed to have jointly and severally released and forever discharged Defendants from any and
16 Released Claims.

17 32. The Named Plaintiffs, individually and on behalf of themselves only, agree to release
18 Defendants from any and all claims they may have against Defendants based on any events
19 occurring up to the Effective Date of the Settlement, whether those claims are known or unknown,
20 except for claims that may not be released as a matter of law. The Named Plaintiffs represent and
21 agree that they have read and fully understand the statutory language of section 1542 of the Civil
22 Code of the State of California and on that basis expressly and specifically waive all rights under
23 said statute, which reads as follows:

24 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
27 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
28 SETTLEMENT WITH THE DEBTOR."

1 The Named Plaintiffs waive and relinquish any right or benefit which they have had or may
2 have under Section 1542 of the Civil Code of the State of California or any similar provision of the
3 statutory or non-statutory law of any other jurisdiction, to the full extent that they may lawfully
4 waive all such rights and benefits pertaining to the subject matter of this Settlement Agreement.

5 33. If, notwithstanding this Settlement Agreement, a claim or cause of action is brought
6 or asserted by or on behalf of one or more of the Named Plaintiffs and/or any member of the
7 Settlement Class based on a Settled Claim, the Parties agree that the payment of a Settlement Award
8 to an Eligible Class Member shall constitute full satisfaction of Defendants' liability with respect to
9 any Settled Claim relating to that Eligible Class Member within the Class Period. The Parties agree
10 that Defendants have the option of withdrawing from the Settlement Agreement if more than
11 twenty-five (25) Eligible Class Members opt-out of the settlement. If Defendants so elect, they will
12 notify Class Counsel and the Court of this election within twenty (20) calendar days after actual
13 receipt of the complete list of all person who timely request to opt-out.

14 34. Subject to Court approval and the conditions specified herein, and in exchange for
15 the release of all Released Claims by members of the Settlement Class, a Qualified Settlement Fund
16 ("QSF") shall established by the Claims Administrator for holding and payment of all settlement
17 amounts, subject to all legal requirements for a QSF and will be funded in the amount of One
18 Million Five Hundred Thousand Dollars (\$1,500,000.00). The Parties understand and agree that
19 this amount does not include the employer's share of payroll taxes, which Defendants will pay to the
20 Claims Administrator.

21 35. Before any Settlement Awards are paid to Eligible Class Members, deductions from
22 the common fund (as supplemented by Defendants for the employer share of payroll taxes) shall be
23 made for (i) the service awards to Named Plaintiffs specified in this Settlement Agreement, (ii) the
24 award of attorneys' fees and costs to Class Counsel specified in this Settlement Agreement, (iii) all
25 costs of settlement administration, and (iv) PAGA payment to the LWDA. The balance remaining
26 in the common fund after these deductions are made shall constitute the Net Settlement Fund.

27 36. The One Million Five Hundred Thousand Dollars (\$1,500,000.00) common fund
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1 will include but is not limited to all Eligible Class Member payments, class representative
2 enhancement awards, payment to the LWDA, attorneys' fees, costs, and Claims Administrator
3 costs as specified in the Implementation Schedule, attached hereto as Exhibit D. Said amount
4 shall be paid in full within one year of the Preliminary Approval Order. In the event Defendants
5 fail to make this payment, the full balance of the Settlement amount shall become immediately
6 owed and due. Plaintiffs agree to give Defendants written notice of any default by fax and mail,
7 and Plaintiffs agree not to take other action to cause an order or judgment to be entered in
8 connection with this lawsuit until after fifteen (15) days have elapsed from the date of transmission
9 of such notice of default by fax and email to Defendants' attorney, William M. Woolman of
10 Sagaser, Watkins & Weiland, PC. During this fifteen (15) day period, Defendants shall have the
11 right to cure any default in their performance.

12 37. The Claims Administrator will make the following distributions within thirty
13 (30) days from the date the Claims Administrator receives payment from Defendants:
14 payment of Settlement Awards to the Class, Named Plaintiffs' enhancement awards, costs of
15 claims administration, PAGA payment to the LWDA, and attorneys' fees and costs. As described
16 in paragraph 46 below, any tax refunds received relating to un-cashed checks, along with any
17 funds from checks that are not cashed, will be sent to the State of California Unclaimed Property
18 Fund to be held in the name of and for the benefit of such class members under California's
19 escheatment laws.

20 38. On the date or dates specified by the Implementation Schedule, and solely for
21 purposes of effectuating this Settlement Agreement, the Claims Administrator shall pay from the
22 common fund the following amounts:

23 38.1. Class Counsel. Subject to Court approval, the Claims Administrator shall pay
24 25% of the Settlement Fund, from the common fund the gross sum of Three-Hundred and Seventy-
25 Five Thousand Dollars (\$375,000.00) to Class Counsel as attorneys' fees for prosecution of the
26 Action against Defendants, or such amount as ultimately approved by the Court. In addition, the
27 Claims Administrator shall pay from the common fund to Class Counsel the costs incurred in
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1 connection with prosecution of the Action in an amount not to exceed Thirty One Thousand Dollars
2 (\$31,000). If the Court does not approve payment of \$375,000 to Class Counsel for attorneys' fees
3 or \$31,000 in costs, then Class Counsel shall be paid from the common fund the amount of
4 attorneys' fees or costs ultimately approved by the Court.

5 38.2. Named Plaintiffs. The Claims Administrator shall pay from the common fund
6 service awards to the Named Plaintiffs in the amount of Seven-Thousand Five-Hundred Dollars
7 (\$7,500.00) each, or such amount as is ultimately approved by the court, and shall cause an IRS
8 Form 1099 to be issued to each such individual in that amount. The service awards shall be paid to
9 Named Plaintiffs to compensate them for the additional efforts they undertook on behalf of the class
10 which have redounded to the benefit of the entire class. In addition, Named Plaintiffs shall be
11 eligible to receive their proportionate share of the Net Settlement Fund through their receipt of
12 Settlement Awards calculated in accordance with this Settlement Agreement.

13 39. On the date specified by the Implementation Schedule, and solely for purposes of
14 effectuating this Settlement Agreement, the Claims Administrator shall pay from the Net Settlement
15 Fund amounts calculated in accordance with the following allocations and eligibility and settlement
16 formula requirements:

17 39.1. Net Settlement Fund Allocations. The Parties agree that the Net
18 Settlement Fund shall be allocated in the following manner.

19 39.1(a). Twenty percent (20%) shall be allocated to the settlement of
20 class claims for unpaid wages.

21 39.1(b). Eighty percent (80%), less ten-thousand dollars (\$10,000), shall
22 be allocated to the settlement of class claims for statutory penalties and interest.

23 39.1(c). Ten-Thousand Dollars (\$10,000) shall be allocated to the
24 settlement of PAGA claims, which will come from the penalties allocation.

25 39.2 Labor and Workforce Development Agency. Of the Net Settlement Fund, the
26 Claims Administrator shall pay Seven-Thousand and Five Hundred Dollars (\$7,500) to the
27 California Workforce Development Agency as the Agency's 75% share of PAGA penalties.
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1 39.3 Eligible Members of the Settlement Class and FLSA Collective Action &
2 Method to Calculate Settlement Shares. The Claims Administrator shall pay Settlement
3 Awards from the remainder of the Net Settlement Fund to members of the Settlement Class
4 and the FLSA collective action as set forth in Exhibit A attached hereto. In the event the
5 Court's final approval of any of the above sums is different than the figures used by the
6 Settlement Administrator in computing the Settlement Shares prior to sending the Notices,
7 the Settlement Administrator shall use the finally approved sums for re-computing the Net
8 Settlement Amount and the Settlement Shares. Defendants have provided Plaintiffs' counsel
9 with time cards and payroll data for each member of the Settlement Class and the FLSA
10 collective action from December 10, 2012 to December 31, 2016, and for many through
11 May, 2017. Utilizing the dates worked by each member of the Settlement Class and the
12 FLSA collective action, Plaintiffs' counsel determined the number of payroll periods worked
13 by each person, as well as the combined number of payroll periods for the entire Class.
14 Plaintiffs' counsel used the actual hours worked and hourly rate of each member of the
15 Settlement Class and the FLSA collective action to calculate damages and the percentage
16 that each worker would be entitled to from the collective total amount allegedly owed.
17 Plaintiffs' counsel will transmit the percentages for each member of the Settlement Class
18 and the FLSA collective action to the Claims Administrator. The Claims Administrator
19 shall use these same percentages in computing each member of the Settlement Class and the
20 FLSA collective action respective portion of the Net Settlement Amount. This amount for
21 each member of the Settlement Class and the FLSA collective action is known as the
22 Settlement Claim Share. The calculation of Settlement Shares for all Settlement Class
23 Members by formula does not imply that the factors included in the formula comprise all of
24 the elements of damages, penalties, restitution, interest and other monetary items alleged in
25 the Action. Inaccurate wage statement and waiting time penalties were not utilized to
26 calculate the distribution amounts. The formula was devised as a logistical tool to simplify
27 the Settlement process and as part of the compromise entered into between the Parties
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1 relative to the Settlement. Based on these data, approximately twenty-one percent (21%) of
2 the Net Settlement Fund constitutes FLSA overtime wages. Any unclaimed FLSA wages
3 will remain in the Net Settlement Fund and re-distributed among the Settlement Class.

4 39.4 Opt-In for FLSA Claims

5 Only workers who consent to join/opt-in to the FLSA action will be releasing their FLSA
6 claims. If a person does not submit a consent to join/opt-in to the FLSA action, that person's FLSA
7 claim will not be released, regardless of whether he or she is part of the Class Settlement.

8 40. The portion of any Settlement Award that is allocable to the settlement of claims for
9 unpaid wages under the terms of this Settlement Agreement shall be paid through the Claims
10 Administrator in a net amount after applicable state and federal tax withholdings, and any other
11 deductions required by state and local law. The Claims Administrator shall cause an IRS Form W-2
12 to be issued with respect to the portion of any Settlement Award that is allocable to the settlement of
13 claims for unpaid wages under the terms of this Settlement Agreement and based on the personal
14 information provided by Eligible Class Members on their dispute forms. In addition, the Claims
15 Administrator shall cause IRS Forms 1099 to be issued with respect to the portion of any Settlement
16 Award that is allocable to the settlement of claims for statutory penalties and interest under the
17 terms of this Settlement Agreement and based on the personal information provided by Eligible
18 Class Members on their dispute forms.

19 41. The Claims Administrator shall have the responsibility for determining eligibility for
20 and the gross and net amounts of any Settlement Awards of Eligible Class Members, and the gross
21 and net amounts of the special payments to Named Plaintiffs. All eligibility and Settlement Award
22 determinations shall be based on data to be provided to the Claims Administrator through dispute
23 forms submitted by members of the Settlement Class pursuant to the terms of this Settlement
24 Agreement.

25 42. On the date specified by the Implementation Schedule, the Claims Administrator
26 shall provide Defendants' counsel and Class Counsel with (i) a list of the names and the last four
27 digits of the social security or individual taxpayer identification numbers of all Eligible Class
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1 Members who the Claims Administrator has determined shall receive Settlement Awards and, for
2 each such Eligible Class Member (ii) the gross and net amount of that portion of his or her
3 Settlement Award allocable to the settlement of claims for unpaid wages under this Settlement
4 Agreement, and (iii) the gross and net amount of that portion of his or her Settlement Award
5 allocable to the settlement of claims for statutory penalties and interest under this Settlement
6 Agreement. This information shall be used to manage the notice and claims process and shall
7 remain confidential, except for the Parties, counsel for the Parties and applicable taxing authorities,
8 or pursuant to express written authorization of the individual in question, or by order of the Court.

9 43. Defendants and their attorneys agree not to oppose any application for attorneys' fees
10 or costs by Class Counsel, so long as any such application is consistent with the provisions of this
11 Settlement Agreement. Any attorneys' fees or costs incurred in connection with prosecution of the
12 Action against Defendants payable under this Settlement Agreement shall be paid to Class Counsel
13 by the Claims Administrator from the common fund no later than the date or dates specified in the
14 Implementation Schedule.

15 44. The Parties agree that the Claims Administrator shall arrange for the opening of an
16 QSF to and from which the Settlement Fund will be paid. The Claims Administrator shall have
17 exclusive control over the QSF subject to and consistent with the terms of this Settlement
18 Agreement. All interest earnings on the QSF shall accrue to the common fund, and all taxes owed
19 on such interest earnings shall be paid by the Claims Administrator from the common fund. Any
20 and all common fund amounts to be paid by Defendants under the terms of this Settlement
21 Agreement shall be wire transferred to the QSF by the dates specified in the Implementation
22 Schedule. The Claims Administrator shall be responsible for providing Defendants the QSF
23 information necessary to effectuate any wire transfer of funds required by this Settlement
24 Agreement.

25 45. No person or entity shall have any claim against Defendants, Defendants' Counsel,
26 the Named Plaintiffs, the Settlement Class, or Class Counsel based on distributions or payments
27 made in accordance with this Settlement Agreement.

1 46. Should any portion of the common fund remain in the trust account after the payment
2 of all Settlement Awards to Eligible Class Members, service awards to Named Plaintiffs, and
3 attorneys' fees and costs to Class Counsel, including all fees, costs and expenses charged or incurred
4 by the Claims Administrator, and the California Labor and Workforce Development Agency, said
5 amount shall be distributed to the State of California Unclaimed Property Fund to be held in the
6 name of and for the benefit of such class members who did not cash their settlement checks, under
7 California's escheatment laws.

8 47. If the proposed Settlement is not approved by the Court and the basis for the Court's
9 disapproval of the proposed Settlement does not involve a material term of this Settlement
10 Agreement, then the Parties shall make good faith efforts to modify the settlement so as to gain the
11 Court's approval. If the Parties are unable to modify the settlement so as to gain the Court's
12 approval, then the Action shall proceed with respect to the Parties as if there had been no settlement.

13 48. The Named Plaintiffs and Defendants agree that the Implementation Schedule shall
14 govern implementation of this Settlement Agreement, and that the dates set forth in the
15 Implementation Schedule shall only be continued based on (i) the mutual consent of counsel for the
16 Parties, or (ii) unavoidable delays due to the Court's schedule, and, then, only to the extent of those
17 delays, or (iii) by order of the Court on its own motion or on the application or motion of any of the
18 Parties.

19 **CLASS NOTICE, FLSA NOTICE AND SETTLEMENT FAIRNESS HEARING**

20 49. As part of this Settlement Agreement, the Parties agree to the following procedures
21 for obtaining the Court's preliminary approval of this Settlement Agreement, notifying the
22 Settlement Class and members of the FLSA collective action, obtaining final Court approval of this
23 Settlement Agreement, and processing the Settlement Awards.

24 49.1. The Named Plaintiffs shall request a hearing date from the Court for
25 preliminary approval of this Settlement Agreement. In conjunction with that request, the Named
26 Plaintiffs shall submit this Settlement Agreement and supporting papers, which shall set forth the
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1 terms of this Settlement Agreement, and shall include the proposed forms of all notices and other
2 documents that are necessary to implement this Settlement Agreement.

3 49.2. Solely for purposes of this Settlement Agreement, and within the time specified
4 by the Implementation Schedule, the Named Plaintiffs shall request the Court to enter an order
5 preliminarily approving the proposed settlement and setting a date for the Settlement Fairness
6 Hearing. The Preliminary Order shall provide for notice of this Settlement Agreement and related
7 matters to be sent to Eligible Class Members as specified herein.

8 49.3. Notice of the settlement shall be provided to the Settlement Class, and
9 members of the Settlement Class shall submit any objections to the settlement, using the following
10 procedures:

11 49.3(a). On the date specified in the Implementation Schedule, Defendants' counsel
12 shall provide to the Claims Administrator and Class Counsel a list of all members of the Settlement
13 Class, their last known addresses, telephone numbers, and the last four digits of their social security
14 or individual taxpayer identification numbers. The Claims Administrator shall be responsible for
15 preparing, printing and mailing to members of the Settlement Class the Class Notice attached hereto
16 as Exhibit A and the dispute forms attached hereto as Exhibit B. A Spanish language translation
17 (prepared by the Claims Administrator) of all materials mailed to members of the Settlement Class
18 by the Claims Administrator shall be included as a part of the same mailing.

19 49.3(b). No later than the date specified in the Implementation Schedule, the Claims
20 Administrator shall send a copy of the Class Notice and FLSA Notice in the form attached hereto as
21 Exhibit A (including a dispute form in the form attached hereto as Exhibit B), to members of the
22 Settlement Class and the FLSA collective action via First Class regular U.S. mail, postage prepaid,
23 using the most current mailing address information available. The Claims Administrator shall also
24 send a copy of the FLSA Consent to Join/Opt-In form attached hereto as Exhibit C to members of
25 the FLSA collective action. For any Class Notice and FLSA Notice returned to the Claims
26 Administrator as non-deliverable within 45 days of the original mailing date, the Claims
27 Administrator shall make prompt and reasonable efforts to locate the person involved, using
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1 appropriate search methods. If new address information is obtained, the Claims Administrator shall
2 promptly re-mail the Class Notice to the addressee via First Class regular U.S. mail, postage
3 prepaid, using the new address. If the Claims Administrator is unable to obtain new address
4 information with regard to any Class Notice returned as non-deliverable within 30 days following
5 the original mailing date, or if a Class Notice is returned as non-deliverable more than 45 days
6 following the original mailing date, the Claims Administrator shall be deemed to have satisfied its
7 obligation to provide the Class Notice to the affected member of the Settlement Class through the
8 original mailing. In the event the procedures in this paragraph are followed and the intended
9 recipient of the Class Notice does not receive the Class Notice, the intended recipient shall
10 nevertheless remain a member of the Settlement Class and shall be bound by all the terms of this
11 Settlement Agreement and the Order and Final Judgment. The Claims Administrator will provide
12 all returned and signed FLSA Consent to Join/Opt-In forms to Plaintiffs' Counsel to file them with
13 the Court.49.3(c). The Class Notice shall provide that those members of the Settlement Class who
14 wish to object to the settlement must serve on the Claims Administrator a written statement
15 objecting to the settlement. Such written statement must be served on the Claims Administrator no
16 later than the date specified in the Implementation Schedule. No member of the Settlement Class
17 shall be entitled to be heard at the Settlement Fairness Hearing (whether individually or through
18 separate counsel) or to object to this Settlement Agreement, and no written objections or briefs
19 submitted by any member of the Settlement Class shall be received or considered by the Court at the
20 Settlement Fairness Hearing, unless written notice of the class member's intention to appear at the
21 Settlement Fairness Hearing, and copies of any written objections or briefs, shall have been served
22 on the Claims Administrator on or before the date specified in the Implementation Schedule.
23 Members of the Settlement Class who fail to serve timely written objections in the manner specified
24 above shall be deemed to have waived any objections and shall be foreclosed from making any
25 objection (whether by appeal or otherwise) to this Settlement Agreement. The Claims
26 Administrator shall provide a weekly status report to the Parties. As part of its weekly status report,
27 the Claims Administrator will inform Class Counsel and Defendant's Counsel of the number of
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1 Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed,
2 and the number of requests for exclusion received.

3 49.3(d). At no time shall any of the Parties or their counsel seek, solicit or otherwise
4 encourage, directly or indirectly, members of the Settlement Class to submit written objections to
5 the settlement, or to appeal from the Order and Final Judgment.

6 49.3(e). A Settlement Fairness Hearing shall be conducted on the date specified in
7 the Implementation Schedule to determine final approval of the settlement along with the amounts
8 properly payable for (i) attorneys' fees and costs, including all costs of claims administration, and
9 (ii) the service awards to Named Plaintiffs. Upon final approval of the settlement by the Court at or
10 after the Settlement Fairness Hearing, the Parties shall present the Order and Final Judgment to the
11 Court for its approval and entry. After entry of the Order and Final Judgment, the Court shall have
12 continuing jurisdiction solely for purposes of addressing settlement administration matters and such
13 post-final judgment matters as may be appropriate under court rules or as set forth in this Settlement
14 Agreement.

15 49.3(f). All members of the Settlement Class and the FLSA collective action who
16 opt-in shall be eligible to receive a Settlement Award. Settlement Awards shall be paid pursuant to
17 the settlement formula set forth herein no later than the date specified in the Implementation
18 Schedule. The Claims Administrator shall initially determine the eligibility for, and the amounts of,
19 any Settlement Awards under the terms of this Settlement Agreement, which shall be conclusive,
20 final and binding on all Parties, including all members of the Settlement Class, subject to review by
21 Counsel for the Parties and approval by the Court. Administration of the settlement shall be
22 completed on or before the date specified in the Implementation Schedule. Upon completion of the
23 administration of the settlement, the Claims Administrator shall provide written certification of such
24 completion to the Court and Counsel for the Parties. Any checks reflecting Settlement Awards shall
25 remain valid and negotiable for 180 days from the date of their issuance and may thereafter
26 automatically be canceled if not cashed by an Eligible Class Member within that time, at which time
27 the Eligible Class Member's claim shall be deemed void and of no further force and effect.

1 49.3(g). The Parties agree to cooperate in the settlement administration process and
2 to make all reasonable efforts to facilitate the administration of the settlement.

3 49.3(h). In the event (i) the Court does not enter the Preliminary Order specified
4 herein, (ii) the Court does not finally approve the settlement terms as provided herein, (iii) the Court
5 does not enter the Order and Final Judgment as provided herein, or (iv) the settlement does not
6 become final for any other reason, this Settlement Agreement shall be null and void and any order or
7 judgment entered by the Court in furtherance of this settlement shall be treated as void *nunc pro*
8 *tunc*. In such a case, any and all unexpended funds in the trust account, including any and all
9 interest earnings, shall be returned immediately to Defendants by the Claims Administrator, and the
10 Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

11 49.3(i). In the event an appeal is filed from the Court's Order and Final Judgment, or
12 any other appellate review is sought prior to the Effective Date, administration of the settlement
13 shall be stayed pending final resolution of the appeal or other appellate review.

14 49.3(j). The Claims Administrator shall keep Class Counsel apprised of all
15 distributions from the trust account and, upon completion of the administration of the settlement the
16 Claims Administrator shall provide written notice of such completion to Counsel for the Parties.

17 50. The terms of this Settlement Agreement include the terms set forth in any of the
18 attached Exhibits, which are incorporated by this reference as though fully set forth herein. The
19 Exhibits to this Settlement Agreement are an integral part of this Settlement Agreement. Except as
20 set forth in the Exhibits to this Settlement Agreement, in the event of any conflict between this
21 Settlement Agreement and the Exhibits, the terms of this Settlement Agreement shall control.

22 51. The Parties agree to hold all proceedings in the Action, except such proceedings as
23 may be necessary to implement and complete this Settlement Agreement, in abeyance pending the
24 Settlement Fairness Hearing to be conducted by the Court.

25 52. This Settlement Agreement, as approved by the Court, may be amended or modified
26 only by a written instrument signed by Class Counsel on behalf of the Settlement Class, and
27 Defendant or its successors-in-interest, and as approved by the Court.

1 53. This Settlement Agreement constitutes the entire agreement among these Parties, and
2 no oral or written representations, warranties or inducements have been made to any Party
3 concerning this Settlement Agreement or its Exhibits other than the representations, warranties and
4 covenants contained and memorialized in such documents.

5 54. Counsel for all Parties warrant and represent that they are expressly authorized by the
6 Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate
7 action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to
8 effectuate the terms hereof, and to execute any other documents required to effectuate the terms of
9 this Settlement Agreement. The Parties and their respective counsel shall cooperate with each other
10 and use their best efforts to effect the implementation of this Settlement Agreement. In the event
11 the Parties are unable to reach agreement on the form or content of any document needed to
12 implement this Settlement Agreement, or on any supplemental provisions that may become
13 necessary to effectuate the terms of this Settlement Agreement, the Parties agree to seek the
14 assistance of the Court to resolve such disagreement. The person signing this Settlement Agreement
15 on behalf of each of the Defendants represents and warrants that he or she is authorized to sign this
16 Settlement Agreement on behalf of such Defendant.

17 55. This Settlement Agreement shall be binding upon, and inure to the benefit of, the
18 successors or assigns of the Parties hereto, as previously defined.

19 56. All terms of this Settlement Agreement and the Exhibits hereto shall be governed by
20 and interpreted according to the laws of the State of California.

21 57. All notices and other communications to be provided or made to the Parties and/or
22 Counsel for the Parties by the Claims Administrator under the terms of this Settlement Agreement
23 shall be delivered personally, e-mailed or mailed via guaranteed next business day delivery, postage
24 prepaid, addressed as follows:

25 **Class Counsel**

26 John E. Hill
27 Enrique Martínez
28 **LAW OFFICES OF JOHN E. HILL**
 333 Hegenberger Road, Ste. 500

Oakland, CA 94621
Telephone: (510) 588-1000
Facsimile: (510) 633-2504

Counsel for All Defendants

Howard A. Sagaser
William M. Woolman
Ian B. Wieland
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483

58. This Settlement Agreement may be executed in one or more counterparts and by facsimile signatures (which shall be deemed originals). All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves signed counterparts.

59. The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement Agreement through good faith negotiations, taking into account all relevant factors, present and potential.

60. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of the Court's interpreting, implementing and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

61. Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction made of this Settlement Agreement, the same shall not be construed against any of the Parties.

62. The Named Plaintiffs agree to sign this Settlement Agreement and by signing this Settlement Agreement are bound by the terms herein stated and further agree not to object to any of the terms of this Settlement Agreement.

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NAMED PLAINTIFFS

Dated: _____
_____ FRANCISCO RODRIGUEZ

Dated: _____
_____ JESUS HERNANDEZ INFANTE

Dated: _____
_____ MARCO GARCIA

Dated: _____
_____ JUAN MANUEL BRAVO

Dated: _____
_____ ESTELA PATIÑO

Dated: _____
_____ JOSE F. OROZCO

Dated: _____
_____ ANTONIO ORTIZ

CLASS COUNSEL

Dated: _____
_____ ENRIQUE MARTÍNEZ
LAW OFFICES OF JOHN E. HILL

DANELL CUSTOM HARVESTING, LLC

Dated: _____ By: _____
Its: _____

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Dated: _____
RANCE DANELL

Dated: _____
ERIC DANELL

Dated: _____
DAVID DANELL

Dated: _____
JUSTIN DANELL

COUNSEL FOR DEFENDANTS

Dated: _____
WILLIAM M. WOOLMAN
SAGASER, WATKINS & WIELAND, PC