

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

Porfirio Garza and Brendon Spencer, individually and as representatives of the Plaintiff Class Members (collectively, "representative Plaintiffs"), and Christina Dugdale, Mark Dugdale, and Garden Fresh Foods, Inc. its successors, past and current owners, officers, managers, supervisors, agents, attorneys, insurers, and all predecessor, successor or related entities (collectively, "Defendants"), enter into this Settlement Agreement and General Release ("Agreement") on the following terms and conditions.

### **I. RECITALS**

1.01 Representative Plaintiffs were formerly hourly employees of Garden Fresh Foods.

1.02 Representative Plaintiffs filed suit on their own behalf and on behalf of similarly situated employees on January 6, 2017, King County cause no. No 17-2-00422-7 SEA. Plaintiffs filed their First Amended Complaint on January 19, 2018.

1.03 Plaintiffs alleged that Garden Fresh Foods denied them rest breaks and meal breaks, failed to pay for all hours worked at the expiration of their scheduled shift, and failed to pay for hours worked while donning and doffing protective clothing in violation of WAC 296-126-092, RCW 49.12.020; RCW 49.46.090; and RCW 49.46.030. Plaintiffs further alleged that these violations were willful in violation of RCW 49.52.050. Plaintiffs alleged individual liability in violation of RCW 49.52.070.

1.04 The Defendants deny Plaintiffs' allegations.

1.05 On June 18, 2018, The Honorable Sandra Widlan certified the following class and subclass:

All hourly-paid individuals, excluding drivers, who are or have been employed by the Defendant in the State of Washington from January 6, 2014 through the date of final disposition of this action.

As a subclass, all hourly paid individuals who are or have been employed by the Defendant in the State of Washington in the High Care Production Department from January 6, 2014 through the date of final disposition of this action and who are or were required to wear protective clothing in order to work.

1.06 The Parties, through their Counsel, are familiar with the facts of these claims and the legal issues they raise. The Parties attended a mediation in Seattle, Washington on October 29, 2018, with Cliff Freed, a respected mediator familiar with complex wage and hour class action litigation.

1.07 Prior to the Mediation, the Parties exchanged information, data, and documents necessary to fully and fairly evaluate the Plaintiffs' claims and damages.

1.08 Following the Mediation, the Parties continued to exchange information, data, and

documents, and to engage in negotiations to resolve this matter, including information concerning the financial solvency of all Defendants. Thus, the Parties' respective Counsel had sufficient information to fully analyze the claims and defenses at issue in the action.

1.09 On February 6, 2018, the parties agreed to the terms of a settlement of all class claims. This final settlement agreement incorporates the terms of the party's final settlement. This Agreement is entered into to avoid the expense, inconvenience, and uncertainty of litigation. The purpose of this Agreement is to achieve a full and complete settlement and compromise of all disputes and controversies existing between the certified class, the Representative Plaintiffs, and the Defendants as of the date of the execution of this Agreement.

1.10 Without admitting or conceding any liability whatsoever, and while continuing to deny the claims asserted in the Action, The Defendants now desires to settle the Action on the terms and conditions set forth in this Agreement solely to avoid the burden, expense, and uncertainty of continuing litigation,

1.11 Plaintiffs' Counsel has diligently investigated the facts of this case including the financial ability of the Defendants to pay a judgment, and researched the legal issues involved. Based on his own independent investigation and evaluation into the claims, Plaintiffs' Counsel believes that Settlement for the consideration set forth in this agreement is fair and reasonable and will serve the best interests the representative Plaintiffs and Class Members. While Plaintiffs' Counsel believes the claims asserted in the action have merit, he recognizes and acknowledge that the time, cost, and burden to fully litigate the action would be significant, and the risk of non-recovery, including the risk of nonpayment of any judgment because of the Defendants' insolvency, is meaningful. In reaching this settlement, Plaintiffs' Counsel has taken into account the uncertainty and risks inherent in any litigation, especially in complex class actions such as this one.

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth in this Agreement, the Parties, for themselves and through their undersigned Counsel, agree to the following settlement, subject to Court approval, under the following terms and conditions.

## II. TERMS OF SETTLEMENT

In consideration of the mutual undertakings set forth below, the undersigned parties agree as follows:

2.01 **Settlement Fund.** A total settlement fund in the amount of \$200,000.00 will be created from which will be paid 1) damages to class members for all claims in the case, 2) attorney fees and litigation costs, 3) costs of class administration, and 4) Service awards to Plaintiffs. This amount is in addition to any amount already paid to the class members via check in 2017.

2.02 **Payroll Checks to Representative Plaintiffs.** Garden Fresh will issue a new payroll check to Porfirio Garza in the amount of \$1,885.61 and a new payroll check to Brendon Spencer in the amount of \$2,232.53. The Defendants have complied with this provision.

**2.03 Timing of Payment.** Garden Fresh Foods will deposit a lump sum of \$150,000 into an account designated by Class counsel within 30 days of the Court's preliminary approval of the proposed settlement. Garden Fresh foods will deposit the remaining \$50,000, in a lump sum payment 12 months after the first deposit.

**2.04 Confession of Judgment.** To secure the future payment of \$50,000, Garden Fresh, Christina and Mark Dugdale shall execute a consent to judgment in the amount of fifty thousand dollars (\$50,000.00) and provide the executed consent to judgment to Plaintiffs' attorney, together with this executed Settlement Agreement. Plaintiffs' attorney shall hold the executed consent to judgment and shall not file the consent to judgment unless and until Garden Fresh fails to meet its payment obligations as set forth in the preceding paragraph. In the event that Garden Fresh Foods fails to make the future payment of \$50,000.00, Plaintiffs' attorney will provide 20 days' written notice of default before filing the consent to judgment to provide Garden Fresh Foods an opportunity to cure default. Upon receipt of Garden Fresh's final payment and full satisfaction of its payment obligations pursuant to this Settlement Agreement, Plaintiffs' attorney shall immediately return the consent to judgment to Garden Fresh's attorney.

### **III CLASS COUNSEL FEES AND COSTS AND SERVICE AWARDS**

Within 14 days of the Court's entry of the Preliminary Approval Order, Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees (not to exceed 30% of the Settlement Amount), actual reasonable litigation expenses incurred by Class counsel, the actual reasonable costs of Settlement Administration, and for a service award to Plaintiffs (not to exceed \$3,000 each). Plaintiffs' counsel will pay all attorney fees, costs, Service Awards, and the costs of the Settlement Administration directly from the initial deposit of \$150,000. The Defendants will not oppose the attorney fees and costs and service award requests if they are consistent with this Paragraph.

### **IV SETTLEMENT ADMINISTRATION**

Settlement Administration shall occur under the Court's supervision. Class counsel will, from the settlement amount, engage CPT Group as the Settlement Administrator to oversee the mailing of notice and processing of any requests for exclusion, and to make the payments and distributions required under this Agreement. The costs of settlement administration approved by the Court are included in the Settlement Amount and shall be paid to the Settlement Administrator from the initial payment of \$150,000. Class counsel will transfer funds to the class action administrator, CTP Group, for distribution to the class members. The Defendants will cooperate in the Notice of Settlement and Settlement Administration but will not have any financial responsibility for the costs of Settlement Administration.

### **V. SETTLEMENT APPROVAL AND NOTICE OF SETTLEMENT FORMS**

**5.01 Preliminary Approval.** Within thirty (30) calendar days of the Execution Date of this Agreement, Class Counsel will draft a proposed motion for preliminary approval, and the Parties will jointly move for a Preliminary Approval Order which, among other things, grants the

Court's Preliminary Approval of this Agreement; approves the Notice of Settlement, and sets a Settlement Hearing date to consider objections, if any, to the Settlement and to enter the Settlement Order and Final Judgment. The parties will agree on a form of class notice. Class Counsel will draft the notice. Garden Fresh Foods will have an opportunity to review and propose revisions to the class notice before it is submitted to the Court for approval.

**5.02 Notice of Settlement.** The Parties will request that the Preliminary Approval Order direct that, within thirty (30) days following the initial payment of \$150,000, the Settlement Administrator shall mail the Notice of Settlement to the Class Members. If any Notice or Settlement is returned as undeliverable, the Settlement Administrator shall promptly conduct skip tracing to search for a better address, and if one is found, the Settlement Administrator shall re-mail the Notice of Settlement.

**5.03 Submission of Exclusion Requests or Objections.** Plaintiffs will request that the Preliminary Approval Order direct that Class Members be allowed thirty (30) calendar days from the date the Settlement Administrator's initial mailing of the Notice of Settlement to request exclusion from the Settlement or to submit objections to the proposed Settlement. Any re-sending of the Notice of Settlement shall extend this period for those Class Members to the later of the date allowed in the original Notice of Settlement or fourteen (14) days after the last Notice was sent to him or her. The Notice of Settlement shall direct that exclusion requests, if any, be sent to the Settlement Administrator, which will provide periodic updates on exclusion requests to the Defendants Counsel and Plaintiffs' Counsel. The Notice of Settlement also shall direct that objections, if any, be sent to Plaintiffs' Counsel, who shall file copies of all such objections received to date with the Motion for final Approval. Any requests for exclusion must be postmarked or received by the Settlement Administrator as of the deadline to request exclusion from the Settlement and any objections to the proposed Settlement must be postmarked or received by Plaintiffs' Counsel as of the deadline to object to the proposed Settlement. Otherwise, the request for exclusion or objection will be deemed invalid and void.

**5.04 Limited Effect of Settlement Class.** If this Agreement terminates or is nullified, the Action shall revert to the status that existed before execution of this Agreement, unless otherwise agreed to by the Parties. Moreover, the Plaintiffs shall be free to attempt to pursue any claims available to them and the Class Members, and the Defendants shall be free to assert any defenses, available before the date of this agreement.

## **VI DISTRIBUTION OF PAYMENTS TO CLASS MEMBERS**

**6.01 Distribution Formula.** The Settlement Fund will be distributed to the class members pro rata in accordance with a formula developed by Class counsel and the class administrator. Garden Fresh Foods will not oppose Class Counsel's formula. However, the parties agree that 25% of each pro rata distribution will be W-2 wages and 75% will be compensation for double damages and interest. The Class Administrator shall be responsible for calculating and remitting the appropriate withholdings for the settlement payments.

**6.02 Single Distribution to Class Members.** There will be a single distribution to class members. No funds will be distributed to class members until all settlement funds are paid. Upon

the payment of the final payment of \$50,000, Plaintiffs' counsel will transfer those funds to an account controlled by the Class Administrator who will distribute a single payment to the class members consistent with the terms of this agreement.

**6.03 Responsibility for Distributions.** Upon entry of the Settlement Order and Final Judgment, the Settlement Administrator will calculate the payments to be made pursuant to the terms of this agreement. The Settlement Administrator will be responsible for making all distributions to Class Members. Upon final Approval, Plaintiffs' Counsel will direct the initial settlement payment of \$150,000, less attorney fees, costs, costs of settlement administration, and service awards, to be transferred to an account controlled by the Settlement Administrator who will maintain such funds in an interest-bearing account until all settlement funds are received. Upon receipt of the second settlement payment of \$50,000, class counsel will transfer those funds to an account controlled by the Settlement Administrator.

**6.04 Authority of Settlement Administrator.** The Settlement Administrator will have authority to make all decisions reasonably necessary for the orderly implementation and administration of this Agreement and the distribution or all payments prescribed in this Agreement. The Settlement Administrator shall have no liability for any compilation or Settlement Administration decision made in good faith and not inconsistent with the express terms of this Agreement.

**6.05 Distribution of Funds.** On the Distribution Date, the Settlement Administrator shall distribute the payments to the Class Members (including Plaintiffs) discussed in Paragraph 6.01, above, by issuing checks to the Class Members for their allocated settlement amounts and mailing those checks to the their respective last-known home address, including any better address the Settlement Administrator located during the Notice of Settlement process discussed in Paragraph 502, above. All of the checks issued pursuant to this Paragraph shall stay valid for ninety (90) calendar days and each check shall Reflect this limitation. If any settlement check remains uncashed for more than ninety (90) calendar days from the date of issuance, including any checks that remain uncashed because the Settlement Administrator is not able to locate a valid address for a Class Member, the amount covered by the check shall be considered "Residual Funds." With the Court's approval, after all checks have been cashed or expired, the Settlement Administrator shall pay half of all Residual Funds to the Legal Foundation of Washington and half to the Fair Work Center or other non-profit approved by the Court. Any Amount distributed pursuant to the preceding sentence shall be reported by the Settlement Administrator as income on an IRS Form 1099 to the Legal foundation of Washington and the Fair Work Center, respectively.

## VII RELEASES

**Class Members' Release.** Effective upon Final Approval, each Class Member and each of their respective agents, successors, heirs, assigns, and any other person who can claim by or through the Class Member in any manner, shall have fully, finally, and forever irrevocably released, relinquished, and forever discharged with prejudice any and all claims that exist or might exist against the Defendants and their current and former parent companies, predecessors, successors, , subsidiaries, partners (whether general or limited), directors, officers, employees or former employees, agents, attorneys, insurers, heirs, and assigns and that were or could have been

brought in this action, including but not limited to claims that relate to the Class Members' commission calculations, unpaid wages, minimum wage, overtime, rest breaks, meal periods, and donning and doffing protective clothing. The released claims also include, but are not limited to, claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, the Washington Minimum Wage Act, RCW 49.46 *et seq.*, the Washington Wage Rebate Act, RCW 49.52 *et seq.*, the Washington Industrial Welfare Act, RCW 49.12 *et seq.*, WAC 296-126-092,; and any claim to attorney's fees, costs, liquidated damages, and interest based on the claims released in this Paragraph. The claims released in this Paragraph do not, however, include any claim based on conduct occurring after the date of Final Approval or to any claim concerning this Agreement. The Class Members further covenant not to sue the Defendants or any party released in this Paragraph or any claim released via this Paragraph.

### VIII MISCELLANEOUS PROVISIONS

**8.01 Settlement Purpose of Agreement.** If the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and final Judgment, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court, and the Parties will commence to propose a new scheduling order to the Court. Invalidation of any portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect. In that event, the Parties will negotiate in good faith to attempt to address the issues raised by said events.

**8.02 Cooperation.** The Parties and their counsel will cooperate fully in the process of seeking settlement approval. All Counsel warrant and agree they will take all steps necessary to obtain and implement Final Approval of this Agreement, to defend the Settlement Order and Final Judgment through all stages or any appeals that may be taken (regard less of who prosecutes the appeal), to give the Parties to this Agreement the full benefits of this Agreement.

**8.03 Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of Washington, without regard to its rules regarding conflict of laws.

**8.04 Construction of Agreement.** The determination of the terms of; and the drafting of, this Agreement has been by mutual agreement after extensive negotiation, with consideration by and participation of counsel for all Parties, The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against any Party.

**8.05 Binding Effect.** This Agreement shall be binding upon and inure to the benefit or the Parties and their respective heirs, successor, and assigns,

**8.06 Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

**8.07 Effectiveness of Agreement; Counterparts.** This Agreement shall become effective upon the last date of its execution by all of the persons for whom signature spaces have been provided below. The Parties and their Counsel may execute this Agreement in counterparts (anyone or all of which may be facsimile or PDF/electronic copies), and execution in counterparts shall have the same force and effect as if all signatories had signed the same document.

**8.08 Use and Retention of Information.** Any documentation containing the names or addresses of Class Members disclosed in the course of executing this Agreement may be used by Plaintiffs' Counsel and the Settlement Administrator only for purposes of implementing this Agreement. All such information may not be disclosed by Plaintiffs' Counsel or the Settlement Administrator to anyone or any organization,

**8.09 Continuing Jurisdiction.** The Court shall retain exclusive and continuing jurisdiction over this Agreement and over all Parties and Class Members to interpret, effectuate, enforce, and implement this Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Agreement.

**8.10 Authority.** Each individual signing this Agreement represents and warrants that he or she has the authority to sign on behalf of the person or entity for which that individual signs.

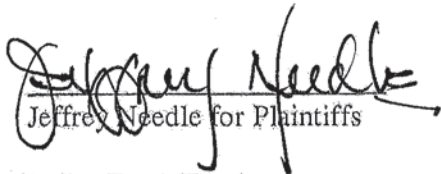
**8.11 Calculation of Time.** Except where specified otherwise, all time listed in this Agreement is in calendar days. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**8.12 No Publication.** Class Counsel agrees not to publish or provide the settlement or its terms to any party that is not directly connected to the litigation.


**8.13 No Solicitation.** Class counsel agrees not to solicit, directly or indirectly, any employee or former employee of Garden Fresh Foods to file any claim against Garden Fresh Foods. This does not prohibit Class counsel from representing a current or former employee of Garden Fresh Foods that voluntarily, and without solicitation, seeks out Class counsel. The resolution of this case is not an admission of liability by Garden Fresh Foods.

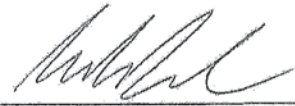
**All Defendants acknowledge that they have been full advised as to the legal effect of this Agreement and has executed this Agreement freely and voluntarily. All Defendants certify that they have been represented by Sheryl Willert and Jeffery Wells of the Law Firm of Williams, Kastner & Gibbs PLLC and has consulted with those lawyers before signing this Agreement. All Defendants have carefully read and fully understands this**

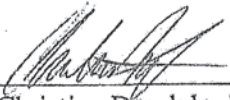
Agreement and has not relied on any representation or statements that are not in this Agreement.

  
Jeffrey Needle for Plaintiffs

Garden Fresh Foods

By:   
Mark Dugdale  
Its: President

  
Mark Dugdale, individually

  
Christina Dugdale, individually