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12 and MOONLIGHT PACKING COMPANY LLC

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF FRESNO**

15 VIDALI ALEMAN, an individual on behalf of
16 herself and others similarly situated,

17 Plaintiff,

18 vs.

19 MOONLIGHT PACKING CORPORATION,
a California corporation; MOONLIGHT
20 PACKING COMPANY, LLC, a California
limited liability company; and DOES 1
21 through 50, inclusive,

22 Defendants.

Case No.: 20CECG01196

CLASS ACTION

Assigned for All Purposes To:
Hon. Judge Kristi Culver Kapetan
Dept.: CX104

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: May 4, 2020
First Amended Complaint: June 10, 2020
Trial Date: January 3, 2022

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff VIDALI ALEMAN (“Plaintiff” or
3 “Class Representative”), on behalf of herself and all others similarly situated, and Defendants
4 MOONLIGHT PACKING CORPORATION and MOONLIGHT PACKING COMPANY, LLC,
5 (collectively “Defendants”) (collectively with Plaintiff, the “Parties”).

6 DEFINITIONS

7 The following definitions are applicable to this Settlement Agreement.

8 Definitions contained elsewhere in this Settlement Agreement will also be effective:

- 9 1. “Action” means *Vidali Aleman, et al. v. Moonlight Packing Corporation, et al.*,
10 Fresno County Superior Court, Case No. 20CECG01196.
- 11 2. “Aggrieved Employees” means all current and former non-exempt employees
12 who worked for Defendants in California at a time during the PAGA limitations which is at any
13 time between April 6, 2019 and January 19, 2021.
- 14 3. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
15 Court for Class Counsel’s litigation and resolution of this Action.
- 16 4. “Class Counsel” means David Yeremian & Associates, Inc.
- 17 5. “Class List” means a complete list of all Class Members that Defendants will
18 diligently and in good faith compile from its records and provide to the Settlement
19 Administrator within ten (10) days after Preliminary Approval of this Settlement. The Class
20 List will be formatted in Microsoft Office Excel and will include the following information
21 from Defendants’ records: each Class Member’s full name; last-known mailing address; Social
22 Security number; and dates of employment as a non-exempt employee in California during the
23 Class Period.
- 24 6. “Class Member(s)” or “Settlement Class” means all current and former non-
25 exempt packing employees who worked for Defendants in California at any time between May
26 4, 2016 and January 19, 2021. “Class Members” shall not include any person who submits a
27 timely and valid request for exclusion.
- 28 7. “Class Period” means the period from May 4, 2016 to January 19, 2021.

1 8. “Class Representative Enhancement Payment” means the amount approved by
2 the Court to be paid to Plaintiff in recognition of her contributions to the Action on behalf of
3 Class Members and Aggrieved Employees.

4 9. “Court” means the Superior Court of California, County of Fresno.

5 10. “Defendants” means MOONLIGHT PACKING CORPORATION and
6 MOONLIGHT PACKING COMPANY, LLC.

7 11. “Effective Date” means: (a) the date of entry of the Court’s order granting final
8 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
9 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is
10 filed, then the date when the time expires to file an appeal of the Court’s grant of Final
11 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice
12 of Appeal of the Court’s grant of Final Approval of the Settlement Agreement, then the date the
13 appeal is finally resolved, with the final approval unaffected.

14 12. “Individual Settlement Payment” means each Class Member’s share of the Net
15 Settlement Amount.

16 13. “Gross Settlement Amount” is the amount of Nine Hundred Thousand Dollars
17 and Zero Cents (\$900,000.00), which is the maximum amount to be paid by Defendants
18 pursuant to this Settlement Agreement. The Gross Settlement Amount includes all Individual
19 Settlement Payments to Class Members, the Class Representative Enhancement Payment to
20 Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the Settlement Administration Costs to
21 the Settlement Administrator and the PAGA Payment as specified in this Agreement.
22 Defendants shall pay the employer’s share of payroll taxes due on the portion of Settlement
23 Payments allocated to wages separately and in addition to the Gross Settlement Amount. The
24 Parties agree that Defendants will have no obligation to pay any amount in connection with this
25 Settlement Agreement apart from the Gross Settlement Amount and the employer’s share of
26 payroll taxes due on the portion of Settlement Payments allocated to wages, and that none of
27 the Gross Settlement Amount will revert to Defendants.

28 14. “Net Settlement Amount” means the Gross Settlement Amount, less the

1 Attorneys' Fees and Costs, Class Representative Enhancement Payments, Settlement
2 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in
3 this Agreement.

4 15. "Objection" means any written objection to this Settlement sent by a Class
5 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.
6 An Objection to Settlement must be sent to the Settlement Administrator within the time
7 limitations set forth in this Stipulation.

8 16. "Notice of Class Action Settlement" means the notice of settlement, attached as
9 **Exhibit A**, to be mailed to all members of the Settlement Class upon Preliminary Approval.

10 17. "Notice Packet" means the Notice of Class Action Settlement attached as
11 **Exhibit A**, the Objection Form attached as **Exhibit B**, and the Request for Exclusion Form
12 attached as **Exhibit C** to be mailed to all members of the Settlement Class upon Preliminary
13 Approval.

14 18. "PAGA" means the California Labor Code Private Attorneys General Act of
15 2004.

16 19. "PAGA Payment" means the payment made hereunder to the California Labor
17 and Workforce Development Agency and the Settlement Class Members for settlement of
18 claims for civil penalties under PAGA.

19 20. "PAGA Period" means the period from April 6, 2019 to January 19, 2021.

20 21. "Parties" means Plaintiff and Defendants collectively.

21 22. "Plaintiff" means VIDALI ALEMAN.

22 23. "Preliminary Approval" means the Court order granting preliminary approval of
23 the Settlement Agreement.

24 24. "Released Claims" means all causes of action and factual or legal theories that
25 were alleged in the operative complaints or that could have been alleged against Defendants
26 based on the facts contained in the operative complaints, including violations of California
27 Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1185,
28 1194, 1194.2, 1197, 1199, 2698, and 2699 *et seq.*, California Code of Regulations, Title 8,

1 section 11000 *et seq.*, and California Business & Professions Code §§ 17200 to 17208, and the
2 applicable IWC Wage Orders from the following claims for relief: (a) failure to pay minimum,
3 regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c)
4 failure to pay reporting time pay, (d) failure to provide meal breaks and failure to pay premium
5 pay for missed meal breaks, (e) failure to provide rest breaks and failure to pay premium pay
6 for missed rest breaks, (f) failure to provide complete, accurate or properly formatted wage
7 statements, (g) failure to timely pay wages during employment or upon separation, (h) failure to
8 maintain accurate records, (i) unfair business practices that could have been premised on the
9 claims, causes of action or legal theories of relief described above or any of the claims, causes
10 of action or legal theories of relief pleaded in the operative complaint; (j) all claims under the
11 California Labor Code Private Attorneys General Act of 2004 that could have been premised on
12 the claims, causes of action or legal theories described above or any of the claims, causes of
13 action or legal theories of relief pleaded in the operative complaint; (k) any other claims or
14 penalties under the California Labor Code or other wage and hour laws pleaded in the Action;
15 and (l) all damages, penalties, interest and other amounts recoverable under said claims, causes
16 of action or legal theories of relief. The period of the Release shall extend to the limits of the
17 Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.
18 Defendants shall be entitled to a release of Released Claims which occurred during the Class
19 Period only during such time that the Settlement Class Member was classified as non-exempt,
20 and expressly excluding all other claims for vested benefits, wrongful termination,
21 unemployment insurance, disability, social security, workers' compensation, claims while
22 classified as exempt, and claims outside of the Class Period.

23 25. “Released Parties” means Defendants, and their past, present and/or future,
24 direct and/or indirect officers, directors, shareholder, employees, agents principals, heirs,
25 representatives, accountants, auditors, attorneys, consultants, insurers, and their respective
26 successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents, if any.

27 26. “Request for Exclusion” means a timely written request by a Class Member to
28 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,

1 address, telephone number and last four digits of the Social Security Number of the Class
2 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the
3 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
4 in the Settlement; and (v) be postmarked on or before the Response Deadline.

5 27. “Response Deadline” means the deadline by which Class Members must
6 postmark to the Settlement Administrator Requests for Exclusion or Objections to the
7 Settlement. The Response Deadline will be forty-five (45) calendar days from the initial
8 mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the
9 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
10 extended to the next day on which the U.S. Postal Service is open.

11 28. “Settlement Administrator” means CPT Group, Inc. or any other third-party
12 class action settlement administrator approved by the Parties and the Court for the purposes of
13 administering this Settlement. The Parties each represent that they do not have a financial
14 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
15 Administrator that could create a conflict of interest.

16 29. “Settlement Administration Costs” includes all costs payable to the Settlement
17 Administrator for administering this Settlement, including, but not limited to, printing,
18 distributing, and tracking notice and other documents for this Settlement, tax reporting,
19 distributing all payments to be made pursuant to this Settlement, and providing necessary
20 reports and declarations, as requested by the Parties. After conference and consultation with the
21 Settlement Administrator, no more than Fourteen Thousand Dollars and Zero Cents
22 (\$14,000.00) will be allocated to Settlement Administration.

23 30. “Workweeks” means the number of calendar weeks that the Class Member
24 worked as a non-exempt employee in California during the Class Period.

25 31. “Workweek Value” means the value of each compensable Workweek, as
26 determined by the formula set forth in herein.

27 **TERMS OF AGREEMENT**

28 Plaintiff, on behalf of herself and the Settlement Class, and Defendants agree as

1 follows:

2 32. Funding of the Gross Settlement Amount. Within 10 business days after the
3 Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified
4 Settlement Fund, with the Settlement Administrator. The Gross Settlement Amount will be used
5 to pay: (i) Individual Settlement Amounts; (ii) the Class Representative Enhancement Payment
6 to Plaintiff; (iii) Attorneys' Fees and Costs; (iv) the PAGA Payment; and the (v) Settlement
7 Administration Costs.

8 33. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees
9 and Costs of not more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) in
10 attorney's fees and not more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) in
11 costs, and Defendants agree not to oppose such application. All Attorneys' Fees and Costs will
12 be paid from the Gross Settlement Amount. Plaintiff and Class Counsel will not have the right
13 to revoke this Settlement in the event the Court fails to approve the amount of Attorneys' Fees
14 and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and Costs not awarded
15 to Class Counsel will be added to the Net Settlement Amount.

16 34. Class Representative Enhancement Payment. Plaintiff will apply to the Court for
17 a Class Representative Enhancement Payment of not more than Five Thousand Dollars and Zero
18 Cents (\$5,000.00) for her effort and work in prosecuting the Action on behalf of Class Members
19 and Aggrieved Employees and Defendants agree not to oppose such application. The Class
20 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount,
21 will be in addition to Plaintiff's right to an Individual Settlement Payment pursuant to the
22 Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on
23 the payments made pursuant to this paragraph and will hold Defendants harmless from any claim
24 or liability for taxes, penalties, or interest arising as a result of the payments. Plaintiff will not
25 have the right to revoke this Settlement in the event the Court fails to approve the amount sought
26 by Plaintiff as a Class Representative Enhancement Payment. Any portion of the Class
27 Representative Enhancement Payment not awarded to the Class Representative will be added to
28 the Net Settlement Amount.

1 35. Settlement Administration Costs. The Settlement Administrator will be paid for
2 the reasonable costs of administration of the Settlement and distribution of payments. These
3 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the
4 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
5 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
6 payments to be made pursuant to the Settlement, and providing necessary reports and
7 declarations. Class Counsel obtained a “not to exceed” quote from the Settlement Administrator
8 to complete the administration for Fourteen Thousand Dollars and Zero Cents (\$14,000.00).
9 The Settlement Administrator’s “not to exceed” quote will represent the Settlement
10 Administrator’s agreement that, based on the class size and distributions under the terms of this
11 Settlement, the costs for administration of the terms of this Settlement will not exceed the
12 specified amount. All of the Settlement Administration Costs shall be paid from the Gross
13 Settlement Amount upon completion of all duties required to be performed by the Settlement
14 Administrator under the terms of this Settlement, or as otherwise required by the Court, subject
15 to the “not to exceed” quote from the Settlement Administrator. The Settlement Administrator
16 will set up the Qualified Settlement Fund.

17 36. PAGA Payment. Thirty Thousand Dollars and Zero Cents (\$30,000.00) shall be
18 allocated from the Gross Settlement Amount for settlement of claims for civil penalties under
19 PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such \$30,000.00
20 PAGA Payment, or \$22,500.00, to the LWDA. Twenty-five (25%) of the \$30,000.00 PAGA
21 Payment, or \$7,500.00, will be included in the Net Settlement Amount and distributed to
22 Settlement Class Members as described in this Agreement. Each Settlement Class Member’s
23 pro rata share of that \$7,500.00 will be part of his or her Individual Settlement Payment.

24 37. Individual Settlement Payment Calculations. Individual Settlement Payments
25 will be calculated and apportioned from the Net Settlement Amount based on the number of
26 Workweeks a Class Member worked during the Class Period as a non-exempt employee in
27 California. Specific calculations of Individual Settlement Payments will be made as follows:

28 34(a). The Settlement Administrator will calculate the total number of

1 Workweeks worked by each Class Member as a non-exempt employee in California during the
2 Class Period and the aggregate total number of Workweeks worked by all Class Members as
3 non-exempt employees in California during the Class Period.

4 34(b). To determine each Class Member’s estimated “Individual Settlement
5 Payment,” the Settlement Administrator will use the following formula: The Net Settlement
6 Amount will be divided by the aggregate total number of Workweeks, resulting in the
7 Workweek Value. Each Class Member’s “Individual Settlement Payment” will be calculated by
8 multiplying each individual Class Member’s total number of Workweeks by the Workweek
9 Value.

10 34(c). The entire Net Settlement Amount will be disbursed as Individual
11 Settlement Payments to Class Members. If there are any valid and timely Requests for
12 Exclusion from members of the Settlement Class, the Settlement Administrator shall
13 proportionately increase the Individual Settlement Payment for each Class Member according
14 to the number of Workweeks worked, so that the amount actually distributed to the Settlement
15 Class equals 100% of the Net Settlement Amount.

16 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
17 Class Members under this Settlement, as well as any other payments made pursuant to this
18 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
19 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing
20 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick
21 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties’ intention
22 that this Settlement Agreement will not affect any rights, contributions, or amounts to which
23 any Class Members may be entitled under any benefit plans.

24 39. Settlement Administration Process. The Parties agree to cooperate in the
25 administration of the settlement and to make all reasonable efforts to control and minimize the
26 costs and expenses incurred in administration of the Settlement.

27 40. Delivery of the Class List. Within ten (10) calendar days of entry of the Court’s
28 Order Granting Preliminary Approval, Defendants will provide the Class List to the Settlement

1 Administrator.

2 41. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class
3 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class
4 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
5 identified in the Class List.

6 42. Confirmation of Contact Information in the Class List and Undeliverable
7 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
8 National Change of Address Database for information to update and correct for any known or
9 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as
10 non-deliverable on or before the Response Deadline will be sent promptly via regular First-
11 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will
12 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided,
13 the Settlement Administrator will promptly attempt to determine the correct address using an
14 Accurint search/skip-trace and will then perform a single re-mailing.

15 43. Notices of Class Action Settlement. All Class Members will be mailed a Notice
16 Packet in the form attached as Exhibit A, B, and C or as provided by Court order.

17 44. Disputed Information on Notices of Class Action Settlement. Class Members
18 will have an opportunity to dispute the information provided in their Notices of Class Action
19 Settlement. To the extent Class Members dispute their employment dates or the number of
20 Workweeks, Class Members may produce evidence to the Settlement Administrator showing
21 that such information is inaccurate. The Settlement Administrator will advise the Parties of
22 such dispute, allow Defendants five (5) business days to respond with any additional
23 information or records, and then decide the dispute. Defendants' records will be presumed
24 correct, but the Settlement Administrator will evaluate the evidence submitted by the Class
25 Member and Defendants and will make the final decision as to the merits of the dispute.

26 45. Requests for Exclusion. The Notice Packet shall include a Request for
27 Exclusion as attached **Exhibit C**. Any Class Member wishing to opt-out from the Settlement
28 Agreement must sign and postmark a written Request for Exclusion to the Settlement

1 Administrator within the Response Deadline. The postmark date will be the exclusive means to
2 determine whether a Request for Exclusion has been timely submitted. The Parties and their
3 counsel will not solicit or encourage any Class Member, directly or indirectly, to opt out of the
4 Settlement Agreement. More specifically, a Class Member may request to be excluded from the
5 effect of this Agreement, and any payment of amounts under this Agreement by timely mailing
6 a Request for Exclusion letter to the Settlement Administrator stating that the Class Member
7 wants to be excluded from this Action. This letter must include the Class Member's name,
8 address, telephone number, and signature. To be valid and timely, the request to be excluded
9 must be postmarked by the Response Deadline date that will be specified in the Class Notice
10 (no less than forty-five (45) days from the initial mailing of the Class Notice by the Settlement
11 Administrator). A Class Member who properly submits a valid and timely request to be
12 excluded from the Action will not receive any payment of any kind in connection with this
13 Agreement or this Action, will not be bound by or receive any benefit of this Agreement, and
14 will have no standing to object to the Settlement. Class Members who do not timely request
15 exclusion will be bound by the releases herein and receive an individual settlement payment
16 ("Participating Class Members"). A request for exclusion must be mailed to the Settlement
17 Administrator at its address to be provided in the Class Notice, and the Settlement
18 Administrator will promptly transmit the requests for exclusion to counsel for the parties.

19 46. Defective Submissions. If a Class Member's Request for Exclusion is defective
20 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
21 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
22 (3) business days of receiving the defective submission to advise the Class Member that his or
23 her submission is defective and that the defect must be cured to render the Request for
24 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
25 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
26 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within
27 that period, it will be deemed untimely.

28 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class

1 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
2 timely and valid Request for Exclusion will be bound by all of its terms, including those
3 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
4 it grants final approval of the Settlement.

5 48. Objection Procedures. The Notice Packet shall include an Objection Form as
6 attached **Exhibit B**. The Notice Packet shall state that Settlement Class Members who wish to
7 object to the Settlement may do so by a written statement of objection (“Notice of Objection”)
8 to be mailed by the Response Deadline to the Settlement Administrator or by appearing at the
9 hearing for Final Approval. The Objection must be signed by the Class Member and contain all
10 information required by this Settlement Agreement. The postmark date of the filing and service
11 will be deemed the exclusive means for determining that the Objection is timely. The Notice of
12 Objection must state: (1) the case name and number; (2) the name of the Settlement Class
13 Member; (3) the address of the Settlement Class Member; (4) the last four digits of the
14 Settlement Class Member’s Social Security number; (4) the basis for the objection; and (5) if
15 the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness
16 Hearing. The Settlement Administrator will promptly provide any Notices of Objection to the
17 parties’ counsel upon receiving them. Class Counsel will include all objections received and
18 Plaintiff’s response(s) with Plaintiff’s motion for final approval of the Settlement. Settlement
19 Class Members may also have a right to have their objections heard at the Final
20 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members
21 with respect to any such Objections to this Settlement, and any Class Members who request
22 exclusion from the Settlement will not have standing to object to it.

23 49. Settlement Administrator Reports. The Settlement Administrator will provide
24 Defendants’ counsel and Class Counsel a weekly report of the number of Class Members who
25 have submitted valid Requests for Exclusion, Objections, and disputes regarding Workweeks
26 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties
27 any updated reports regarding the administration of the Settlement Agreement as needed or
28 requested.

1 50. Distribution and Timing of Payments. Within 25 days of the Effective Date, and
2 after Defendants has fully funded the Qualified Settlement Fund with the Gross Settlement
3 Amount, the Settlement Administrator will issue payments to: (i) all Class Members who have
4 not submitted a valid and timely Request for Exclusion, including any Class Member whose
5 notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the LWDA. The
6 Settlement Administrator will also issue a payment to itself for Court-approved services
7 performed in connection with the Settlement. The Settlement Administrator will pay Individual
8 Settlement Payments from the Net Settlement Amount to all Participating Class Members. The
9 Settlement Administrator will do so by sending a check in the appropriate amount to the Class
10 Member at the address indicated in the list of Class Member names and addresses provided by
11 Defendants, or as subsequently determined by the Settlement Administrator to be correct.

12 51. Un-cashed Settlement Checks. Class Members will receive checks for their
13 Individual Settlement Payments. Checks will remain negotiable for 180 days (“Check-Cashing
14 Deadline”). Any check not cashed within 180 calendar days will be void. The money from the
15 uncashed checks shall be distributed by the Settlement Administrator, in accordance with
16 California Code of Civil Procedure section 384. Any amounts from the settlement checks that
17 remain uncashed and otherwise unclaimed shall be tendered to the Valley Children’s Hospital.

18 52. Certification of Completion. Upon completion of administration of the
19 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
20 such completion to the Court and counsel for all Parties.

21 53. Allocation of Individual Settlement Payments. All Individual Settlement
22 Payments will be allocated as follows: (a) one-third as wages and (b) two-thirds as penalties
23 and interests. The Settlement Administrator will be responsible for issuing to claimants a form
24 W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to
25 penalties.

26 54. Administration of Taxes by the Settlement Administrator. The Settlement
27 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
28 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The

1 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the
2 appropriate government authorities as may be required by law.

3 55. Tax Liability. Defendants make no representation as to the tax treatment or
4 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not
5 relying on any statement, representation, or calculation by Defendants or by the Settlement
6 Administrator in this regard. Plaintiff and Class Members understand and agree that they will
7 be solely responsible for the payment of any taxes and penalties assessed on the payments
8 described herein and will defend, indemnify, and hold Defendants free and harmless from and
9 against any claims resulting from treatment of such payments as non-taxable damages.

10 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
11 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
12 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
13 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
14 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
15 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
16 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
17 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
18 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
19 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
20 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
21 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
22 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
23 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
24 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
25 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
26 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
27 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
28 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY

1 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
2 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
3 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
4 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
5 AGREEMENT.

6 57. No Prior Assignments. The Parties and their counsel represent, covenant, and
7 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
8 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
9 demand, action, cause of action or right herein released and discharged.

10 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not
11 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final
12 for any other reason, then this Settlement Agreement, and any documents generated to bring it
13 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
14 this Settlement Agreement will likewise be treated as void from the beginning, it will be of no
15 force or effect whatsoever, it will not be referred to or used for any purpose whatsoever, and the
16 negotiation, terms and entry of it shall remain subject to the provisions of California Evidence
17 Code §§ 1119 and 1152.

18 Defendants deny all of the claims and allegations asserted in the Action (as defined
19 herein). Defendants have agreed to resolve this Action via this Stipulation, but to the extent this
20 Stipulation is deemed void or does not take effect, Defendants do not waive, but rather
21 expressly reserves, all rights to challenge all such claims and allegations in the Action upon all
22 procedural and factual grounds, including without limitation the ability to challenge suitability
23 for class treatment or representative adjudication on any grounds or to assert any and all
24 defenses or privileges. The Class Representative and their counsel agree that Defendants retain
25 and reserve these rights. In particular, the Class Representative and their counsel waive and
26 agree not to argue or to present any argument that Defendants would be estopped from
27 contesting class certification because it has entered into this Stipulation.

28 59. Tolerance of Opt-Outs. Defendants retain the right, in the exercise of their sole

1 discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period, if
2 more than one hundred and six (106) Class Members opt out of this settlement.

3 60. Escalator. This settlement is based on Defendants' representation that there are
4 approximately 1,672 Class Members and approximately 52,350 workweeks as of November 18,
5 2020. At the time of preliminary approval, if the number of workweeks increases by more than
6 10% upon confirmation of the workweeks, then there will be a pro rata adjustment to the Gross
7 Settlement Amount which shall automatically increase in proportion to the increased percentage of
8 workweeks.

9 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court
10 to request the Preliminary Approval of the Settlement Agreement, and the entry of a
11 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
12 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
13 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
14 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
15 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
16 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
17 proposed Notice of Class Action Settlement.

18 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
19 the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement,
20 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
21 conducted to determine the Final Approval of the Settlement Agreement along with the
22 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative
23 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
24 Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30)
25 days after the Response Deadline. Class Counsel will be responsible for drafting all documents
26 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
27 attorneys' fees and costs application to be heard at the final approval hearing.

28 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by

1 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
2 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
3 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
4 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
5 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
6 Agreement.

7 64. General Release by Plaintiff. In consideration for the consideration set forth in
8 this Agreement, Plaintiff, for herself, their heirs, successors and assigns, does waive, release,
9 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
10 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
11 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
12 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
13 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
14 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
15 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
16 state or other governmental statute, law, regulation or ordinance, including any claims arising
17 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
18 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
19 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
20 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
21 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
22 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &
23 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
24 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waive
25 and relinquish any and all claims, rights, or benefits that they may have under California Civil
26 Code § 1542, which provides as follows:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
28 **THAT THE CREDITOR OR RELEASING PARTY DOES**

1 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
2 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
3 **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
4 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
5 **WITH THE DEBTOR OR RELEASED PARTY.**

6 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
7 which they now know or believe to exist, but they expressly agree to fully, finally and forever
8 settle and release any and all claims against the Released Parties, known or unknown, suspected
9 or unsuspected, which exist or may exist against Released Parties at the time of execution of
10 this Agreement, including, but not limited to, any and all claims relating to or arising from
11 Plaintiff's employment with Defendants. The Parties further acknowledge, understand and
12 agree that this representation and commitment is essential to the Agreement and that this
13 Agreement would not have been entered into were it not for this representation and
14 commitment.

15 65. Release by All Settlement Class Members. Plaintiff and all Class Members who
16 do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or
17 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
18 finally release and discharge the Released Parties from any and all of the Released Claims for
19 the entirety of the Class Period. This waiver and release will be final and binding on the
20 Effective Date and will have every preclusive effect permitted by law. Plaintiff and the
21 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
22 different from those they now know or currently believe to be true with respect to the Released
23 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
24 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
25 Settlement Class Members shall be deemed to have, and by operation of the final judgment
26 approved by the Court, shall have, fully, finally, and forever settled and released all of the
27 Released Claims. The parties understand and specifically agree that the scope of the release
28 described in this Paragraph: is a material part of the consideration for this Agreement; was

1 critical in justifying the agreed upon economic value of this settlement and without it
2 Defendants would not have agreed to the consideration provided; and is narrowly drafted and
3 necessary to ensure that Defendants is obtaining peace of mind regarding the resolution of
4 claims that were or could have been alleged based on the facts, causes of action, and legal
5 theories contained in the operative complaint in the Action.

6 66. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
7 include the terms set forth in any attached Exhibits, which are incorporated by reference as
8 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
9 the Settlement.

10 67. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or
11 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
12 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any
13 person or entity, except potential class members and as shall be contractually required to
14 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff
15 and Class Counsel agree not to issue press releases, communicate with, or respond to any
16 media or publication entities, publish information in manner or form, whether printed or
17 electronic, on any medium or otherwise communicate, whether by print, video, recording or
18 any other medium, with any person or entity concerning the Settlement, including the fact of
19 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
20 shall be contractually required to effectuate the terms of the Settlement.

21 68. No Unalleged Claims. Except for those claims brought forth under *Vidali*
22 *Aleman, et al. v. Moonlight Packing Corporation, et al.*, Fresno County Superior Court, Case
23 No. 20CECG01196 to the extent they are not covered under the Released Claims, Plaintiff and
24 Class Counsel represent that they are not currently aware of any: (a) unalleged claims in
25 addition to, or different from, those which are finally and forever settled and released against
26 the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which
27 any claims or causes of action could be brought against Defendants, except such facts and
28 theories specifically alleged in the operative complaints in this Action. Plaintiff and Plaintiff's

1 Counsel will further represent that, other than the instant Action, they have no current intention
2 of asserting any other claims against Defendants in any judicial or administrative forum.

3 Plaintiff and Plaintiff's Counsel will further represent that they do not currently know of or
4 represent any persons who have expressed any interest in pursuing litigation or seeking any
5 recovery against Defendants. The Parties acknowledge, understand and agree that the
6 representations described in this paragraph are essential to the Settlement Agreement and that
7 this Settlement Agreement would not have been entered into were it not for this representation.

8 69. Entire Agreement. This Settlement Agreement and any attached Exhibits
9 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
10 written or oral agreements may be deemed binding on the Parties.

11 70. Amendment or Modification. This Settlement Agreement may be amended or
12 modified only by a written instrument signed by counsel for all Parties or their successors-in-
13 interest.

14 71. Binding on Successors and Assigns. This Settlement Agreement will be binding
15 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
16 defined.

17 72. California Law Governs. All terms of this Settlement Agreement and Exhibits
18 hereto will be governed by and interpreted according to the laws of the State of California.

19 73. Headings. The headings contained in this Settlement Agreement are for
20 convenience and reference purposes only and will not be given weight in its construction.

21 74. Execution and Counterparts. This Settlement Agreement is subject only to the
22 execution of all Parties. However, the Settlement may be executed in one or more counterparts.
23 All executed counterparts and each of them, including facsimile and scanned copies of the
24 signature page, will be deemed to be one and the same instrument provided that counsel for the
25 Parties will exchange among themselves original signed counterparts.

26 75. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
27 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
28 and have arrived at this Settlement after arm's-length negotiations and in the context of

1 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
2 further acknowledge that they are each represented by competent counsel and that they have
3 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
4 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
5 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
6 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
7 reasonable.

8 76. Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
10 extent possible consistent with applicable precedents so as to define all provisions of this
11 Settlement Agreement valid and enforceable.

12 77. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
13 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
14 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
15 request from the Court, and either party may appeal any court order that materially alters the
16 Settlement Agreement's terms.

17 78. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
18 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
19 litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that
20 they violated any federal, state, or local law; violated any regulations or guidelines promulgated
21 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
22 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
23 engaged in any other unlawful conduct with respect to its employees. Neither this Settlement,
24 nor any of its terms or provisions, nor any of the negotiations connected with it, will be
25 construed as an admission or concession by Defendants of any such violations or failures to
26 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
27 this Settlement, this Settlement and its terms and provisions will not be offered or received as
28 evidence in any action or proceeding to establish any liability or admission on the part of

1 Defendants or to establish the existence of any condition constituting a violation of, or a non-
2 compliance with, federal, state, local or other applicable law.

3 The Parties understand and acknowledge that this Settlement Agreement constitutes a
4 compromise and settlement of disputed claims. No action taken by the Parties whether
5 previously or in connection with the negotiations or proceedings connected with the Settlement
6 or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any
7 allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any
8 party of any fact, fault, liability, or wrongdoing of any kind whatsoever.

9 Neither the Settlement, nor any act performed or document executed pursuant to or in
10 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission
11 of, or evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any
12 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be
13 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in
14 the Action or in any proceeding in any court, administrative agency or other tribunal; or
15 construed as an admission by Plaintiff regarding the validity of any allegation or claim asserted
16 in this Action or that Plaintiff has waived any allegation or claim asserted in the Action.

17 79. Waiver. No waiver of any condition or covenant contained in this Settlement or
18 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
19 constitute a further waiver by such party of the same or any other condition, covenant, right or
20 remedy.

21 80. Enforcement Action. In the event that one or more of the Parties institutes any
22 legal action or other proceeding against any other Party or Parties to enforce the provisions of
23 this Settlement or to declare rights and/or obligations under this Settlement, the successful
24 Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable
25 attorneys' fees and costs, including expert witness fees incurred in connection with any
26 enforcement actions.

27 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the
28 terms and conditions of this Settlement. Accordingly, this Settlement will not be construed

1 more strictly against one party than another merely by virtue of the fact that it may have been
2 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
3 negotiations between the Parties, all Parties have contributed to the preparation of this
4 Settlement.

5 82. Representation By Counsel. The Parties acknowledge that they have been
6 represented by counsel throughout all negotiations that preceded the execution of this
7 Settlement, and that this Settlement has been executed with the consent and advice of counsel.
8 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
9 Settlement Agreement.

10 83. All Terms Subject to Final Court Approval. All amounts and procedures
11 described in this Settlement Agreement herein will be subject to final Court approval.

12 84. Cooperation and Execution of Necessary Documents. All Parties will cooperate
13 in good faith and execute all documents to the extent reasonably necessary to effectuate the
14 terms of this Settlement Agreement.

15 85. Binding Agreement. The Parties warrant that they understand and have full
16 authority to enter into this Settlement, and further intend that this Settlement will be fully
17 enforceable and binding on all parties, and agree that it will be admissible and subject to
18 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
19 provisions that otherwise might apply under federal or state law.

20 **SO AGREED AND STIPULATED.**

21 DATED: January 19, 2021

22 DAVID YEREMIAN & ASSOCIATES, INC.

23
24 By _____

25 David Yeremian
26 Natalie Haritounian
27 Attorneys for Plaintiff VIDALI ALEMAN
28 and all others similarly situated

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DATED: January __, 2021

BAKER MANOCK & JENSEN, P.C.

By _____
Diane Coderniz
Attorneys for Defendants MOONLIGHT
PACKING CORPORATION and
MOONLIGHT PACKING COMPANY LLC

DATED: January ¹⁹ __, 2021

DocuSigned by:
By Viola
Plaintiff Vidal Aleman

DATED: January __, 2021

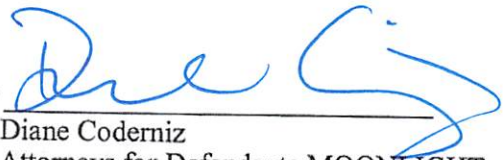
MOONLIGHT PACKING
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DATED: January 27, 2021

BAKER MANOCK & JENSEN, P.C.


By 
Diane Coderniz
Attorneys for Defendants MOONLIGHT
PACKING CORPORATION and
MOONLIGHT PACKING COMPANY LLC

DATED: January __, 2021

By _____
Plaintiff Vidali Aleman

DATED: January 27, 2021

MOONLIGHT PACKING
CORPORATION and MOONLIGHT
PACKING COMPANY LLC

By 
Name: Ty TAVLAN
Title: VP