

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**  
*Argelio Vargas Lopez, et al v. Taylor Orchards, LLC*  
**Yakima County Superior Court Case No. 17-2-00468-39**

Subject to the approval of the Superior Court for the State of Washington, in and for the County of Yakima, Plaintiff Argelio Vargas Lopez, individually and on behalf of all Class Members, as defined herein, and Defendant Taylor Orchards, LLC, agree to the terms of this Class Action Settlement and Release (the “Settlement”).

**I. DEFINITIONS**

For the purposes of the Settlement, any word or phrase that is presented in initial capital letters (e.g., Class Member), is a word or phrase defined herein.

1. “Action” shall mean the civil action currently pending in Yakima County Superior Court, entitled “*Argelio Vargas Lopez, individually and on behalf of all other similarly situated, Plaintiff v. Taylor Orchards, LLC, a Washington corporation, Defendant,*” Case No. 17-2-00468-39; Complaint filed on February 28, 2014.

2. “Check Cashing Period” shall mean the 90-day period commencing the date on which the Settlement Proceeds are mailed to the Class Members. After the 90-day Check Cashing Period, any uncashed proceeds shall be dispersed as set forth in Section III 45, below.

3. “Class Counsel” shall mean Craig Ackermann and Ackermann & Tilajef, P.C.; India Lin Bodien, Attorney at Law; and Law Offices of Tatiana Hernandez, P.C.

4. “Class Member” shall mean all members of the Washington Resident Subclass and the Non-resident Subclass, which are defined as follows:

- (a) “Washington Resident Subclass:” all individuals who (1) resided in Washington (2) were employed by Taylor Orchards, LLC, as a hand harvester, pruner, picker, thinner, farm worker, or any similar position (3) and who were paid on a piece-rate basis, at any time from February 28, 2014 through to July 11, 2015 (“Class Period”).

- (b) “Non-resident Subclass:” all individuals who (1) did not reside in Washington (2) were employed by Taylor Orchards, LLC, as a hand harvester, pruner, picker, thinner, farm worker, or any similar position (3) and who were paid on a piece-rate basis, at any time from September 25, 2014 through to July 11, 2015 (“Non-resident Class Period”).

As of the date of this Agreement, Defendant represents there are approximately 2,157 Class Members.

5. “Claims Deadline” shall mean the date by which Claim Forms must be postmarked and/or received by the Settlement Administrator. The Parties agree to request that the Court set the Claim Deadline seventy-five (75) calendar days after the initial mailing of the Claim Form.

6. “Claim Form,” shall mean a proof of claim in substantially the form as **Exhibit B** attached hereto. It is the Claim Form, approved by the Parties and subject to Court approval, which the Settlement Administrator will mail to each Class Member explaining how each Class Member can claim their Individual Settlement Payment.

7. “Claim Share” shall mean the amount of money allocated to each Claiming Class Member pursuant to Paragraph 59 of this Settlement.

8. “Claiming Class Member” shall mean a Class Member who submits a timely and valid Claim Form.

9. “Piece Rate Hours” shall mean the total number of hours during which a Class Member worked for Defendant for piece rate compensation during the Covered Period.

10. “Class Representative,” “Plaintiff” and “Named Plaintiff” shall mean Argelio Vargas Lopez, the person identified as named Plaintiff in the Action.

11. “Class Notice” shall mean the Notice of Class Action Settlement, attached hereto as **Exhibit A**. It is the Notice, approved by the Parties and subject to Court approval, which the Settlement Administrator will mail to each Class Member explaining the terms of the Settlement.

12. “Court” shall mean the Superior Court for the State of Washington, in and for the County of Yakima.

13. “Covered Period” shall mean the period from February 28, 2014 through July 11, 2015 (since Defendant began paying separately for rest periods on July 11, 2015).

14. “Defendant,” “Taylor” or the “Company” shall mean Taylor Orchards, LLC.

15. “Dispute Deadline” shall mean the deadline regarding any disputes concerning the gross payroll listed on the Claim Form that Class Members received during the Class Period. The Dispute Deadline is seventy-five (75) calendar days after the initial mailing of the Class Notice and Claim Form by the Settlement Administrator, or other date set by the Court.

16. “Final” shall mean the latest of the following dates, as applicable: the date the Court has rendered a Final Judgment of the Settlement and either (i) the Washington State Supreme Court or the U.S. Supreme Court has rendered a final judgment affirming the Court’s approval without material modification and the applicable date for seeking further appellate review has passed, or (ii) the applicable date for seeking appellate review of the Court’s Final Judgment of the Settlement has passed without a timely appeal or a request for review having been made.

17. “Final Judgment” shall mean the order granting final approval of the class action settlement entered by the Court.

18. “Gross Settlement Amount” shall mean the maximum settlement amount of \$150,000 that Defendant will be obligated to pay under the terms of this Settlement. From the Gross Settlement Amount (“GSA”) will be deducted the following costs associated with the Settlement: Plaintiff’s Class Representative Payment (\$3,000); Class Counsel’s attorneys’ fees

(which will be sought at 20% of the GSA, i.e., up to \$30,000) and litigation expenses (up to \$5,000); and the Settlement Administrator's fees and expenses (approximately \$20,000).

19. "Settlement Proceeds" or "Net Settlement Amount" shall mean: the amount remaining in the Gross Settlement Amount after all applicable deductions set forth in Paragraph 18 have been deducted. The Net Settlement Amount, estimated to be approximately \$92,000, will be available to be claimed by the Class Members subject to the provisions below.

20. "Individual Settlement Payment" shall mean the Settlement Proceeds available to be claimed by each individual Class Member as calculated in paragraphs 58 and 59.

21. "Opt-Out Deadline" shall mean the date by which a Class Member must exclude himself or herself from the Class (hereinafter referred to at times as "opt-out") in the manner provided herein or by order of the Court. The Opt-Out Deadline shall be seventy-five (75) calendar days after the initial mailing of the Class Notice and Claim Form by the Settlement Administrator.

22. "Participating Class Members" shall mean all Class Members other than those who timely and properly opt-out of (i.e., request exclusion from) the Settlement.

23. "Parties" shall mean Class Members, the Class Representative, and Defendant, and "Party" shall mean any one of the Parties.

24. "Settlement" shall mean this settlement agreement between the Parties, which, with Court approval, is intended to provide the terms relevant to the resolution of the Action with respect to all Participating Class Members.

25. "Settlement Administrator" shall mean the Settlement Administrator mutually selected by the Parties to perform the duties set forth in this Settlement, subject to the Court's approval. The Parties will jointly agree on the administrator before Plaintiff files a motion for preliminary approval of the Settlement.

26. The "Settlement Administrator's fees and expenses" shall mean the amount charged by the Settlement Administrator to administer the settlement, including but not limited to

calculating settlement shares, sending out Class Notices and Claim Forms (in both English and Spanish), sending weekly updates to counsel of the results of the claims process, calculating and paying the applicable taxes related to the Settlement, responding to inquiries from Class Members, providing a declaration summarizing the results of the claim process, including amount claimed, number of class members who submitted timely claims, amount of requests for exclusion (if any), evaluating any challenges to piece rate hours, and providing any objections to counsel, and other tasks normally associated with administering a class action settlement. The Settlement Administrator's fees and expenses are estimated to be no more than \$20,000, but the project will be bid out to several settlement administrators prior to the preliminary approval hearing, and the parties will jointly agree upon the administrator based on the lowest bid response among the competent settlement administrators who bid on the project.

27. "Settlement Effective Date" shall mean the date by which all of the following have occurred: (i) this Settlement Agreement has been executed by Plaintiff, Class Counsel, Defendant, and Defense Counsel; (ii) the Parties, or any one of them, has not voided this Settlement pursuant to Section XVIII; (iii) the Court has granted Preliminary Approval; (iv) notice has been given to the Class Members providing them with an opportunity to opt-out of the Settlement or to submit Claim Forms; (v) the Court has granted Final Approval and entered Final Judgment as to this Settlement; and (vi) the later of the following events: the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has lapsed without any appeal, writ, or other appellate proceeding having been filed; or the dismissal of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate order upholding the Court's final order with no right to pursue further remedies or relief.

## **II. RECITALS**

28. On February 28, 2017, Plaintiff commenced the Action on behalf of himself and all others allegedly similarly situated with respect to the claims asserted.

29. Following the filing of Plaintiff's Complaint, Plaintiff and Defendant agreed to engage in formal and informal discovery and mediation.

30. The Parties agreed to, and through their counsel, retained Bruce Friedman, Esq., as the neutral. Bruce Friedman is an experienced class action mediator, with extensive knowledge of wage and hour laws. The Parties each submitted detained briefs to Mr. Friedman in advance of the mediation.

31. As part of discovery, Plaintiff's counsel requested, among other things, information about the total number of class members, the hours worked during the class period by each class member, the amounts paid out in piece-rate pay for the years 2014 through 2017 to all employees, the amount paid out in pay for rest periods for each pay period in the years 2014 through 2017, as well as evidentiary confirmation showing when Defendant began to pay hourly and separately for rest breaks. Prior to engaging in settlement discussions, Defendant's counsel produced the requested information, including a spreadsheet containing the requested data. Defendant has subsequently supplemented information as requested by Plaintiff's counsel.

32. On September 25, 2017, the Parties engaged in a private, arm's-length mediation in Seattle, Washington and agreed to resolve this matter under the terms of this Agreement.

33. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged, and contends that, for any purpose other than this Settlement, the Action is not appropriate for class treatment under Washington CR 23, or otherwise. The Parties agree, however, that it is appropriate to certify the class for purposes of this Settlement only.

34. Class Counsel represent that they have conducted a thorough investigation into the facts of this Action, and have diligently pursued an investigation of the Class Members' claims against Defendant, including engaging in pre-negotiation investigation, reviewing substantial data and documents, and researching the applicable law and potential defenses. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable and adequate and is in the best interests of Class Members in light of all known

facts and circumstances, including the risk of protracted litigation, the risk that the Court would not certify a class action, and Defendant's defenses and potential appellate issues, including risks associated with Defendant's potential defenses to class certification, to retroactivity, and to liquidated damages, among other things.

35. Defendant agrees that the Settlement is fair, reasonable and adequate under the circumstances, taking into account litigation risks and costs of defense.

36. This Settlement represents a compromise of materially disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the Class Members on those claims.

37. The entry of Final Judgment in this action shall bind all Participating Class Members to the Release of all claims set forth in this Agreement, and it will also state that the Court retains jurisdiction to enforce the terms of the Settlement.

### **III. TERMS OF SETTLEMENT**

38. The Parties agree that, with the Court's approval, the Court shall certify a Class consisting of the Class Members as defined above solely for the purpose of implementing the terms of this Settlement.

39. Gross Settlement Amount: The Gross Settlement Amount under this Settlement is \$150,000, as defined above.

40. Class Counsel's Attorneys' Fees and Costs: Defendant will not oppose Class Counsel's request to the Court for approval of a total for attorneys' fees in the amount that does not exceed 20% of the Gross Settlement Amount plus actual litigation costs incurred up to \$5,000, to be paid out of the Gross Settlement Amount. Defendant will issue to Class Counsel a Form 1099 with respect to their awarded fees and costs.

41. Class Representative Payment: Defendant will not oppose Plaintiff's application to the Court for a Class Representative Payment not to exceed \$3,000 to the named Class Representative, to be paid out of the Gross Settlement Amount, in addition to his Individual Settlement Payment. Defendant will issue to the Class Representative a Form 1099 with respect to his Class Representative Payment.

42. Distribution to Class Members: The Parties agree that the settlement funds will be placed in an account held by the Settlement Administrator to effectuate the terms of this Settlement and the orders of the Court. The Settlement Administrator shall be responsible for establishing, administering, and otherwise operating the settlement fund, including the preparation and filing of federal, state, and/or local tax returns. The Settlement Administrator shall also be responsible for administering the settlement distribution process, as follows:

(a) After deductions of Court-approved Class Counsel's attorneys' fees and expenses, and the Class Representative Payment, the remainder of the Gross Settlement Amount (i.e., the Settlement Proceeds or Net Settlement Amount) shall be available to be claimed by the Class Members.

(b) Each Class Member who submits a timely and properly completed Claim Form and does not submit Request for Exclusion Forms will be entitled to receive the Individual Settlement Payment calculated for such individual pursuant to Sections 58 and 58 below. To the extent that the total of these Individual Settlement Payments, including the additional pro rata amounts described in paragraph 58 below, is still less than 75% of the Net Settlement Amount, the remaining amount of the 75% Net Settlement Amount will be paid to an Internal Revenue Code section 501(c)(3) non-profit organization(s) to be agreed upon by the Parties prior to the preliminary approval hearing, and subject to the Court's approval. The portion of the Settlement Proceeds as calculated in paragraphs 58 and 59 below, shall be distributed via US Mail to all Participating Class Members who submit timely Claim Forms from the office of the Settlement Administrator. The remaining amount of the 75% of the Net Settlement, if any, is paid to the 501(c)(3), and written confirmation shall be provided to Plaintiff's counsel by Defendant or the Settlement Administrator.



43. Settlement Funding Date: Within ten (10) days of the Settlement Effective Date, Defendant shall fund the Settlement by tendering the Gross Settlement Amount, less any reversion to the Settlement Administrator, plus a sum calculated by the Settlement Administrator sufficient to satisfy the employer's portion of the payroll taxes for the portion of the Net Settlement characterized as wages.

44. Settlement Payment Date: Within fourteen (14) days after the Settlement Effective Date, the Settlement Administrator shall mail the Individual Settlement Payments to eligible Participating Class Members; make payment of Court approved attorneys' fees and costs to appropriate counsel; and make payment of the Class Representative Payment, as approved by the Court.

45. Unclaimed Funds and Potential Partial Reversion to Defendant: If any funds are unclaimed above the 75% floor, then those funds shall remain with Defendant. If any Class Members opt-out of the Settlement, their portion of the Settlement shall remain with the Settlement Proceeds for distribution in accordance with Paragraph 42(b). If any Class Members do not cash their checks within the 90-day Check Cashing Period following the mailing of Individual Settlement Payments, any amounts associated with those Class Members' uncashed checks will be sent to the Washington State unclaimed property fund in the name of the Class Member who filed a timely claim but did not cash his or her check.

#### **IV. NOTICE TO THE CLASS MEMBERS**

46. Within twenty-one (21) days after the Court's entry of its order granting preliminary approval, Defendant will provide the Settlement Administrator with the names, last-known addresses, phone numbers, Social Security numbers, and the number of Piece Rate Hours, as that term is defined in the Claim Form, of the Class Members as appearing in Defendant's business records.

47. The Settlement Administrator shall send the Class Notice to the Class Members in the form attached as **Exhibit A**, as well as the Claim Form attached as **Exhibit B**, by first class mail within thirty (30) days after receiving the Class Member information from Defendant.

48. The Settlement Administrator will use reasonable tracing to verify the accuracy of the addresses before the initial mailing to ensure that the Class Notice and Claim Form are sent to Class Members at the addresses most likely to result in prompt receipt. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Class Member received the Class Notice and Claim Form. With respect to envelopes returned as undeliverable, the Settlement Administrator will use reasonable diligence to obtain a current address and re-mail the envelope to such address. With respect to any returned envelopes with forwarding addresses, the Settlement Administrator will forward the envelopes to the given addresses promptly.

#### **V. CLASS NOTICE AND CLAIM FORM DISSEMINATION PROCESS**

49. The Class Notice and Claim Form distributed to Class Members, attached substantially hereto as **Exhibits A** and **B**, respectively, or as otherwise approved by the Court, shall be sent by the Settlement Administrator in English and in Spanish to each Class Member by first-class mail within thirty (30) calendar days after the Settlement Administrator receives the information from Defendant as set forth above in Paragraph 46.

50. The Claim Notice and Claim Form will explain that the Class Members who wish to receive any portion of the Settlement must submit a timely and valid Claim Form. Only those who submit a timely and valid Claim Form can receive a portion of the Settlement Proceeds. Each Participating Class Member will be bound for purposes of the Settlement in this Action by the releases set forth in this Settlement.

51. Class Members shall have seventy-five (75) calendar days from the mailing of the Class Notice and Claim Form to opt-out of the Settlement (Opt-Out Deadline) or to object to the

Settlement by submitting a written objection to the Settlement Administrator. A Class Member who has opted-out shall have no standing to object to the Settlement, and will not be entitled to be heard at the Final Approval Hearing. The Settlement Administrator shall forward any objections received to counsel for all Parties within five (5) days of receipt, and Class Counsel shall file the objections and any responses thereto with the Court prior to the Final Fairness Hearing.

52. Opt-Out Provisions – The Class Notice shall provide that Class Members who wish to opt-out of the Settlement must send a written notice to the Settlement Administrator requesting to opt-out of the Class on or before the applicable Opt-Out Deadline. Such written notice to opt-out (1) must contain the name, address, social security number of the person seeking to opt-out, and home telephone number, if any; (2) must be returned to the Settlement Administrator at the specific address referenced in the Notice; (3) and must be postmarked (if mailed) or received (if otherwise delivered) by the Settlement Administrator on or before the applicable Opt-Out Deadline. Any Class Member who properly requests to opt-out will not be entitled to receive a Claim Share and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Prior to the Claims Deadline, any Class Member who has elected to opt-out may withdraw that election by notifying the Settlement Administrator in writing that he or she wishes to be a Settlement Class Member.

53. Class Members who choose not to opt-out shall have seventy-five (75) calendar days from the mailing of the Class Notice and Claim Form to submit their completed and signed Claim Form to the Settlement Administrator (Claims Deadline). The Claim Form must be postmarked by the Claims Deadline if delivered to the Settlement Administrator by postage pre-paid U.S. first-class mail. If delivered by means other than mail, it must be received by the Settlement Administrator on or before the Claims Deadline. The Claim Form must be signed and/or timely returned by the Class Member. Class Counsel and Defendant's Counsel may mutually agree, but need not, in their respective sole discretion, to accept late-filed Claim Forms that are received prior to the Effective Date. Any Claim Form (1) not postmarked by the Claims

Deadline, (2) not received by the Settlement Administrator by the fifth (5th) calendar day after the Claims Deadline; (3) not received by other means by the Settlement Administrator by the Claims Deadline; or (4) not signed by the Class Member is not considered a valid Claim Form. Any Claim Form that is not considered timely and valid will not be funded by Defendant, unless the Parties otherwise agree to treat it as valid.

54. Claim Form Disputes – If a Class Member disagrees with any of the information listed on his or her Claim Form concerning the Piece Rate Hours included on the Claim Form, the Class Member may dispute such information by returning a signed Claim Form with a statement containing the information the Class Member believes is correct. In addition, the Class Member may attach documents to the Claim Form to support his or her dispute. The Claim Form with the disputed information and any documents must be received by the Dispute Deadline. The Claim Form must include a telephone number to be used to contact the Class Member if necessary. Class Counsel and Defendant’s Counsel shall jointly and expeditiously consider the dispute and any relevant evidence. Any and all disputes which cannot be resolved by Class Counsel and Defendant’s Counsel shall be submitted to the Court at the time of the Final Approval Hearing for resolution by the Court.

55. Class Members who fail to submit a valid and timely request to opt-out or a timely and valid Claim Form shall be bound by all terms of the Settlement and any Final Judgment entered in the Action if the Settlement is finally approved by the Court.

56. The Settlement Administrator shall provide updates to Class Counsel and Defendant’s counsel at least every two weeks of (1) the number of undeliverable notices/forms; (2) the number and names of any opt-outs; (3) any disputes by Class Members; (4) Claim Forms that do not comply with the claims process; and (4) the number of Claim Forms received and the amount and percentage of the Net Settlement Amount claimed.

57. Within fifteen (15) days after the close of business of the Claims Deadline, the Settlement Administrator will provide to Class Counsel and Defendant’s counsel a declaration

including a statement of due diligence and proof of mailing of the Class Notice and Claim Form to the Class Members, a statement as to the number of Claim Forms received and the amount and percentage of the Net Settlement Amount claimed, and a statement as to the number of opt-outs received. Class Counsel shall provide this information to the Court within its Motion for Final Approval of this Settlement.

58. Calculation of Claim Shares/Individual Settlement Payment – The calculation of the initial Claim Share for all Class Members shall be based upon each Class Member’s actual rest break calculation according to Defendant’s business records (the “Claim Share”). The calculation of the Claim Shares by this method does not imply that the factors included in the calculation comprise all of the elements of damages alleged in the Action and further does not imply that those alleged damages are not being taken into account by this arithmetic method. The calculation was devised as a logistical tool to simplify the claim process and as part of the compromise entered into between the Parties relative to the Settlement. If the total amount of the initial Claim Shares for which Class Members submit Claim Forms in accordance with Section 42(b) above is under 75% of the Net Settlement Amount, then the remaining Net Settlement Amount up to 75% of the Net Settlement Amount shall be distributed to Claiming Class Members pro rata in proportion to their original Claim Share in an additional amount not to exceed their original Claim Share, so that no Claiming Class Member receives a total Individual Settlement Payment in excess of two times their originally calculated Claim Share. The remaining balance of the 75% of the Net Settlement Amount, if any, shall be distributed in accordance with Section 42(b) above. If the total amount of the initial Claim Shares for which Class Members submit Claim Forms in accordance with Section 42(b) above exceeds the Net Settlement Amount, then the total Net Settlement Amount shall be distributed to the Claiming Class Members pro rata in proportion to their initial Claim Share.

59. For purposes of computing the Claim Share initially for purposes of sending the Claim Form, the Settlement Administrator shall use the actual amount of rest break pay owed,

pursuant to Defendant's records. For purposes of computing the Claim Share after the Final Approval Hearing, the Settlement Administrator shall use the actual Employer Taxes for all Settlement Class Members in computing the Net Settlement Amount, or Settlement Proceeds. In calculating the initial Claim Share, the Settlement Administrator shall use the actual amount of rest break pay owed pursuant to Defendant's records. The Class Notice shall advise Class Members that their Claim Share or Individual Settlement Payment is an estimate and, depending on the amount of the net settlement claimed, that the actual amount payable to each Class Member may be higher or lower than initially calculated on the Claim Form depending on various factors, such as the number of opt-outs, the amount claimed, the number of Class Members, and the Court's rulings on other matters.

60. The Settlement Administrator shall provide initial calculations of the Claim Shares for each Class Member to Class Counsel and Defendant's Counsel prior to preparation of the Claim Form and mailing thereof to the Class. Class Counsel and Defendant's Counsel shall review the computations to ensure that they are consistent with the terms of the Settlement. In the event that any dispute exists between the Parties as to whether or not the Claim Shares have been calculated consistent with the Settlement, Class Counsel and Defendant's Counsel shall seek to resolve any and all disputes in an informal fashion between themselves or, if they are unable, they shall submit the unresolved disputes to the Court. The Claims Shares payable to Settlement Class Members shall be provided to Class Counsel and Defendant's Counsel within fifteen (15) calendar days after the Claims Deadline. This report shall also certify what Claim Forms were timely and completely filed.

61. The Parties agree that, for tax purposes, the Individual Settlement Payments shall be treated as follows: 33.33% shall be treated as payment for wages and shall be reported on an IRS Form W-2, 66.67% shall be treated as payment for interest, costs, and/or non-wages, and shall be reported on an IRS Form 1099.

62. The Settlement Administrator shall be responsible for issuing and mailing the checks for the court-approved Claim Share payments to the Settlement Class Members. The

Settlement Administrator shall also make all required payroll tax deductions and payments, and shall issue all W-2 and 1099 statements associated with all payments issued hereunder.

63. If there are sufficient funds deposited by Defendant with the Settlement Administrator or in the settlement fund to pay all obligations under this Settlement, the Settlement Administrator will prepare and mail all necessary checks to the appropriate persons and entities within seventy-five (75) calendar days of the Settlement Effective Date.

64. The Settlement Administrator shall be responsible for distributing the payments pursuant to this Settlement. The Settlement Administrator will submit to Class Counsel for filing with the Court proof of all payments made from the Settlement fund with the Court, and will serve all counsel with a copy of the same, within sixty (60) days of the Settlement Effective Date.

65. Participating Class Members shall have a period of 90 days after the mailing by the Settlement Administrator to cash or deposit their Individual Settlement Payment checks. If a Participating Class Member fails to cash or deposit his or her check within this Check Cashing Period, the Settlement Administrator will cancel the check, and distribute the funds as set forth in Section III.

## **VI. RELEASE OF CLAIMS**

66. Released Claims by Class Representative: In consideration of the awarded Class Representative Payment and the other terms and conditions of the Settlement, and understanding that there is a *bona fide* dispute regarding wages they may be owed, among other things, Plaintiff irrevocably releases and discharges Defendant and its former and current parents, subsidiaries, and affiliated corporations, its officers, directors, employees, partners, shareholders, agents, insurers, employee benefit plans, and any other successors, assigns, or legal representatives (“Released Parties”), from all known and unknown claims, promises, causes of action, or similar rights of any type that she presently may have with respect to any Released Party (“Released Claims.”) The Released Claims might arise under many different foreign, domestic, national, state, or local laws

(including statutes, regulations, other administrative guidance, and common law doctrines), such as federal and state anti-discrimination statutes, and other laws such as those providing recourse for alleged wrongful discharge, tort, personal injury, emotional distress, fraud, negligence, defamation, and similar or related claims, as well as those related to compensation, pay deductions, tax treatment of earnings, wage disputes of any nature (including those pursuant to the Fair Labor Standards Act), penalties, liquidated damages, punitive damages, attorneys' fees, benefits, and family and medical leave rights. Plaintiff's release includes all claims that were made, or could have been made, against the Released Parties in the Action. This Release does not release any claims that the law does not permit Plaintiff to release. Plaintiff agrees to promptly pay and to indemnify and hold the Released Parties herein harmless from and against any and all loss, cost, damage or expense, including without limitation, attorneys' fees, interest, assessments, and penalties, arising out of any dispute over the tax treatment of any of the proceeds received by Plaintiff as a result of this Release.

67. Released Claims by Washington Resident Subclass Members: In consideration of their Individual Settlement Payments and the other terms and conditions of the Settlement, and recognizing that there is a *bona fide* dispute regarding wages owed, among other things, each Participating Washington Resident Subclass Member (including the named Class Representative) will irrevocably release and discharge Defendant and its former and current parents, subsidiaries, and affiliated corporations, its officers, directors, employees, partners, shareholders, agents, insurers, employee benefit plans, and any other successors, assigns, or legal representatives ("Released Parties"), from any and all claims raised in the Action from February 28, 2014 through July 11, 2015, including claims for unpaid rest periods, liquidated damages, civil penalties, and interest, whether founded on state, federal or local law, including but not limited to claims under Washington Administrative Code ("WAC") Sections 296-131-020(2); the Industrial Welfare Act (RCW 49.12, *et. seq.* and/or 49.52.070). This Release does not release any claims that the law does not permit each Participating Class Member to release. Each Participating Class Member is



responsible for appropriately reporting the proceeds received as a result of this Release on his/her taxes, and agrees to hold the Released Parties harmless with respect to any dispute arising from or related to such reporting.

68. Released Claims by Non-resident Subclass Members: In consideration of their Individual Settlement Payments and the other terms and conditions of the Settlement, and recognizing that there is a *bona fide* dispute regarding wages owed, among other things, each Non-resident Subclass Member (including the named Class Representative) will irrevocably release and discharge Defendant and its former and current parents, subsidiaries, and affiliated corporations, its officers, directors, employees, partners, shareholders, agents, insurers, employee benefit plans, and any other successors, assigns, or legal representatives (“Released Parties”), from any and all claims raised in the Action from September 25, 2014 through July 11, 2015, including claims for unpaid rest periods, liquidated damages, civil penalties, and interest, whether founded on state, federal or local law, including but not limited to claims under Washington Administrative Code (“WAC”) Sections 296-131-020(2); the Industrial Welfare Act (RCW 49.12, *et. seq.* and/or 49.52.070).

69. The Releases do not release any claims that the law does not permit each Participating Class Member to release. Each Participating Class Member is responsible for appropriately reporting the proceeds received as a result of this Release on his/her taxes, and agrees to hold the Released Parties harmless with respect to any dispute arising from or related to such reporting.

70. Additional Attorneys’ Fees and Costs Released by Class Counsel: In consideration for their Court-approved attorneys’ fees and expenses, Class Counsel waives any and all claims to any further attorneys’ fees or costs in connection with the Action.

## **VII. NO RETALIATION**

71. Defendant agrees that that it will not engage in discrimination or retaliation of any kind against the Class Representative or any family members associated with him or her

who are employed by Defendant as a result of filing this action, or for giving testimony, assistance or participating in any manner in an investigation, proceeding or a hearing pursuant to this action, or any Class Member for choosing to participate or not to participate in this Settlement.

#### **VIII. CONFIDENTIALITY**

72. Plaintiff and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the Action, or the fact, amount or terms of the Settlement.

73. Plaintiff and Class Counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement that identifies Defendant, including but not limited to any postings on any websites maintained by Class Counsel. Class Counsel shall be permitted to make reference to the Settlement, without identifying Defendant by name. In connection with submitting declarations concerning adequacy in other cases, Class Counsel may identify the case number, provide a description of the case and resolution, and confirm the fact that they were approved as Class Counsel.

74. Any communication about the Settlement to Class Members by Class Counsel or Plaintiff prior to the Court-approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved Notice.

75. Defendant shall have the right to rescind this Settlement, rendering it null and void, if Plaintiff or Class Counsel violate the obligations in this Section VIII.

#### **IX. NO EFFECT ON OTHER BENEFITS**

76. The Parties agree that the calculations made regarding the Settlement amounts and the pro-ration of the same among the Class Members, are for purposes of this Settlement only, and do not give rise to any other rights under any benefit plans or otherwise.

77. Payments under this Settlement shall not be considered compensation under any of Defendant's employee benefit plans.

**X. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

78. Cooperation: The Parties and their counsel agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and to dismiss the Action with prejudice. The Parties further agree that neither they nor their counsel will solicit or otherwise encourage Class Members to object to or request exclusion from the Settlement.

79. Prior to the Preliminary Approval Hearing, Plaintiff shall file, and Defendant shall not oppose, an Amended Complaint revising the definition of the Class and Subclasses to conform with the same in this Agreement. Defendant shall be provided the opportunity to review and comment on the Amended Complaint to ensure its conformity with the definition of the Class and Subclasses.

80. Fair, Reasonable and Adequate Settlement: The Parties agree that the Settlement is fair, reasonable and adequate and will so represent to the Court.

81. Unopposed Motion for Preliminary Approval of Settlement: Class Counsel will move the Court for an Order Granting Preliminary Approval of the Settlement and Notice substantially in the following form, which Defendant shall not oppose:

- (a) Setting a date for a fairness hearing on the question whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to the Class;
- (b) Approving as to form, content and distribution of the proposed Notice;
- (c) Directing the mailing of the Notice to the Class Members;
- (d) Preliminarily approving the Settlement;

(e) Preliminarily certifying a class consisting of Plaintiff and Class Members for purposes of Settlement only;

(f) Approving Craig Ackermann, India Bodien, and Tatiana Hernandez, and their respective law firms, as Class Counsel; and

(g) Approving the Parties' mutually agreed-upon Settlement Administrator as the third-party administrator for the Class.

## **XI. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

82. Following final approval of the Settlement by the Court, Class Counsel will submit a proposed Final Judgment substantially in the following form:

(a) Certifying a Settlement Class consisting of Plaintiff and Participating Class Members for purposes of Settlement only;

(b) Approving the Settlement, adjudging the terms to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(c) Approving the Class Representative Payment to the Named Plaintiff;

(d) Approving the payment of attorneys' fees and expenses to Class Counsel;

(e) Entering Final Judgment and permanently barring all Participating Class Members and Plaintiff from prosecuting any and all Released Claims against the Released Parties as set forth above.

## **XII. PARTIES' AUTHORITY**

83. The respective signatories to the Settlement represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

### **XIII. MUTUAL FULL COOPERATION**

84. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the cooperation of Defendant and its counsel, take all steps necessary to secure the Court's Final Judgment.

### **XIV. NO PRIOR ASSIGNMENTS**

85. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Settlement.

### **XV. NO ADMISSION**

86. Nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies any such liability. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

87. This Settlement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

### **XVI. ENFORCEMENT ACTIONS**

88. In the event that one or more of the Parties institutes any legal action against any other party or Parties to enforce the provisions of this Settlement or to declare rights and/or

obligations under this Settlement, the successful party or Parties shall be entitled to recover from the unsuccessful party or Parties reasonable attorneys' fees and costs, including expert witness fees and costs incurred in connection with any enforcement actions.

## **XVII. NOTICES**

89. Unless otherwise specifically provided, all notices, demands or other communications shall be in writing and shall be deemed to have been duly given as of the fifth (5th) business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To the Class:

Craig Ackermann, Esq.  
Ackermann & Tilajef, P.C.  
1180 South Beverly Drive, Suite 610  
Los Angeles, California 90035

India Lin Bodien, Esq.  
India Lin Bodien, Attorney at Law  
2522 North Proctor Street, #387  
Tacoma, Washington 98406

Tatiana Hernandez, Esq.  
Law Offices of Tatiana Hernandez, P.C.  
1180 South Beverly Drive, Suite 610  
Los Angeles, California 90035

To Defendant:

Clay M. Gatens, Esq.  
Devon A. Gray, Esq.  
Jeffers, Danielson, Sonn & Aylward, PS  
2600 Chester Kimm Road  
Wenatchee, WA 98801  
Or PO BOX 1688  
Wenatchee, WA 98807-1688

## **XVIII. VOIDING THE AGREEMENT**

90. If this Settlement is not approved, or if the Court's Final Judgment is materially modified on appeal, then this Settlement will become null and void, no payment under this Settlement will be made, and the Settlement shall not be used nor be admissible in any subsequent proceeding either in this Court or in any other Court or forum, nor shall there be any certification of the Class, as it is being requested here solely for the purposes of this Settlement. If there is any reduction in the attorneys' fee award and/or costs requested, such reduction may be appealed as set forth below but is not a basis for rendering the Settlement voidable and unenforceable.

## **XIX. CONSTRUCTION**

91. The Parties agree that the terms and conditions of this Settlement are the result of intensive arm's-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement.

## **XX. CAPTIONS AND INTERPRETATIONS**

92. Paragraph titles or captions contained in this Settlement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Settlement is contractual and not merely a recital.

## **XXI. MODIFICATION**

93. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties, and approved by the Court.

## **XXII. INTEGRATION CLAUSE**

94. This Settlement contains the entire agreement between the Parties, and, once it is fully executed, all prior or contemporaneous agreements, understandings, representations, and

statements, whether oral or written and whether by a Party or such Party's legal counsel, relating to the resolution of the Action, are merged in this Settlement. No rights under this Settlement may be waived except in writing.

**XXIII. BINDING ON ASSIGNS**

95. This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

**XXIV. CLASS COUNSEL SIGNATORIES**

96. It is agreed that it is impossible or impractical to have each Class Member execute this Settlement. The Notice will advise all Class Members of the binding nature of the release. Excepting only the Class Members who timely submit a Request for Exclusion, the Notice shall have the same force and effect as if this Settlement were executed by Plaintiff and each Class Member with regard to the Release of Claims recited in Section VI. By signing below, the Class Representative shall be deemed to have submitted a timely and valid Claim Form without the need for a further Claim Form to be submitted, and the Class Representative shall waive her right to opt-out of, or object to, the Settlement.

**XXV. COUNTERPARTS**

97. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

**XXVI. RIGHT OF APPEAL**

98. The Parties agree to waive all appeals from the Court's Final Judgment of this Settlement, unless the Court materially modifies the Settlement; provided, however, that Plaintiff



may appeal any reduction in the requested amount of attorneys' fees and/or costs, or Class Representative Payment.

**XXVII. CLASS CERTIFICATION**

99. The Parties agree that the stipulation of class certification is for the purposes of this Settlement only and if for any reason the Settlement is not approved, the Settlement will be of no force or effect, the class will not be certified and no payment will be made. The Parties agree that certification for settlement purposes is in no way an admission that class certification is proper and that evidence of this stipulation for settlement purposes only will not be deemed admissible in this or any other proceeding.

**XXVIII. RIGHT OF REVOCATION**

100. In the event that 4% or more of the Class Members request exclusion from the Settlement, Defendant has the right to void the Settlement in its entirety. The Settlement Administrator will notify Defendant of the total number of opt-outs within (14) days after the deadline for the submission of Requests for Exclusion. Defendant shall have ten (10) days thereafter to notify the Settlement Administrator and Class Counsel of its election to void the Settlement, after which the election shall be waived.

[SIGNATURE PAGE FOLLOWS]

*The Parties:*

DATED: 11/05/2017

ARGELIO VARGAS LOPEZ  
ARGELIO VARGAS LOPEZ  
Plaintiff

DATED: \_\_\_\_\_

\_\_\_\_\_  
TAYLOR ORCHARDS, LLC  
Defendant

*Approved as to Form by Counsel:*

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

DATED: \_\_\_\_\_

\_\_\_\_\_  
CLAY M. GATENS  
DEVON A. GRAY  
Attorneys for Taylor Orchards, LLC

ACKERMANN & TILAJEF, P.C.

DATED: 11/10/17

  
\_\_\_\_\_  
SAM VAHEDI, ESQ.  
CRAIG ACKERMANN, ESQ.  
Co-Counsel for Plaintiff Argelio Vargas Lopez

INDIA LIN BODIEN, ATTORNEY AT LAW

DATED: 11/10/17

  
\_\_\_\_\_  
INDIA LIN BODIEN, ESQ.  
Co-Counsel for Plaintiff Argelio Vargas-Lopez

LAW OFFICES OF TATIANA HERNANDEZ

DATED: 11/10/17

  
\_\_\_\_\_  
TATIANA HERNANDEZ, ESQ.  
Co-Counsel for Plaintiff Argelio Vargas Lopez

DATED: 11/9/17

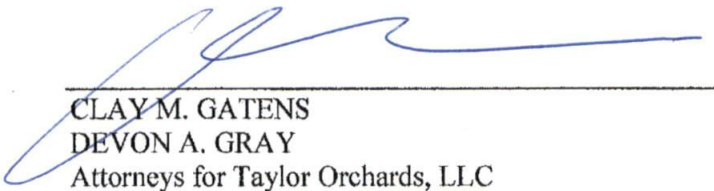
  
\_\_\_\_\_

TAYLOR ORCHARDS, LLC  
Defendant

*Approved as to Form by Counsel:*

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

DATED: 11/9/17

  
\_\_\_\_\_

CLAY M. GATENS  
DEVON A. GRAY  
Attorneys for Taylor Orchards, LLC

ACKERMANN & TILAJEF, P.C.

DATED: \_\_\_\_\_

\_\_\_\_\_

SAM VAHEDI, ESQ.  
CRAIG ACKERMANN, ESQ.  
Co-Counsel for Plaintiff Argelio Vargas Lopez

INDIA LIN BODIEN, ATTORNEY AT LAW

DATED: \_\_\_\_\_

\_\_\_\_\_

INDIA LIN BODIEN, ESQ.  
Co-Counsel for Plaintiff Argelio Vargas-Lopez

LAW OFFICES OF TATIANA HERNANDEZ

DATED: \_\_\_\_\_

\_\_\_\_\_

TATIANA HERNANDEZ, ESQ.  
Co-Counsel for Plaintiff Argelio Vargas Lopez