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6 FARMGIRL FLOWERS INC.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

10
11 CARLOS AGUILAR, MARIA ALCAZAR,) Case No. RG21107981
LIZVETTE SALGADO and ELPIDIA)
12 ALCAZAR individually, and on behalf of all) Assigned for All Purposes To:
others similarly situated,) Judge: Evelio Grillo
13) Dept: 21
Plaintiffs,)
14 vs.) **SECOND AMENDED STIPULATION AND**
FARMGIRL FLOWERS INC., a California) **SETTLEMENT OF CLASS ACTION**
15 Corporation; CHRISTINA STEMBEL; DOES) **CLAIMS**
16 1 through 50, inclusive,)
Defendants.) Action Filed: August 5, 2021
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1 This Second Amended Stipulation and Settlement of Class Action Claims (“Agreement”) is
2 made by and between Plaintiffs Carlos Aguilar, Maria Alcazar, Lizvette Salgado and Elpidia Alcazar
3 (collectively, “Plaintiffs”), in their individual capacities and on behalf of the Class Members and
4 Aggrieved Employees, on the one hand, and Defendant Farmgirl Flowers Inc. (“Defendant”), on the
5 other hand, after Plaintiffs and Defendant engaged in formal discovery, engaged in informal
6 discovery, participated in a full day of mediation, and negotiated this Agreement at arms-length.
7 Plaintiffs and Defendant are referred to in this Agreement collectively as the “Parties,” or
8 individually as a “Party.” Capitalized terms used herein shall have the meanings set forth in Article
9 I or as defined elsewhere in this Agreement.

10 For the consideration set forth herein, including, but not limited to, a release of claims by the
11 Participating Class Members and a general release of claims by Plaintiffs, Defendant agrees to pay a
12 settlement amount of Nine Hundred Eighty-Five Thousand Dollars and Zero Cents (\$ 985,000.00)
13 (the “Settlement Amount”).

14 Now, therefore, it is stipulated and agreed by and among the undersigned Parties, subject to
15 the approval of the Court pursuant to the California Rules of Court, that the Settlement of the Action
16 shall be effectuated subject to the following terms and conditions.

17 **ARTICLE I**

18 **DEFINITIONS**

19 Unless otherwise defined herein, the following terms used in this Agreement shall have the
20 meanings ascribed to them as set forth below:

21 a. “Action” means the putative class action lawsuit filed by Plaintiffs against Defendant
22 on August 5, 2021, in Alameda County Superior Court, Case No. RG21107981, which was later
23 amended. On October 12, 2021, Plaintiffs filed a First Amended Complaint to add a cause of action
24 under California’s Private Attorneys General Act (“PAGA”). The Action alleges the following
25 claims: (1) failure to pay wages for all hours worked; (2) failure to pay overtime wages, (3) failure
26 to provide mandatory meal and rest breaks, (4) unreimbursed business expenses, (5) violation of the
27 California WARN Act, (6) failure to provide accurate wage statements, (7) failure to pay waiting
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1 time penalties, (8) violations of the Unfair Competition Law, Calif. Bus. & Prof. Code §§17200 *et*
2 *seq.* (“UCL”), and (9) civil penalties for alleged Labor Code violations under PAGA.

3 b. “Aggrieved Employees” means all current and former non-exempt hourly employees
4 of Defendant Farmgirl Flowers Inc. in California at any time during the PAGA Period.

5 c. “Agreement” means this Second Amended Stipulation and Settlement of Class Action
6 Claims, including any attached Exhibit(s).

7 d. “Attorneys’ Fees and Costs” means reasonable attorneys’ fees for Class Counsel’s
8 litigation and resolution of this Action (not to exceed one-third of the Gross Settlement Amount),
9 and Class Counsel’s expenses and costs reasonably incurred in connection with this Action.

10 e. “Check-Cashing Period” means the period of 180 days after the date each of the
11 Individual Settlement Payment checks are issued.

12 f. “Claims and Allegations at Issue” means all of the claims and allegations asserted in
13 (i) the First Amended Complaint filed by Plaintiffs against Defendant on October 12, 2021; (ii) the
14 Complaint filed by Plaintiffs against Defendant on August 5, 2021; (iii) the letter sent to the LWDA
15 on behalf of Plaintiffs against Defendant dated July 27, 2021; and (iv) any claims or allegations that
16 could have been asserted under any applicable Industrial Welfare Commission (“IWC”) Wage Order
17 based on the facts, claims or theories expressly pleaded in the Action.

18 g. “Class” means all current and former non-exempt hourly employees who are or were
19 employed by Defendant in California at any time during the Class Period, excluding those putative
20 class members who previously signed separation agreements with general releases.

21 h. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

22 Brian D. Chase
23 Ian M. Silvers
24 BISNAR | CHASE LLC
25 1301 Dove Street, Suite 120
26 Newport Beach, CA 92660
27 T: (949) 752-2999
28 E: bchase@bisnarchase.com
isilvers@bisnarchase.com; and

i. “Class List” means a list based on Defendant Farmgirl Flowers Inc.’s business records

1 that identifies each Class Member’s name, last known home or mailing address, Social Security
2 number or, as applicable, other taxpayer identification number, the number of Qualifying
3 Workweeks worked during the Class Period (calculated by Defendant and sent to the Settlement
4 Administrator), and the number of Qualifying Pay Periods worked during the PAGA Period
5 (calculated by Defendant and sent to the Settlement Administrator).

6 j. “Class Members” means all current and former non-exempt hourly employees of
7 Defendant Farmgirl Flowers Inc. in California during the Class Period, excluding those putative class
8 members who previously signed separation agreements with general releases.

9 k. “Class Notice” means the Court approved Notice of Class Action Settlement and
10 Hearing Date for Final Court Approval, to be mailed to Class Members in English and Spanish in
11 the form, without material variation (unless as modified as directed by the Court), attached as **Exhibit**
12 **A**.

13 l. “Class Period” means August 5, 2017, through the date of preliminary approval by
14 the court.

15 m. “Class Representative” means the named Plaintiffs in the operative complaint in this
16 Action seeking Court approval to serve as Class Representatives.

17 n. “Court” means the Alameda County Superior Court, where the Action is currently
18 pending.

19 o. “Defendant” means Farmgirl Flowers Inc.

20 p. “Defense Counsel” means counsel for Defendant, who are:

21 Alison L. Tsao
22 Marianne C. Koepf
23 CDF LABOR LAW LLP
24 600 Montgomery Street, Suite 440
25 San Francisco, California 94111
26 T: (415) 981-3233
27 E: atsao@cdflaborlaw.com
28 mkoepf@cdflaborlaw.com

q. “Effective Date” of this Settlement means the later of the following: (i) if there are
no objections to the Settlement, then the sixty-first (61st) day after service of notice of entry of the
Judgment entered by the Court; (ii) if there are objections to the Settlement, and if an appeal, review

1 or writ is not sought from the Judgment, the sixty-first (61st) day after service of notice of entry of
2 the Judgment; or (iii) if an appeal, review or writ is sought from the Judgment, the date upon which
3 all appellate and/or other proceedings resulting from the appeal, review or writ have been finally
4 terminated in such a manner as to permit the Judgment to take effect in substantially the form
5 described herein.

6 r. “Final Fairness and Approval Hearing” means the hearing to be conducted by the
7 Court to determine whether to finally approve and implement the Settlement pursuant to the terms
8 of this Agreement.

9 s. “Final Order” means the final order signed by the Court following the Final Fairness
10 and Approval Hearing in accordance with the terms herein, approving this Agreement.

11 t. “Gross Settlement Amount” means the settlement amount of Nine Hundred Eighty-
12 Five Thousand Dollars and Zero Cents (\$985,000.00) which Defendant Farmgirl Flowers Inc., shall
13 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all
14 Individual Settlement Payments, Attorneys’ Fees and Costs, the Enhancement Payments, Settlement
15 Administration Costs, and the LWDA Payment. Employer’s Share of Payroll Taxes shall be paid
16 separately and in addition to the Gross Settlement Amount.

17 u. “Employer’s Share of Payroll Taxes” means Defendant Farmgirl Flowers Inc.’s
18 portion of payroll taxes, including, but not limited to FICA and FUTA, on the portion of the
19 Individual Settlement Payments that constitutes wages. The Employer’s Share of Payroll Taxes shall
20 be submitted by Defendant Farmgirl Flowers Inc., to the Settlement Administrator in addition to the
21 Gross Settlement Amount.

22 v. “Enhancement Payment” means a monetary award subject to Court approval of up to
23 Ten Thousand Dollars and Zero Cents (\$10,000.00) that will be paid to each Plaintiff pursuant to
24 Section 3.06(e) of this Agreement.

25 w. “Individual Class Settlement Payment” means each Participating Class Member’s pro
26 rata share of the Net Settlement Amount calculated according to the number of Workweeks the Class
27 Member worked during the Class Period.

28 x. “Individual PAGA Settlement Payment” means each Aggrieved Employee’s pro rata

1 share of 25% of the PAGA Penalties, calculated according to the number of Pay Periods the
2 Aggrieved Employee worked during the PAGA Period.

3 y. “LWDA” means the California Labor and Workforce Development Agency.

4 z. “LWDA Payment” means the portion of the PAGA Payment payable to the LWDA.

5 aa. “Motion for Final Approval” means Plaintiffs’ submission of a written motion,
6 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
7 the Settlement Agreement as set forth in this Agreement, to conduct a Final Fairness and Approval
8 Hearing, and to enter a Final Order in this Action.

9 bb. “Motion for Preliminary Approval” means Plaintiffs’ written motion, including any
10 evidence as may be required for the Court to grant preliminary approval of the Settlement
11 Agreement, including as required by Rule 3.769 of the California Rules of Court.

12 cc. “Net Settlement Amount” means the Gross Settlement Amount less the amount
13 allocated to Settlement Administration Costs, Attorneys’ Fees and Costs, Enhancement Payments,
14 and the PAGA Payment.

15 dd. “Objection” means the Class Member’s timely submission of a written objection
16 notice to the Class Settlement, which must explain the reason for the objection and be signed by the
17 Class Member.

18 ee. “Operative Complaint” means the First Amended Complaint filed by Plaintiffs
19 against Defendant on October 12, 2021 in the Action.

20 ff. “PAGA” means the California Private Attorneys General Act of 2004, which is
21 codified in California Labor Code §§ 2698, *et seq.*

22 gg. “PAGA Payment” means the amount payable from the Gross Settlement Amount to
23 resolve the PAGA claim alleged in the Action, of which seventy-five percent (75%) shall be paid to
24 the LWDA and twenty-five percent (25%) shall be paid to Aggrieved Employees.

25 hh. “PAGA Period” means the period from August 10, 2020, through the date of
26 preliminary approval or 105 days after the signing of parties’ Memorandum of Understanding dated
27 April 4, 2023, whichever is sooner.

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1 ii. “Participating Class Member” means a Class Member who does not timely request to
2 be excluded from the Settlement and will therefore receive a share of the Net Settlement Amount.

3 jj. “Preliminary Approval Date” means the date the Court preliminarily approves the
4 Settlement in accordance with the terms of this Agreement.

5 kk. “Preliminary Approval Order” means the order the Court enters approving and
6 authorizing the mailing of the Notice Packet by the Settlement Administrator, setting the date of the
7 Final Fairness and Approval Hearing and granting preliminary approval of the Settlement set forth
8 in this Agreement, among other things.

9 ll. “Qualifying Pay Periods” means any pay period during which an Aggrieved
10 Employee worked at least one day for Defendant Farmgirl Flowers Inc. as a non-exempt hourly
11 employee in California during the PAGA Period.

12 mm. “Qualifying Workweeks” means any week during which a Class Member worked at
13 least one day for Defendant Farmgirl Flowers Inc. as a non-exempt hourly employee in California
14 during the Class Period.

15 nn. “Released Class Claims” means the claims being released as described in Section
16 4.01, below.

17 oo. “Released PAGA Claims” means the claims being released as described in Section
18 4.02, below.

19 pp. “Released Parties” are defined in Section 4.01, below.

20 qq. “Request for Exclusion “ means the Class Member’s timely submission of a written
21 request to be excluded from the Class Settlement signed by the Class Member, which need only
22 include their name, last four digits of his/her Social Security Number (to verify identity), identify the
23 case as Aguilar v. Farmgirl Flowers and generally state that they request exclusion from the class
24 and do not wish to participate in the settlement, or words to that effect.

25 rr. “Settlement” means the final resolution and disposition of the Action pursuant to this
26 Agreement.

27 ss. “Settlement Administration Costs” means all costs (not to exceed \$20,000.00)
28 incurred by the Settlement Administrator in administering the Settlement, including, but not limited

1 to, the following: (i) printing, mailing and re-mailing (if necessary) of Class Notices to Class
2 Members in English and Spanish; (ii) preparing and submitting to Participating Class Members and
3 government entities all appropriate tax filings and forms; (iii) computing the amount of and
4 distributing Individual Settlement Payments, the Enhancement Award, Attorneys' Fees and Costs,
5 and the LWDA Payment; (iv) processing and validating Requests for Exclusions and Notices of
6 Objection; (v) establishing a Qualified Settlement Fund ("QSF"), as defined by the Internal Revenue
7 Code; and (vi) calculating and remitting to the appropriate government agencies all employer and
8 employee payroll tax obligations arising from the Settlement and preparing and submitting filings
9 required by law in connection with the payments required by the Settlement.

10 tt. "Settlement Administrator" means CPT Group, Inc. which will be responsible for the
11 administration of the Settlement pursuant to the terms of this Agreement.

12 **ARTICLE II**

13 **CONTINGENT NATURE OF THE AGREEMENT**

14 **Section 2.01: Stipulation to Class Certification for Settlement Purposes**

15 The Parties agree that the Action will be stayed until the requests for preliminary and final
16 approval of the Settlement are either granted or denied, except to proceed with those motions.
17 Because the Parties have stipulated to the certification of the Class with respect to all causes of action
18 alleged in the Operative Complaint for settlement purposes only, this Agreement requires preliminary
19 and final approval by the Court. Defendant does not consent to certification of the Class for any
20 purpose other than to effectuate the Settlement of the Action. Accordingly, the Parties enter into this
21 Agreement on a conditional basis. This Agreement is contingent upon the approval and certification
22 by the Court.

23 **Section 2.02: Continued Best Efforts to Obtain Court Approval of Settlement**

24 The Parties and their respective counsel shall take all steps that may be requested by the Court
25 relating to the approval and implementation of the Settlement in accordance with the terms of this
26 Agreement and shall use their respective best efforts to obtain Court approval and to implement this
27 Agreement. If the Court does not grant the Motion for Preliminary Approval and/or the Motion for
28 Final Approval and instead addresses issues/concerns with the filed motion, the Parties agree to meet

1 and confer to address the Court's concerns. If the Parties are unable to reach a resolution, the Parties
2 agree to seek the assistance of mediator Lou Marlin to resolve the dispute.

3 **Section 2.03: Effect of Non-Occurrence of Effective Date**

4 If the Effective Date does not occur, the Parties agree as follows:

- 5 (a) Any conditional certification of the Class will be vacated and Plaintiffs,
6 Defendant, and the Class will be returned to their positions with respect to the
7 Action as if this Agreement had not been entered into. Any Settlement
8 Administration costs incurred to that point will be split by the Parties.
9 However, if Defendant exercises its option to terminate this Settlement (as
10 addressed in Section 3.04(c)), Defendant shall be responsible for the full
11 amount of Settlement Administration Costs incurred up to the date of
12 termination.
- 13 (b) Any orders of the Court preliminarily or finally approving certification of any
14 class contemplated by this Agreement shall be null, void, and vacated, and
15 shall not be used or cited thereafter by any person or entity.
- 16 (c) The fact that the Parties were willing to stipulate to certification for the
17 purposes of this Agreement shall have no bearing on, nor be admissible in
18 connection with, the issue of certification of the Class with respect to any
19 cause of action alleged in the Action.
- 20 (d) The fact of the settlement terms reflected in this Agreement and the fact that
21 Defendant did not oppose the certification of a Class under this Agreement or
22 that the Court preliminarily approved the certification of the Class shall not be
23 used or cited thereafter by any person or entity in any manner whatsoever,
24 including without limitation any contested proceeding relating to the
25 certification of any class.
- 26 (e) This Agreement shall be deemed null and void, shall be of no force or effect
27 whatsoever, and shall not be referred to or used for any purpose whatsoever
28 (except as addressed in this Section regarding costs and agreements).

1 **ARTICLE III**

2 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

3 The procedure for obtaining Court approval of and implementing this Agreement shall be as
4 follows:

5 **Section 3.01: Preliminary Approval and Conditional Class Certification**

6 Within 60 days of this Stipulation and Settlement of Class Action Claims being executed by
7 all Parties, Plaintiffs will submit the Motion for Preliminary Approval along with this Agreement to
8 the Court for preliminary approval pursuant to Rule 3.769 of the California Rules of Court. Plaintiffs'
9 Motion for Preliminary Approval will request an order conditionally certifying the Class. The Motion
10 for Preliminary Approval will request a hearing date for the Final Fairness and Approval Hearing to
11 be included in the Preliminary Approval Order. Defendants will not oppose the Motion for
12 Preliminary Approval. At least three (3) business days prior to submission of Plaintiffs' Motion for
13 Preliminary Approval, Plaintiffs' counsel will prepare and deliver to Defense Counsel a draft of the
14 Motion for Preliminary Approval papers for counsel's review, including a draft of the notice,
15 memorandum in support, and any supporting declarations. Any proposed changes or revisions shall
16 be incorporated by Class Counsel to the extent Class Counsel deems them reasonable. However, if
17 Class Counsel chooses not to incorporate Defendant's requested changes or revisions, Defendant
18 reserves the right to file an objection and/or opposition to Plaintiff's Motion for Preliminary Approval
19 of the parties' Settlement.

20 **Section 3.02: The Settlement Administrator**

21 The Parties have chosen CPT Group, Inc. to administer the Settlement pursuant to this
22 Agreement and to act as the Settlement Administrator. The Settlement Administrator shall perform
23 all functions required under this Agreement and take necessary steps to effectuate the Settlement,
24 including, but not limited to, the following: distributing and responding to inquiries about the Class
25 Notice; determining the validity of any Requests for Exclusion and/or notice of Objection;
26 calculating the Net Settlement Amount and the Individual Settlement Payments; issuing the
27 Individual Settlement Payment checks and distributing them to Participating Class Members and
28 Aggrieved Employees; issuing the PAGA Payment to the LWDA; and issuing payment to Class

1 Counsel for Attorneys' Fees and Costs, to Plaintiffs for their Enhancement Awards, and to the
2 appropriate taxing authorities for the Employer's Share of Payroll Taxes, which will be paid by
3 Defendant Farmgirl Flowers Inc., separately and in addition to the Gross Settlement Amount. The
4 Settlement Administrator shall provide Class Counsel with estimated average of the recovery for the
5 Class Members, and the high and low ranges. To protect Class Members' privacy rights, the
6 Settlement Administrator shall maintain any and all Class Member identifying information provided
7 to it by Defendant Farmgirl Flowers Inc. ("Class Data") in confidence, use the Class Data only for
8 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to
9 Administrator employees who need access to the Class Data to effectuate the terms of this
10 Agreement. The Settlement Administrator has a continuing duty to immediately notify Defense
11 Counsel if it discovers the confidentiality of the Class Data has been breached.

12 **Section 3.03: Notice to Class Members**

13 No later than fifteen (15) days after the Preliminary Approval Date, Defendant Farmgirl
14 Flowers Inc. will provide the Settlement Administrator the Class List.

15 Within ten (10) calendar days of receiving the Class List from Defendant Farmgirl Flowers
16 Inc., the Settlement Administrator will send Class Members, by first-class mail, at their last known
17 addresses, the Court approved Class Notice. The Class Notice will include a calculation of each Class
18 Member's estimated share of the Net Settlement Amount. Class Members will have forty-five (45)
19 days from the date of mailing of the Class Notice to postmark objections or Requests for Exclusion.
20 Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses
21 against the National Change of Address database and shall update any addresses before mailing.
22 Class Members shall not be required to submit claim forms in order to receive their share of the Net
23 Settlement Amount.

24 If a Class Notice is returned with a forwarding address, the Settlement Administrator shall
25 re-mail the Class Notice to the forwarding address. With respect to each Class Member whose Notice
26 is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall
27 promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on a
28 database such as LexisNexis based on set criteria and, if another address is identified, shall mail the

1 Notice Packet to the newly identified address. It is the intent of the Parties that reasonable means be
2 used to locate Class Members and that the Settlement Administrator be given discretion to take steps
3 in order to facilitate notice of the Settlement and delivery of the Individual Settlement Payments to
4 the Participating Class Members.

5 If a Class Member's Notice is re-mailed, the Class Member shall have ten (10) days from the
6 re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, to postmark
7 objections or requests for exclusion. If the Class Notice is re-mailed, the Settlement Administrator
8 will note for its own records and notify Class Counsel and Defense Counsel as part of a weekly status
9 report provided to the Parties.

10 In the event a Class Notice remains undeliverable seventy (70) days after its initial mailing,
11 the Settlement Administrator will not mail the Class Member's Individual Settlement Payment. The
12 Settlement Administrator will hold the Class Member's Individual Settlement Payment during the
13 Check-Cashing Period on behalf of the Class Member. If, at the conclusion of the Check-Cashing
14 Period, the Class Member's Notice and Individual Settlement Payment remain undeliverable, the
15 Settlement Administrator will send the funds from those checks to Bay Area Legal Aid.

16 No later than thirty (30) court days prior to the Final Fairness and Approval Hearing, the
17 Settlement Administrator shall provide Class Counsel and Defense Counsel with a declaration
18 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
19 for and re-sending of any returned Notice Packets, as well as the number of requests for exclusion
20 and objections that the Settlement Administrator received.

21 If the Final Fairness and Approval Hearing is continued for any reason, the Settlement
22 Administrator will update its website for this matter to note the new date, time, and location of the
23 Final Fairness and Approval Hearing.

24 **Section 3.04: Responses to Notice**

25 **a. Settlement Terms Bind All Class Members Who Do Not Submit a Timely**
26 **Request for Exclusion**

27 Any Class Member who does not affirmatively opt out of the Settlement by submitting a
28 timely Request for Exclusion will be bound by all of its terms including those pertaining to the

1 Released Class Claims and Released PAGA Claims, as well as any Final Order that may be entered
2 by the Court if it grants final approval of the Settlement. However, any Aggrieved Employee who
3 opts out of the Settlement will still be releasing the PAGA Released Claims.

4 **b. Class Member Disputes**

5 If a Class Member/Aggrieved Employee disputes the Individual Settlement Payment
6 Amount or basis thereof, the Class Member/Aggrieved Employee may produce evidence to the
7 Settlement Administrator for the Class/PAGA Period. In order for the dispute to be considered,
8 s/he must follow the directions on the Notice of Class Action Settlement.

9 Written notice of the dispute must be received by the Settlement Administrator within 45
10 calendar days of the mailing of the Notice, or 10 calendar days of any re-mailing of the Notice,
11 whichever is later (as addressed above). The date of mailing of the Notice by the Settlement
12 Administrator to the Class Member, and the date the notice of dispute was postmarked, shall be
13 conclusively determined according to the records of the Settlement Administrator. Upon the timely
14 receipt of any dispute, the Settlement Administrator will notify Defense Counsel in writing (email
15 constitutes a writing for this purpose) of the dispute within three (3) business days of receipt and let
16 Class Counsel know generally that an individual has disputed the Individual Settlement Amount, or
17 basis thereof, without providing full details of the dispute. Defendant's records will be presumed
18 determinative, absent evidence to rebut Defendant's records, but the Settlement Administrator will
19 evaluate the evidence submitted by the Class Member and make the final decision as to the validity
20 of such evidence.

21 **c. Requests for Exclusion from Class Members**

22 By entering into this Agreement, Plaintiffs agree that they will not request exclusion from the
23 Class. Class Members who wish to exclude themselves (opt-out of) from the Class Settlement must
24 send the Administrator by mail, a Request for Exclusion that must be signed by the Class Member
25 or his or her authorized representative, include the last four digits of his/ Social Security Number (to
26 verify his/her identity) and identify the case as Aguilar v. Farmgirl Flowers postmarked by no later
27 than forty-five (45) days after the date the Settlement Administrator initially mails the Notice Packet
28 to the Class Members (or ten (10) days after the Settlement Administrator re-mails the Notice to the

1 Class Member, whichever is later). The Class Notice shall contain instructions on how to validly
2 exclude oneself from the Class and this Settlement, but the Request for Exclusion must just state that
3 they request exclusion from the class and do not wish to participate in the settlement, or words to
4 that effect. The date of the initial mailing of the Class Notice, and the date the signed Request for
5 Exclusion was postmarked, shall be conclusively determined according to the records of the
6 Settlement Administrator. Any Class Member who timely and validly submits a Request for
7 Exclusion will not be entitled to any Individual Settlement Payment from the Net Settlement Amount,
8 will not be bound by the terms and conditions of this Agreement, and will not have any right to
9 object, appeal, or comment thereon. However, even if Class Members validly opt out of the
10 Settlement, they will still be entitled to a portion of the employees' share of the PAGA Payment if
11 the Class Member also qualifies as an Aggrieved Employee. The Parties agree that the Court's
12 approval of the Settlement Payment, inclusive of the settlement and release pertaining to the PAGA
13 claim, shall be entitled to res judicata, issue preclusion, and claim preclusion effect to the fullest
14 extent of the law.

15 Any Class Member who fails to timely submit a Request for Exclusion shall automatically
16 be deemed a Class Member whose rights and claims with respect to the issues raised in the Action
17 are determined by the Court's Final Order, and by the other rulings in the Action. Thus, said Class
18 Member's rights to pursue any claims covered by the Action and/or released in this Agreement will
19 be extinguished.

20 Defendant has the unilateral right to void this Agreement in the event more than seven percent
21 (7%) of Class Members opt out of the Settlement. Defendant must notify Class Counsel and the
22 Court whether it is exercising this right to void no later than fourteen (14) days after the end of the
23 class notice period and the Settlement Administrator notifies the Parties of the total number of valid
24 Request for Exclusion Forms it has received. If Defendant exercises this option, it must pay for any
25 costs incurred by the Settlement Administrator.

26 **d. Objections to Settlement**

27 Class Members may object to the Settlement by submitting to the Settlement Administrator)
28 his or her notice of Objection or by appearing at the Final Fairness and Approval Hearing to explain

1 their objection(s). In order for a Class Member to object to this Agreement, or any term of it, the
2 Class Member must not submit a Request for Exclusion notice (*i.e.*, must not opt out). The Objection
3 notice must include the Class Member's full name, address and telephone number, and a written
4 statement of the grounds of objection, and be signed by the objecting Class Member or his or her
5 attorney, along with all supporting papers for the objection as applicable (such as documents showing
6 that the number of workweeks calculated is incorrect). Settlement Class Members who fail to make
7 objections in the manner specified above shall be deemed to have waived any objections and shall
8 be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

9 The notice of Objection and supporting papers must be sent to the Settlement Administrator
10 by mail/fax no later than forty-five (45) days after the Class Notice was initially mailed to the Class
11 Members (or ten (10) days after the Settlement Administrator re-mails the Notice to the Class
12 Member, whichever is later). The date of the initial mailing of the Class Notice, and the date the
13 signed notice of Objection was postmarked, shall be conclusively determined according to the
14 records of the Settlement Administrator. The Settlement Administrator shall send any notice of
15 Objection it receives to Defense Counsel and Class Counsel within three (3) business days of receipt.

16 The Court retains final authority with respect to the consideration and admissibility of any
17 Class Member objections.

18 **e. Encouragement of Class Members**

19 The Parties, Class Counsel, and Defense Counsel shall not, directly or indirectly, through any
20 person, encourage or solicit any Class Member to exclude himself or herself from this Settlement
21 (opt out) or to object to the Settlement. However, nothing in this Agreement shall bar or prohibit
22 any Party, Class Counsel, or Defense Counsel from responding to questions from Class Members
23 concerning this Settlement.

24 **Section 3.05: Final Fairness and Approval Hearing**

25 The Final Fairness and Approval Hearing shall be held before the Court in order to (1) review
26 this Agreement and determine whether the Court should grant final approval pursuant to the Motion
27 for Final Approval, and (2) consider any timely objections made pursuant to Section 3.04(d), above,
28 and any responses from the Parties to such objections. At the Final Fairness and Approval Hearing,

1 the Parties shall ask the Court to grant final approval of this Agreement and shall submit to the Court
2 a proposed Final Order and Judgment.

3 **Section 3.06: Settlement Payment Procedures**

4 **a. Funding the Settlement Amount**

5 In exchange for the releases set forth in this Agreement and subject to the terms and
6 conditions set forth herein, Farmgirl Flowers Inc., agrees to pay the Gross Settlement Amount
7 (“GSA”) of Nine Hundred Eighty-Five Thousand Dollars and Zero Cents (\$985,000.00) on a non-
8 reversionary basis. The Gross Settlement Amount includes Individual Settlement Payments to
9 Participating Class Members and Aggrieved Employees, Settlement Administration Costs,
10 Attorneys’ Fees and Costs, Enhancement Payments, and the LWDA Payment. The Employer’s Share
11 of Payroll Taxes will be paid by Defendant Farmgirl Flowers Inc., separate from and in addition to
12 the Gross Settlement Amount.

13 The GSA will be payable in two installments according to the following payment scheduled:

14 Payment 1: \$500,000.00, plus the Employer’s Share of Payroll Taxes for the taxable portion
15 of Individual Settlement Payments attributed to Payment 1, paid to the Settlement Administrator
16 within 15 days of the Effective Date of the Settlement.

17 Payment 2: \$485,000, plus the Employer’s Share of Payroll Taxes for the taxable portion of
18 Individual Settlement Payments attributed to Payment 2, paid to the Settlement Administrator within
19 120 days after the Effective Date of the Settlement.

20

21 In no event shall Defendant be required to pay more than the GSA, other than as provided in
22 this Section (employer’s share of payroll taxes) and Section 3.06(b) (if the escalator clause is
23 triggered).

24 There will be two distributions made from the settlement proceeds, one from each Payment
25 described in this Section above. The first payment distribution shall be made within ten (10) calendar
26 days after the Settlement Administrator receives Payment 1 from Defendant and shall include one-
27 half of the Attorneys’ Fees awarded to Plaintiffs’ counsel by the Court, all of the Costs awarded to
28 Plaintiffs’ counsel by the Court, all Enhancement Awards, and the Settlement Administrator costs.

1 The remainder after subtracting these payments will be distributed to the Settlement Class Members.
2 To extent practicable in light of the potential funds available for distribution to Settlement Class
3 Members, they will receive approximately 50% of their Individual Class Settlement Payment from
4 Payment 1. The second payment distribution will be made within ten (10) days after the Settlement
5 Administrator receives Payment 2 from Defendant and shall consist of the second half of the
6 Attorneys' Fees awarded to Plaintiff's counsel, unless a reduction is made according to the prior
7 paragraph, and the PAGA Payment. The remainder after subtracting these payments will be
8 distributed to the Settlement Class Members and the Aggrieved Employee Group. Settlement Class
9 Members will receive the approximately 50% remainder of their Individual Class Settlement
10 Payment from Payment 2, unless a reduction is made according to the prior paragraph. In that case,
11 the Settlement Class Members will receive the remainder that is owed to them. The Aggrieved
12 Employees will receive their Individual PAGA Settlement Payment from Payment 2.

13 **b. Escalator Clause**

14 This Settlement is premised on the settlement class size consisting of 742 settlement
15 class members between August 5, 2017 and January 31, 2023 (excluding putative class members
16 who previously signed separation agreements containing general releases). If the actual number of
17 settlement class members at issue exceeds 742 by more than 7% (excluding putative class members
18 who previously signed separation agreements containing general releases) as of the date of
19 preliminary approval of the settlement, the amount of the GSA will increase by 1% in proportion for
20 those settlement class members above 7%. In other words, if the number of settlement class members
21 exceeds 794 individuals (for example to 801), excluding putative class members who previously
22 signed separation agreements with general releases, then the amount of the GSA would be increased
23 by 1% per each percentage increase of settlement class members over 794 individuals.

24 **c. Payment of Attorneys' Fees and Costs**

25 Class Counsel shall apply for an award of attorneys' fees of up to one-third (33 and 1/3%) of
26 the Gross Settlement Amount, which is Three Hundred Twenty-Eight Thousand Three Hundred
27 Thirty-Three Dollars and Thirty-Three Cents (\$328,333.33). In addition, subject to Court approval,
28 Class Counsel shall be entitled to an award of reasonable costs associated with Class Counsel's

1 prosecution of the Action not to exceed Fifty Thousand Dollars (\$50,000.00). Such application for
2 attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing.
3 Defendants will not object to or oppose Plaintiffs' application for these amounts. Class Counsel shall
4 be paid any Court-awarded attorneys' fees and costs as provided in this Section. The Court's
5 approval of attorneys' fees and/or costs in an amount less than that requested by Class Counsel shall
6 not invalidate this Agreement.

7 The Attorneys' Fees and Costs approved by the Court shall encompass all work performed
8 and all costs and expenses related to the investigation, prosecution, and settlement of the Action
9 incurred through the Effective Date. To the extent that the Court approves less than the amounts of
10 attorneys' fees and/or costs that Class Counsel requests, the difference between the requested and
11 awarded amounts will be reallocated to the Net Settlement Amount.

12 **d. Payment of Settlement Administration Costs**

13 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
14 shall not constitute payment to any Participating Class Member. Class Counsel will submit an
15 application for Court approval for an allocation of Settlement Administration Costs no greater than
16 Twenty Thousand Dollars and Zero Cents (\$20,000.00). Defendant will not object to or oppose
17 Plaintiffs' application for this amount. To the extent there are unused funds of this cost allocation,
18 such funds will be reallocated to the Net Settlement Amount. The Settlement Administration costs
19 shall be paid in accordance with this Section.

20 **e. Payment of Enhancement Payments to Plaintiffs**

21 Subject to Court approval, each Plaintiff shall receive an Enhancement Payment of up to Ten
22 Thousand Dollars and Zero Cents (\$10,000.00) for their services as class representatives and in
23 exchange for a general release of Plaintiffs' claims. Defendant will not oppose this request. The
24 Enhancement Payment will be paid from the Gross Settlement Amount and is not allocated as
25 payment to any Participating Class Member. Plaintiffs shall be paid the Court-awarded Enhancement
26 Payment in accordance with this Section. To the extent that the Court approves less than the amount
27 of the Enhancement Payments that Plaintiffs have requested, the difference between the requested
28 and awarded amount will be reallocated to the Net Settlement Amount.

1 Because it is the intent of the Parties that the Enhancement Payment represents payment to
2 Plaintiffs for services performed on behalf of the Class Members and not to be considered wages, the
3 Settlement Administrator will not withhold any taxes from the Enhancement Payment. The
4 Enhancement Payment will be reported on an IRS Form 1099, which the Settlement Administrator
5 will provide to each Plaintiff and to the pertinent taxing authorities as required by law.

6 **f. LWDA Payment**

7 In consideration of claims alleged under PAGA, Class Counsel will request that the Court
8 approve allocation of Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement
9 Amount as PAGA penalties. Seventy-five percent (75%), or Thirty-Seven Thousand Five Hundred
10 Dollars (\$37,500.00), of this amount will be paid to the LWDA, and twenty-five percent (25%), or
11 Twelve Thousand Five Hundred Dollars (\$12,500.00) will be allocated to the Net Settlement Amount
12 for distribution to Aggrieved Employees. Defendant will not oppose this request for allocation and
13 distribution of payments under this Section 3.06(f). The Court's adjustment, if any, of the amount
14 allocated as PAGA penalties will not invalidate this Agreement, as long as the Gross Settlement
15 Amount does not exceed \$985,000.00 (excluding Defendant's share of the payroll taxes applicable
16 to the Net Settlement Amount allocated to wages) and subject to Section 3.06(b) above and final
17 approval of the Settlement is granted.

18 **g. PAGA Payments to Aggrieved Employees**

19 If a Class Member requests exclusion from the Settlement, the Class Member is still entitled
20 to his or her share of the employees' portion of the PAGA Payment if he/she is an Aggrieved
21 Employee, which will be determined on a pro rata basis based upon the number of pay periods that
22 the Aggrieved Employee worked during the PAGA Period. The Parties agree that the Court's
23 approval of the Settlement Payment, inclusive of the settlement and release pertaining to the PAGA
24 claim, shall be entitled to res judicata, issue preclusion, and claim preclusion effect to the fullest
25 extent of the law.

26 **h. Individual Settlement Payments to Participating Class Members**

27 The Parties agree that the Net Settlement Amount shall be used to fund Individual Class
28 Settlement Payments and Individual PAGA Settlement Payments (collectively, "Individual

1 Settlement Payments”). The Parties agree that the Net Settlement Amount shall be divided between
2 all Participating Class Members in proportion to the number of Qualifying Workweeks for each Class
3 Member. To calculate the amount each Participating Class Member will receive, the Net Settlement
4 Amount will be divided by the total number of Qualifying Workweeks worked by all Participating
5 Class Members during the Class Period to determine the base dollar amount per Qualifying
6 Workweek. The Settlement Administrator shall then multiply the number of Qualifying Workweeks
7 for each Participating Class Member by the base dollar amount. In addition, all Aggrieved Employees
8 shall receive a pro rata share of the portion of the PAGA Payment allocated to Aggrieved Employees
9 based on their Qualifying Pay Periods during the PAGA Period. The Settlement Administrator shall
10 disperse Individual Settlement Payments to Participating Class Members in compliance with Section
11 3.06 (a) above.

12 Each Individual Settlement Payment will represent wages, penalties, expenses and interest
13 allocated using the following formula: twenty (20%) allocated to wages (with legally required tax
14 withholding) and eighty percent (80%) allocated to penalties, expenses and interest.

15 Based on the information contained in the Class List, the Settlement Administrator shall
16 calculate: (a) the Net Settlement Amount, (b) the Individual Settlement Payment for each
17 Participating Class Member based on the formula specified above, (c) the amount of the Individual
18 Settlement Payments to be allocated to wages and interest and penalties based on the formula
19 specified above, (d) Defendant Farmgirl Flowers Inc.’s share of the payroll taxes applicable to the
20 Net Settlement Amount allocated to wages; and (e) the employee tax withholding amount based on
21 the allocation of each Individual Settlement Payment to wages.

22 Individual Settlement Payments allocated to wages will be reduced by applicable employee
23 withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the
24 Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 for the
25 interest, expenses and penalty portions of the Individual Settlement Payments.

26 Participating Class Members shall have 180 days from the date their Individual Settlement
27 Payment checks are dated to cash their settlement checks.

28 **i. Distribution of the Gross Settlement Amount**

1 The Settlement Administrator will distribute the Individual Settlement Payments to
2 Participating Class Members in accordance with Section 3.06(a) above. If Individual Settlement
3 Payments are returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
5 a mass search on a database such as LexisNexis based on set criteria and, if another address is
6 identified, shall mail the check to the newly identified address. If the Settlement Administrator is
7 unable to obtain a valid mailing address or if any funds representing Individual Settlement Payments
8 remain uncashed upon the expiration of the Check-Cashing Period, the Settlement Administrator will
9 deliver the monies represented by the check to Bay Area Legal Aid.

10 **i. No Credit Toward Benefit Plans**

11 The Individual Settlement Payments made to Participating Class Members under this
12 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
13 calculate any additional benefits under any benefit plans to which any Class Members may be
14 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
15 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
16 intent that this Agreement will not affect any rights, contributions, or amounts to which any Class
17 Members may be entitled under any benefit plans.

18 **ARTICLE IV**

19 **RELEASES**

20 **Section 4.01: Releases by Participating Class Members and Plaintiffs**

21 a. August 5, 2017 through the date of preliminary approval of the settlement is the
22 "Settlement Class Release Period." During the Settlement Class Release Period, Plaintiffs and
23 Participating Class Members will release the Released Parties (defined in this paragraph below) from
24 all claims under federal, state or local law, that were asserted or could have been asserted based on
25 the facts, claims, and theories expressly pleaded in the First Amended Complaint or any prior
26 Complaints; the facts, claims or theories expressly raised in Plaintiff's notice to the LWDA dated
27 July 27, 2021, regarding Defendant; and/or any facts, claims or theories arising under any applicable
28 IWC Wage Orders, including claims for: (1) failure to pay wages for all hours worked; (2) failure to

1 pay overtime wages, (3) failure to provide mandatory meal and rest breaks, (4) unreimbursed
2 business expenses, (5) violation of the California WARN Act, (6) failure to provide accurate wage
3 statements, (7) failure to pay waiting time penalties, and (8) violations of the Unfair Competition
4 Law, Calif. Bus. & Prof. Code §§17200 *et. seq.* (“UCL”) (“Released Class Claims”).

5 Plaintiff and Participating Class Members will waive and release the Released Class Claims
6 against Defendant Farmgirl Flowers Inc., together with its current and former owners, officers,
7 directors, managers, employees and agents (collectively, including Defendant, the “Released
8 Parties”).

9 **Section 4.02: PAGA Release by the LWDA and Plaintiffs**

10 a. August 10, 2020 through the date of preliminary approval of the settlement is the
11 “PAGA Release Period.” In addition to the release set forth in Section 4.01 above, for the PAGA
12 Release Period, Plaintiffs, on behalf of themselves and as agents and proxies on behalf of the LWDA,
13 shall release the Released Parties from any and all claims and/or causes of action under the PAGA
14 that were asserted or could have been asserted based upon the facts, claims and theories expressly
15 pleaded in the First Amended Complaint and/or any prior Complaints, and/or any facts, claims, or
16 theories set forth in the LWDA Notice against Defendant dated July 27, 2021, including but not
17 limited to, claims for civil penalties for alleged Labor Code violations under the PAGA, including
18 the alleged (1) failure to pay wages for all hours worked; (2) failure to pay overtime wages, (3) failure
19 to provide mandatory meal and rest breaks, (4) unreimbursed business expenses, (5) violation of the
20 California WARN Act, (6) failure to provide accurate wage statements, and (7) failure to pay waiting
21 time penalties (“Released PAGA Claims”). All Aggrieved Employees will receive a portion of the
22 settlement designated as the Aggrieved Employees’ portion of the PAGA Penalty, regardless of if
23 such Aggrieved Employees exclude themselves or opt-out of the Settlement Class. The Parties agree
24 that the Court’s approval of the Settlement, inclusive of the settlement and release by the LWDA and
25 Plaintiffs pertaining to the PAGA claim, shall be entitled to res judicata, issue preclusion, and claim
26 preclusion effect to the fullest extent of the law. *See Arias v. Superior Ct.* (2009) 46 Cal.4th 969, 986
27 (“Because an aggrieved employee's action under the Labor Code Private Attorneys General Act of
28 2004 functions as a substitute for an action brought by the government itself, a judgment in that

1 action binds all those, including nonparty aggrieved employees, who would be bound by a judgment
2 in an action brought by the government. ... Accordingly, with respect to the recovery of civil
3 penalties, nonparty employees as well as the government are bound by the judgment in an action
4 brought under the act.”)

5 **Section 4.03: General Release by Plaintiffs**

6 For and during the Settlement Class Release Period, Plaintiffs, each of them, for themselves,
7 their heirs, successors, and assigns, waive, release, acquit, and forever discharges the Released
8 Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of
9 any nature arising from Plaintiffs’ employment with Defendant Farmgirl Flowers Inc., whether
10 known or unknown, which exist or may exist as of the Parties’ execution of this Agreement.

11 Section 1542 of the California Civil Code provides as follows:

12 *“A general release does not extend to claims that the creditor or releasing party*
13 *does not know or suspect to exist in his or her favor at the time of executing the*
14 *release and that, if known by him or her, would have materially affected his or*
15 *her settlement with the debtor or released party.”*

16 Plaintiffs’ general release provided by each of them herein is made with an express waiver and
17 relinquishment of any claim, right, or benefit under California Civil Code § 1542. Plaintiffs, each of
18 them, warrant that they have read this Agreement, including this waiver of California Civil Code §
19 1542, and that Plaintiffs have consulted with or had the opportunity to consult with counsel about
20 this Agreement and specifically about the waiver of § 1542, and that Plaintiffs understand this
21 Agreement and the § 1542 waiver, and so they freely and knowingly enter into this Agreement.
22 Plaintiffs further acknowledge that Plaintiffs later may discover facts different from or in addition to
23 those Plaintiffs now know or believe to be true regarding the matters released or described in this
24 Agreement, and even so Plaintiffs agree that the releases and agreements contained in this Agreement
25 shall remain effective in all respects notwithstanding any later discovery of any different or additional
26 facts.

27 **Section 4.04: Plaintiffs’ Employment**

28 It is understood that by entering into this Agreement, the Parties agree that each of the

1 Plaintiffs' employment with Farmgirl Flowers Inc. has ended. It is Defendant's position that it had
2 legitimate, non-discriminatory and non-retaliatory reasons for ending the employment relationship.

3 **Section 4.05: No Additional Attorneys' Fees or Costs**

4 Except for the allocation of attorneys' fees and costs from the Gross Settlement Amount set
5 forth herein, the Parties agree to bear their own attorneys' fees and costs related to this Action.

6 **Section 4.06: Inapplicability of California Labor Code 206.5**

7 The Participating Class Members, including Plaintiffs, shall be deemed to have
8 acknowledged and agreed that there is a bona fide dispute as to their claim for wages and/or penalties
9 and/or any other recovery solely in connection with this Action, and that the payments to them set
10 forth in this Agreement constitute payment of all sums allegedly due to them solely from the claims
11 alleged in the Action. Participating Class Members, including Plaintiffs, shall be deemed to have
12 acknowledged and agreed that Labor Code section 206.5 does not apply to any such payments. That
13 section provides in pertinent part as follows: **"No employer shall require the execution of any
14 release of any claim or right on account of wage due, or to become due, or made as an advance
15 on wages to be earned, unless payment of such wages has been made."** Each Participating Class
16 Member shall be deemed to have made the foregoing Release as if by manually signing it. This
17 section in no way limits the releases set forth in Sections 4.01, 4.02 and 4.03, above.

18 **ARTICLE V**

19 **LIMITATIONS ON USE OF THIS SETTLEMENT**

20 **Section 5.01: No Admission**

21 Defendant disputes the allegations in the Action and contends that, but for this Settlement, a
22 Class should not have been certified in the Action. This Agreement is entered into solely for the
23 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
24 construed as an admission of liability or wrongdoing by Defendant. The Parties enter into this
25 Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and
26 risk of continued litigation. In entering into this Agreement, Defendant does not admit—and in fact
27 specifically denies—that it violated any federal, state, or local law; violated any regulations or
28 guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal

1 requirements; breached any contract; violated or breached any duty; engaged in any
2 misrepresentation or deception; or engaged in any other unlawful conduct with respect to any and all
3 employees at Defendant Farmgirl Flowers Inc. Neither this Agreement, nor any of its terms or
4 provisions, nor any of the negotiations connected with it, will be construed as an admission or
5 concession by Defendant of any such violations or failures to comply with any applicable law. Except
6 as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms
7 and provisions will not be offered or received as evidence in any action or proceeding to establish
8 any liability or admission on the part of Defendant or the Released Parties or to establish the existence
9 of any condition constituting a violation of, or non-compliance with, federal, state, local, or other
10 applicable law.

11 **Section 5.02: Non-Evidentiary Use**

12 Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the
13 Settlement itself will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed
14 to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including
15 but not limited to, evidence of a presumption, concession, indication, or admission by any of the
16 Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or
17 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
18 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
19 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims
20 released through this Agreement.

21 **Section 5.03: Nullification**

22 The Parties have agreed to the certification of the Class encompassing all claims alleged in
23 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
24 make a final determination that it will not certify this Class for settlement, or (b) the Court should
25 for any reason make a final determination that it will not approve this Settlement, or (c) the Court
26 should for any reason make a final determination that it will not enter the Final Order, or (d) the Final
27 Order is reversed, or declared or rendered void, or (e) the Court should for any reason make a final
28 determination that it will not dispose of the Action in its entirety, then (i) this Agreement shall be

1 considered null and void; (ii) neither this Agreement nor any of the related negotiations or
2 proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same
3 position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court;
4 and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action
5 pled in the Action as part of the Settlement will have no bearing on, and will not be admissible in
6 connection with, the issue of whether the Class should be certified by the Court in a non-settlement
7 context in this Action or any other action, and in any of those events, Defendant expressly reserves
8 the right to oppose certification of the Class.

9 ARTICLE VI

10 MISCELLANEOUS PROVISIONS

11 **Section 6.01: Amendments or Modification**

12 The terms and provisions of this Agreement may be amended or modified only by an express
13 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

14 **Section 6.02: Assignment**

15 None of the rights, commitments, or obligations recognized under this Agreement may be
16 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
17 consent of all other Parties and their respective counsel. The representations, warranties, covenants,
18 and agreements contained in this Agreement are for the sole benefit of the Parties under this
19 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

20 **Section 6.03: Governing Law**

21 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
22 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
23 of laws.

24 **Section 6.04: Entire Agreement**

25 This Agreement, including the Exhibit A (Class Notice) referred to herein, which forms an
26 integral part hereof, contains the entire understanding of the Parties with respect to the subject matter
27 contained herein. In case of any conflict between text contained in Articles I through VI of this
28 Agreement and text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through

1 VI) shall be controlling, unless the Exhibit is changed by or in response to a Court order. There are
2 no restrictions, promises, representations, warranties, covenants, or undertakings governing the
3 subject matter of this Agreement other than those expressly set forth or referred to herein. This
4 Agreement supersedes all prior agreements and understandings among the Parties with respect to the
5 Settlement of the Action, including correspondence between Class Counsel and Defense Counsel
6 and drafts of prior agreements or proposals.

7 **Section 6.05: Waiver of Compliance**

8 Any failure of any Party, Class Counsel, or Defense Counsel to comply with any obligation,
9 covenant, agreement, or condition set forth in this Agreement may be expressly waived in writing,
10 to the extent permitted under applicable law, by the Party or Parties and their respective counsel
11 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
12 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
13 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

14 **Section 6.06: Counterparts and Electronic Signatures**

15 This Agreement, and any amendments hereto, may be executed in any number of
16 counterparts, and any Party and/or their respective counsel may execute any such counterpart, each
17 of which when executed and delivered shall be deemed to be an original. All counterparts taken
18 together shall constitute one instrument. A fax, PDF, or electronic signature on this Agreement shall
19 be as valid as an original signature.

20 **Section 6.07: Meet and Confer Regarding Disputes**

21 Should any dispute arise among the Parties or their respective counsel regarding the
22 implementation or interpretation of this Agreement, Class Counsel and Defense Counsel shall meet
23 and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

24 **Section 6.08: Agreement Binding on Successors**

25 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
26 of each of the Parties.

27 **Section 6.9: Cooperation in Drafting**

28 The Parties have cooperated in the negotiation and preparation of this Agreement. This

1 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
2 was the drafter or participated in the drafting of this Agreement.

3 **Section 6.10: Fair and Reasonable Settlement**

4 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
5 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
6 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
7 further believe that the Settlement is consistent with public policy, and fully complies with applicable
8 law. The Parties further acknowledge that they are each represented by competent counsel and have
9 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
10 Settlement.

11 **Section 6.11: Headings**

12 The descriptive heading of any section or paragraph of this Agreement is inserted for
13 convenience of reference only and does not constitute a part of this Agreement and shall not be
14 considered in interpreting this Agreement.

15 **Section 6.12: Notice**

16 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
17 communications under this Agreement must be in writing and addressed as follows:

18
19 *To Plaintiffs and the Class:*

20 Brian D. Chase
21 Ian M. Silvers
22 BISNAR | CHASE LLC
23 1301 Dove Street, Suite 120
24 Newport Beach, CA 92660
25 T: (949) 752-2999
26 E: bchase@bisnarchase.com
27 isilvers@bisnarchase.com; and

28
29 *And*

To Defendant:

30 Alison L. Tsao
31 Marianne C. Koepf

1 CDF LABOR LAW LLP
2 600 Montgomery Street, Suite 440
3 San Francisco, California 94111
4 T: (415) 981-3233
5 E: atsao@cdflaborlaw.com
6 mkoepf@cdflaborlaw.com

7 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

8 To the extent consistent with class action procedure, this Agreement shall be enforceable by
9 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
10 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
11 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
12 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
13 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
14 extent to enforce and effectuate the terms and intent of this Agreement.

15 **Section 6.14: Mutual Full Cooperation**

16 The Parties agree fully to cooperate with each other to accomplish the terms of this
17 Agreement, including but not limited to execution of such documents, and taking such other action
18 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
19 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to
20 effectuate this Agreement and its terms. In the event the Parties are unable to reach agreement on the
21 form or content of any document needed to implement the Settlement (after execution of this
22 agreement), or on any supplemental provisions that may become necessary to effectuate the terms of
23 the Settlement, the Parties agree to seek the assistance of the Court.

24 **Section 6.15: Authorization to Act**

25 Class Counsel represent and warrant that they are authorized by Plaintiffs, and Defense
26 Counsel warrants that they are authorized by Defendant, to take all appropriate action required to
27 effectuate the terms of this Agreement, except for signing documents, including but not limited to
28 this Agreement, that are required to be signed by the Parties. Defendant represents and warrants that
the individual executing this Agreement on its behalf has the full right, power, and authority to enter
into this Agreement and to carry out the transactions contemplated herein.

1 **Section 6.16: No Reliance on Representations**


2 The Parties have made such investigation of the facts and the law pertaining to the matters
3 described herein and to this Agreement as they deem necessary, and have not relied, and do not
4 rely, on any statement, promise, or representation of fact or law, made by any of the other Parties,
5 or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or
6 asserted rights, or with regard to the advisability of making and executing this Agreement, or with
7 respect to any other matters. No representations, warranties, or inducements, except as expressly
8 set forth herein, have been made to any party concerning this Agreement.

9 ///

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11 Dated October ²⁰____, 2023

Electronically Signed _____ 2023-10-20 19:00:53 UTC - 166.198.34.108
Nintex AssureSign® _____ b6c33185-a591-430f-b24b-b0a1011b69ef_



Carlos Aguilar
Plaintiff

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13
14 Dated: October ____ , 2023

Maria Alcazar
Plaintiff

15
16
17 Dated: October ____ , 2023

Lizvette Salgado
Plaintiff

18
19
20
21 Dated: October ____ , 2023

Elpidia Alcazar
Plaintiff

22
23
24 Dated: October ____ , 2023

Christina Stembel
CEO of Farmgirl Flowers Inc.

25
26 APPROVED AS TO CONTENT AND FORM:
27
28

1 **Section 6.16: No Reliance on Representations**

2 The Parties have made such investigation of the facts and the law pertaining to the matters
3 described herein and to this Agreement as they deem necessary, and have not relied, and do not
4 rely, on any statement, promise, or representation of fact or law, made by any of the other Parties,
5 or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or
6 asserted rights, or with regard to the advisability of making and executing this Agreement, or with
7 respect to any other matters. No representations, warranties, or inducements, except as expressly
8 set forth herein, have been made to any party concerning this Agreement.

9 ///

10 ///

11 Dated October ____, 2023

Carlos Aguilar
Plaintiff

14 Dated: October 18, 2023

M. Gloria Alcazar
Maria Alcazar
Plaintiff

17 Dated: October ____, 2023

Lizvette Salgado
Plaintiff

21 Dated: October ____, 2023

Elpidia Alcazar
Plaintiff

24 Dated: October ____, 2023

Christina Stembel
CEO of Farmgirl Flowers Inc.

26 APPROVED AS TO CONTENT AND FORM:

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Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

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Dated October ____, 2023

Carlos Aguilar
Plaintiff

Dated: October ____, 2023

Maria Alcazar
Plaintiff

Dated: October 18, 2023



Lizvette Salgado
Plaintiff

Dated: October ____, 2023

Elpidia Alcazar
Plaintiff

Dated: October ____, 2023

Christina Stembel
CEO of Farmgirl Flowers Inc.

APPROVED AS TO CONTENT AND FORM:

1 **Section 6.16: No Reliance on Representations**

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11 Dated October ____, 2023

Carlos Aguilar
Plaintiff

14 Dated: October ____, 2023

Maria Alcazar
Plaintiff

17 Dated: October ____, 2023

Lizvette Salgado
Plaintiff

21 Dated: October 28, 2023

x Elpidia Alcazar

Elpidia Alcazar
Plaintiff

24 Dated: October ____, 2023

Christina Stembel
CEO of Farmgirl Flowers Inc.

26 APPROVED AS TO CONTENT AND FORM:

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Carlos Aguilar
Plaintiff

14 Dated: October ____, 2023

Maria Alcazar
Plaintiff

17 Dated: October ____, 2023

Lizvette Salgado
Plaintiff

21 Dated: October ____, 2023

Elpidia Alcazar
Plaintiff

24 Dated: October 10/18/2023

Christina Stembel

 Christina Stembel
CEO of Farmgirl Flowers Inc.

26 APPROVED AS TO CONTENT AND FORM:

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Dated: October 20, 2023

Ian M. Silvers

Ian M. Silvers
BISNAR | CHASE LLP
Attorneys for Plaintiffs

Dated: October 18, 2023



Alison L. Tsao
CDF LABOR LAW LLP
Attorneys for Defendant