

EXHIBIT 1

1 Charley Stoll, Cal. Bar No. 64946
Charley M. Stoll, APC
2 340 Rosewood Ave, Ste K
Camarillo, CA 93010
3 cstoll@cmsapc.com

4 Rob Roy, Cal. Bar No. 74982
Ventura County Agricultural Assoc.
5 916 W. Venture Blvd.
Camarillo, CA 93010
6 Rob-vcaa@pacbell.net

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
8 Including Professional Corporations
DAVID A. SCHWARZ, Cal. Bar No. 159376
9 dschwarz@sheppardmullin.com
ROBERT MUSSIG, Cal Bar No. 240369
10 rmussig@sheppardmullin.com
TYLER J. JOHNSON, Cal. Bar No. 307386
11 tjjohnson@sheppardmullin.com
IAN A. MICHALAK, Cal. Bar No. 335425
12 imichalak@sheppardmullin.com
333 South Hope Street, 43rd Floor
13 Los Angeles, California 90071-1422
Telephone: 213.620.1780
14 Facsimile: 213.620.1398

15 Attorneys for Defendants
FRESH HARVEST, INC. and SMD LOGISTICS, INC.

16
17 *Additional counsel on following page*

18 UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 RIGOBERTO SARMIENTO, GUSTAVO
LUEVANO-VACA, and others similarly
21 situated,

22 Plaintiffs,

23 vs.

24 FRESH HARVEST, INC., FRESH FOODS,
25 INC., RAVA RANCHES, INC., and SMD
LOGISTICS, INC.

26 Defendants.
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Case No. 5:20-cv-7974-BLF

**SETTLEMENT OF CLASS ACTION AND
PAGA CLAIMS**

Complaint Filed: November 12, 2020
FAC Filed June 11, 2021

1 Ana C. Toledo, Esq. (State Bar No. 246636)
Lindsey Berg-James, Esq. (State Bar No. 285109)
2 NOLAND, HAMERLY, ETIENNE & HOSS
3 A Professional Corporation
333 Salinas Street
4 Post Office Box 2510
Salinas, California 93902-2510
5 Telephone: (831) 424-1414
Facsimile: (831) 424-1975
6 atoledo@nheh.com | lbergjames@nheh.com

7 Attorneys for Defendants,
8 FRESH FOODS, INC. and RAVA RANCHES, INC.

9 Dawson Morton (SBN 320811)
Santos Gomez (SBN 172741)
10 LAW OFFICES OF SANTOS GOMEZ
11 1003 Freedom Boulevard
Watsonville, CA 95076
12 Ph: 831-228-1560
Fax: 831-228-1542
13 dawson@lawofficesofsantosgomez.com
santos@lawofficesofsantosgomez.com
14

15 James M. Finberg (SBN 114850)
Eve H. Cervantez (SBN 164709)
16 Connie K. Chan (SBN 284230)
ALTSHULER BERZON LLP
17 177 Post Street, Suite 300
San Francisco, CA 94108
18 Ph: (415) 421-7151
19 Fax: (415) 362-8064
jfinberg@altshulerberzon.com
20 ecervantez@altshulerberzon.com
cchan@altshulerberzon.com
21

22 Attorneys for Plaintiffs and the proposed class
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1 H. The term “Parties” means Plaintiffs and Defendants collectively.

2 I. The term “Settlement Class Period” means the time period beginning November
3 12, 2016 through December 10, 2022.

4 J. The term “PAGA Period” means the time period beginning one year prior to
5 filing of the PAGA letter through December 10, 2022.

6 K. The terms “Truck Driver” or “Truck Drivers” mean all persons employed by
7 Defendants as hourly commercial drivers, excluding bus drivers, who operated over-the-road highway
8 vehicles in excess of 26,000 pounds gross vehicle weight in California or Arizona at any time during the
9 Settlement Class Period either as an H-2A worker or a domestic worker.

10 L. The term “Settlement Class” means the proposed settlement class consisting of all
11 Truck Drivers that Plaintiffs will request certification of pursuant to this Settlement.

12 M. The terms “Settlement Class Member” or “Settlement Class Members” mean any
13 Truck Driver who does not timely and validly request exclusion from the Settlement Class.

14 N. The terms “PAGA Member” or “PAGA Members” mean all Truck Drivers who
15 were employed by Defendants in California at any time during the PAGA Period.

16 O. The term “LWDA” means the California Labor & Workforce Development
17 Agency.

18 P. The term “Effective Date” means the date by when both of the following have
19 occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and
20 (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day
21 after the deadline for filing a notice of appeal from the Judgment if no notice of appeal is filed; or (b) if a
22 timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and
23 issues a remittitur, and the Judgment is no longer subject to further appellate review by way of petitions
24 for rehearing or certiorari or otherwise.

25 Q. The term “Released Parties” means Defendants, and each of their past and present
26 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
27 stockholders, attorneys, parents, subsidiaries, divisions, predecessors, successors, alter-egos, insurers
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1 and assigns. The term “Released Parties” also means all related companies, corporations, associations
2 and/or partnerships (defined as a company, corporation, association, and/or partnership that is, directly
3 or indirectly, under common control with Defendants or any of their parents and/or affiliates),
4 consultants, joint ventures, any actual or alleged joint employers, co-employers, affiliates, and all of
5 their respective past, present and future employees, directors, officers, agents, attorneys, insurers,
6 stockholders, fiduciaries, parents, subsidiaries, and assigns, but only with respect to those work weeks
7 for which one of the Defendants was that Truck Driver’s W-2 employer, as set forth on the Class
8 Member Data File to be transmitted by Defendants to the Claims Administrator.

9 R. The term “Base Settlement Amount” means the settlement amount of
10 \$2,031,000.00 (Two Million and Thirty-One Thousand Dollars), which includes Defendants’ Credit of
11 payments already made by Defendants to the Settlement Class.

12 S. The term “Defendants’ Credit” means the amount of \$374,276.00 (Three Hundred
13 Seventy-Four Thousand and Two Hundred Seventy Six Dollars) already paid to some Truck Drivers
14 within the Settlement Class that offsets the Base Settlement Amount. The Base Settlement Amount less
15 Defendants’ Credit equals the Gross Settlement Amount.

16 T. The term “Gross Settlement Amount” means a non-reversionary common fund
17 that shall have a value of no more than \$1,656,724.00 (One Million Six Hundred Fifty-Six Thousand
18 Seven Hundred and Twenty-Four Dollars) and includes without limitation any and all payments
19 Defendants may be responsible for under the Settlement, except for employer-side payroll taxes to be
20 paid separately as specified in paragraph VI.5.(k).(ii) and claims administration costs up to \$10,000.00
21 to be paid separately as specified in paragraphs VI.3.(c) and VI.5.(i).

22 U. The term “Net Settlement Amount” means the amount remaining after all of the
23 amounts set forth in section VI.3.(a)-(d) of this Settlement, plus \$2,500 of the PAGA Payment allocated
24 to PAGA Members, which are approved by the Court, are deducted from the Gross Settlement Amount,
25 as described in VI.3(f).

26 V. The term “Objection / Opt-Out Deadline” shall mean sixty (60) calendar days
27 after the Settlement Administrator sends the Notice attached to this Settlement as Exhibit A, or other
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1 form of class settlement notice approved by the Court, to the Truck Drivers, in the manner ordered and
2 approved by the Court.

3 W. The term “Notice” shall mean the written notice packet approved by the Court in
4 substantially the form attached to this Settlement as Exhibits A and B, which shall be translated into
5 Spanish by a federal court certified translator after Court approval. The Notice packet shall include
6 personalized information setting forth each Class Member’s estimated recovery as set forth in Exhibit B.

7 X. The term “Individual Settlement Allocation” means the weighted distribution as
8 detailed in paragraphs VI.4.(a).(v)-(viii) apportioned to each Settlement Class Member based on their
9 work weeks, paystub employer, whether they were employed subject to the terms of an H-2A visa, and
10 the amounts if any already paid by Defendants, which will be paid to Settlement Class Members from
11 the Net Settlement Fund.

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13 II. Background and Procedural History

14 A. The Action was filed against Defendants by Plaintiff Rigoberto Sarmiento on
15 November 12, 2020 in the United States District Court for the Northern District of California. The
16 original Complaint alleged claims for (1) Violation of the Migrant and Seasonal Agricultural Workers
17 Protection Act (“AWPA”), 29 U.S.C. §§ 1801 et seq., (2) Violation of California’s Minimum Wage
18 Laws, Cal. Labor Code §§ 1182.11-1182.13, 1194, and 1197, (3) Failure to Pay Overtime in Violation
19 of California Labor Code § 1194 and Contractual Promise, (4) Failure to Provide Meal Periods, or
20 Premium Wages in Lieu Thereof, Cal. Lab. Code §§ 226.7, 512 & Wage Orders, (5) Failure to Provide
21 Rest Breaks, or Premium Wages in Lieu Thereof, Cal. Lab. Code §§ 226.2, 226.7, 1198 & Wage Orders,
22 (6) Breach of Employment Contract, (7) Failure to Furnish Accurate Itemized Wage Statements, Cal.
23 Lab. Code §§ 226, 226.2 & Wage Orders, (8) Violation of California’s Unfair Competition Law
24 (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq., and (9) Waiting Time Penalties for Failure to Pay
25 All Wages Due Pursuant to Cal. Labor Code § 203. On June 11, 2021, Sarmiento filed a First Amended
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1 Complaint alleging all the same facts and claims as the original Complaint and adding Plaintiff Gustavo
2 Luevano-Vaca as a named plaintiff. All claims were brought as proposed class claims.

3 B. In their Answer, Defendants denied all allegations in the Action, denied any
4 failure to comply with the statutes, regulations or other laws cited by Plaintiffs in the Action, and denied
5 any and all liability for any claim for relief alleged in the Action.

6 C. On August 19, 2022, the Parties attended mediation with Jeffrey Krivis. The
7 matter did not settle at that time. However, the Parties continued to engage in settlement discussions
8 through Mr. Krivis, including a second mediation session via Zoom on October 1, 2022, and ultimately
9 reached a settlement, the terms of which are memorialized in further detail herein.

10 D. Prior to the mediation, Plaintiffs obtained employment payroll data from
11 Defendants, including database records, internal communications, and payroll check registers for
12 Defendants' Truck Drivers, as well as wage-hour policies and procedures. Prior to that, the matter had
13 been heavily litigated for over a year, and during that time Plaintiffs compelled discovery responses and
14 conducted depositions, including several Federal Rule of Civil Procedure 30(b)(6) depositions.

15 E. To implement this Settlement, the Parties agree that, pursuant to California Labor
16 Code section 2699.3(a), Plaintiffs will file a PAGA notice with the LWDA for violations of the
17 California Labor Code provisions at issue in the Action. The PAGA notice shall contain all facts and
18 theories alleged in the complaints filed in this Action, and shall be substantially in the form attached as
19 Exhibit C and incorporated herein by this reference. Simultaneous with the filing of this Agreement,
20 and solely for purposes of settlement, Plaintiffs shall file a Second Amended Complaint that asserts a
21 PAGA claim that is based on the PAGA notice and that includes allegations regarding (1) Violation of
22 California's Minimum Wage Laws, Cal. Labor Code §§ 1182.11-1182.13, 1194, and 1197, (2) Failure to
23 Pay Overtime in Violation of California Labor Code § 1194 and Contractual Promise, (3) Failure to
24 Provide Meal Periods, or Premium Wages in Lieu Thereof, Cal. Lab. Code §§ 226.7, 512 & Wage
25 Orders, (4) Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof, Cal. Lab. Code §§
26 226.2, 226.7, 1198 & Wage Orders, (5) Breach of Employment Contract, (6) Failure to Furnish Accurate
27 Itemized Wage Statements, Cal. Lab. Code §§ 226, 226.2 & Wage Orders, (7) Violation of California's
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1 Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq., and (8) Waiting Time
2 Penalties for Failure to Pay All Wages Due Pursuant to Cal. Labor Code § 203. Defendants shall waive
3 any statute of limitations defense to the PAGA claim for settlement purposes only. A copy of the
4 proposed Second Amended Complaint is attached as Exhibit D and incorporated herein by this
5 reference. Defendants’ consent to this Agreement is expressly conditioned upon the Court approving
6 the filing of the Second Amended Complaint. Defendants shall not be required to file any response to
7 the Second Amended Complaint. For purposes of settlement only, Defendants’ current operative
8 answers shall be deemed their answers to the Second Amended Complaint. If the Court declines to
9 grant Preliminary Approval or Final Approval of the Settlement, then the parties will be returned to the
10 *status quo ex ante*: That is, Plaintiffs shall withdraw the Second Amended Complaint, and the First
11 Amended Complaint will be the operative complaint.

12 III. Benefits of Settlement to Plaintiffs and Settlement Class Members

13 Plaintiffs and Plaintiffs’ Counsel recognize the expense and length of proceedings necessary to
14 continue the litigation through trial and through any possible appeals. Plaintiffs and Plaintiffs’ Counsel
15 have also taken into account the uncertainty and risk of the outcome of further litigation, and the
16 difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs’ Counsel have also taken into
17 account the discovery undertaken, the motion practice to-date, including some Defendants’ loss at
18 summary judgment, and settlement negotiations conducted, which negotiations resulted in the material
19 settlement terms set forth herein. Based on the foregoing, Plaintiffs and Plaintiffs’ Counsel have
20 determined that the Settlement is a fair, adequate and reasonable settlement, and is in the best interests
21 of the Settlement Class.

22 IV. Defendants’ Reasons for Settlement

23 Defendants have concluded that any further defense of this litigation would be protracted and
24 expensive for all Parties. Defendants have devoted substantial amounts of time, energy, and resources to
25 the defense of the claims asserted by Plaintiffs and, unless this Settlement is made, will continue to do so
26 for the foreseeable future. For these reasons, Defendants have agreed to settle the matter upon the terms
27 set forth in this Settlement, to put to rest the claims alleged in the Action.

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1 V. Defendants' Denials of Wrongdoing

2 Defendants deny each of the claims and contentions alleged by Plaintiffs in the Action.

3 Defendants have repeatedly asserted and continue to assert defenses thereto and have expressly denied
4 and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged
5 in the Action. Neither this Settlement, nor any document referred to or contemplated herein, nor any
6 action taken to carry out this Settlement, is, may be construed as, or may be used as an admission,
7 concession or indication by or against Defendants of any fault, wrongdoing or liability, except with
8 respect to any action to enforce the terms of the Settlement or any action to enforce any Court Order or
9 Judgment with respect to the Settlement.

10 VI. Settlement

11 NOW, THEREFORE, IT IS HEREBY AGREED, by and among the Parties, and subject to the
12 approval of the Court, that the Action is hereby being compromised and settled pursuant to the terms and
13 conditions set forth in this Settlement.

14 1. Class Certification

15 For the purposes of this Settlement only, the Parties agree to the certification of a Settlement
16 Class as defined above pursuant to Fed. R. Civ. Proc. 23. Should the Settlement not become final, for
17 whatever reason, the fact that the Parties were willing to stipulate to certification of a Settlement Class
18 shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class or
19 collective should be certified for litigation purposes in any lawsuit, including without limitation the
20 Action.

21 2. Releases

22 (a) General Release by Plaintiffs. As of the Effective Date, Plaintiffs fully and
23 finally release the Released Parties, from any and all claims accruing on or before December 10, 2022,
24 known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law,
25 or other source of law, now existing, including but not limited to claims arising from or related to
26 Plaintiffs' application for employment with any of the Released Parties, employment with any of the
27 Released Parties and/or the termination of Plaintiffs' employment from any of the Released Parties.

1 Plaintiffs' released claims include all claims, including, but not limited to, failure to pay wages, failure
2 to pay minimum wages; failure to pay wages under the Migrant and Seasonal Agricultural Worker
3 Protection Act, 29 U.S.C. §§ 1801, *et seq.*; failure to pay any prevailing wage rate that may be due under
4 20 CFR 655.100; any claim alleging any violation of the federal H-2A or H-2B visa programs, 20 CFR
5 655.1 through 20 CFR 655.235; failure to pay straight time compensation, overtime compensation,
6 and/or double-time compensation, and/or interest; missed, late, short or interrupted meal and/or rest
7 periods, including any claim for any alleged failure to pay premiums for missed, late, short or
8 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
9 reimbursement for business expenses or any other claim that the Released Parties allowed or required
10 employees to bear any of the costs associated with the operation of the Released Parties' business,
11 including without limitation costs for equipment; inaccurate or otherwise improper wage statements
12 and/or failure to keep or maintain accurate records; unlawful deductions; unlawful payment instruments;
13 failure to timely pay wages upon discharge or quitting, paid sick leave, including that sick leave was
14 calculated at an incorrect rate of pay; any claim for unfair business practices arising out of or related to
15 any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of
16 the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement
17 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs.

18 Plaintiffs' released claims include all claims arising under the California Labor Code (including, but not
19 limited to, sections 200, 201, 201.3, 202, 203, 204, 210, 212, 216, 218.5, 218.6, 221, 222.5, 223, 224,
20 225, 225.5, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
21 1198, 2698 *et seq.*, and 2802); all claims arising under the Wage Orders of the California Industrial
22 Welfare Commission; California Business and Professions Code section 17200, *et seq.*; the California
23 Government Code; the California Civil Code, including but not limited to, sections 3287, 3289, 3336
24 and 3294; California Code of Civil Procedure § 1021.5; the California common law of contract; the Fair
25 Labor Standards Act, 29 U.S.C. § 201 *et seq.*; federal common law; and the Employee Retirement
26 Income Security Act, 29 U.S.C. § 1001, *et seq.* Plaintiffs' released claims include any and all claims
27 under PAGA of any kind. Plaintiffs' released claims also include all claims for lost wages and benefits,
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1 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal,
2 state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way
3 of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the
4 Americans With Disabilities Act, the Age Discrimination in Employment Act, and the California Fair
5 Employment and Housing Act; and the law of contract and tort.

6 Plaintiffs' released claims include all claims, whether known or unknown. Even if Plaintiffs
7 discover facts in addition to or different from those that Plaintiffs now know or believe to be true with
8 respect to the subject matter of Plaintiffs' released claims, those claims will remain released and forever
9 barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of section
10 1542 of the California Civil Code, which reads:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
12 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
13 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
14 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
15 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
16 **PARTY.**

17 Notwithstanding the foregoing, Plaintiffs do not waive or release any claim which cannot be
18 waived or released by private agreement. Further, nothing in this Settlement shall prevent Plaintiffs
19 from filing a charge or complaint with, or from participating in, an investigation or proceeding
20 conducted by the SEC, OSHA, EEOC, CRD, NLRB or any other federal, state or local agency charged
21 with the enforcement of any employment or other applicable laws. Plaintiffs, however, understand that
22 by signing this Settlement, they waive the right to recover any damages or to receive other relief in any
23 claim or suit brought by or through the EEOC, CRD or any other federal, state or local deferral agency
24 on their behalf to the fullest extent permitted by law, but expressly excluding any monetary award or
25 other relief available from the SEC/OSHA, including an SEC/OSHA whistleblower award, or other
26 awards or relief that may not lawfully be waived.

27 (b) Class Release

28 As of the Effective Date, the Settlement Class Members fully and finally release the Released
Parties from any and all claims alleged in the Action arising during the Settlement Class Period, and all

1 claims arising during the Settlement Class Period that were or could have been alleged in the Action
2 based on the facts, transactions, occurrences, or claims alleged in the Action, including, but not limited
3 to: failure to pay wages; failure to pay minimum wages; failure to pay straight time compensation,
4 overtime compensation, or double-time compensation; missed, late, short or interrupted meal and/or rest
5 periods, including any claim for any alleged failure to pay premiums for missed, late, short or
6 interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation;
7 reimbursement for business expenses; inaccurate or otherwise improper wage statements and/or failure
8 to keep or maintain accurate records; failure to timely pay wages upon discharge or quitting; claims that
9 the Released Parties employed Settlement Class Members for longer hours than those fixed by state,
10 federal, or local law and/or under conditions of labor prohibited by state, federal, or local law; claims for
11 breach of contract for failure to pay wages; violation of the Migrant and Seasonal Agricultural Worker
12 Protection Act, 29 U.S.C. §§ 1801 *et seq.*; failure to pay any prevailing wage rate that may be due under
13 20 CFR 655.100; violations of the federal H-2A or H-2B visa programs, 20 CFR 655.1 through 20 CFR
14 655.235; claims asserted for unfair or unlawful business practices arising out of any or all of the
15 aforementioned claims; any claim for penalties arising out of any or all of the aforementioned claims,
16 including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage
17 penalties, and waiting-time penalties; and attorneys' fees and costs. Without limitation by any other
18 language in this Settlement, this class release includes claims against the Released Parties arising during
19 the Settlement Class Period based on the facts, transactions, occurrences, or claims alleged in the Action
20 alleging a violation of California Labor Code §§ 200, 201, 202, 203, 204, 210, 216, 218.5, 218.6, 226,
21 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.11-1182.13, 1194, 1194(a), 1194.2, 1197,
22 1197.1, 1198, 2698, *et seq.*, 2800, 2802, 2810.3, the Wage Orders of the California Industrial Welfare
23 Commission, and/or the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* Upon entry of Judgment,
24 Class Members are precluded from filing a wage and hour action under the Fair Labor Standards Act
25 against the Released Parties for claims and/or causes of action encompassed by this class release, which
26 are extinguished and precluded pursuant to Rangel v. PLS Check Cashers of California, Inc., 899 F.3d
27 1106 (2018). This class release excludes the release of claims not permitted to be released by law.

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1 (c) PAGA Release

2 As of the Effective Date, Plaintiffs, the PAGA Members and the LWDA fully and finally release
3 the Released Parties from any and all claims alleged in the Action arising under PAGA during the
4 PAGA Period, and all PAGA claims arising during the PAGA Period that could have been alleged in the
5 Action arising in connection with or related to the facts, transactions, occurrences, or claims alleged in
6 the Action, including, but not limited to: failure to pay wages; failure to pay minimum wages; failure to
7 pay straight time compensation, overtime compensation, or double-time compensation; missed, late,
8 short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay
9 premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the
10 regular rate of compensation; reimbursement for business expenses; inaccurate or otherwise improper
11 wage statements and/or failure to keep or maintain accurate records; failure to timely pay wages upon
12 discharge or quitting; and any claims that the Released Parties employed PAGA Members for longer
13 hours than those fixed by state, federal, or local law and/or under conditions of labor prohibited by state,
14 federal, or local law, and violations of law alleged in the Action including the Wage Orders of the
15 California Industrial Welfare Commission and/or California Labor Code §§ 200, 201, 202, 203, 204,
16 210, 216, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.11-1182.13, 1194,
17 1194(a), 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, 2802, 2810.3. This PAGA release excludes
18 the release of claims not permitted to be released by law.

19 3. Gross Settlement Amount Allocation: The Gross Settlement Amount of
20 \$1,656,724.00 shall be allocated among these elements:

21 (a) Plaintiffs' Counsel will request Court approval of attorneys' fees in an
22 amount not to exceed thirty percent of the Gross Settlement Amount, or \$497,017.20, to be paid to
23 Plaintiffs' Counsel from the Gross Settlement Amount.

24 (b) Plaintiffs' Counsel will request Court approval for reimbursement of their
25 out-of-pocket costs according to proof incurred on behalf of Plaintiffs and Truck Drivers to be paid to
26 Plaintiffs' Counsel from the Gross Settlement Amount, in an amount not to exceed \$75,000.

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1 (c) Plaintiffs' Counsel will request Court approval for the fees and costs of the
 2 Settlement Administrator for the administration of this Settlement. Settlement Administration costs will
 3 separately be paid by Defendants in addition to the Gross Settlement Amount, in an amount not to
 4 exceed \$10,000.00. In the event the administration costs exceed \$10,000.00, the excess costs will be
 5 paid from the Gross Settlement Amount ("Excess Administration Costs").

6 (d) Plaintiffs' Counsel will request Court approval for the payment of service
 7 awards to each of the Plaintiffs, in the amount of \$15,000 to each Plaintiff, to be paid from the Gross
 8 Settlement Amount.

9 (e) Subject to Court approval, \$10,000 of the Gross Settlement Amount shall
 10 be allocated as PAGA Penalties, of which 75% (\$7,500) shall be paid to the LWDA and 25% (\$2,500)
 11 to the PAGA Members. The \$7,500 payment to the LWDA will be paid from unclaimed class funds
 12 which funds otherwise would be subject to a Second Distribution or paid to the *cy pres* recipient
 13 identified in Paragraph VI.5.(j).(iv). If, but only if, there is not at least \$7,500 remaining in unclaimed
 14 class funds after the first distribution, Defendant Fresh Harvest, Inc. will pay the difference up to
 15 \$7,500.

16 (f) The remainder of the Gross Settlement Amount after deducting the
 17 amounts described in (a)-(d) above and the \$2,500 to be paid to the PAGA Members, and as approved
 18 by the Court, shall be the Net Settlement Amount and distributed in accordance with the Plan of
 19 Allocation set forth below. Any Court ordered reductions to the amounts of the deductions described in
 20 (a)-(d) shall be added to the Net Settlement Amount, and shall not revert to Defendants.

21 4. Plan of Allocation for Payment to Settlement Class Members, LWDA, and PAGA
 22 Members

23 (a) Individual Settlement Allocation to Settlement Class Members

24 (i) Each Settlement Class member who does not exclude himself or herself
 25 from the Class shall receive his or her pro-rata share of the Net Settlement Amount, as determined
 26 based on the following Plan of Allocation:
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1 (ii) To determine each Settlement Class Member's Individual
2 Settlement Allocation, the Base Settlement Amount attributed to the Settlement Class after subtraction of
3 Court approved attorney's fees and costs, Excess Administration Costs, and service awards shall be
4 allocated among Settlement Class Members based on the following:

5 (iii) Each Settlement Class member employed as a Truck Driver, and not
6 under the terms of an H-2A visa, shall initially be allocated \$200 in AWPA liquidated damages ("AWPA
7 Damages");

8 (iv) The remaining amount (that is, the Base Settlement Fund less the
9 AWPA Damages, Court approved attorney's fees and costs, Excess Administration Costs, and service
10 awards) shall be initially allocated to each Settlement Class member based on the number of workweeks
11 they performed work in a Truck Driver position for Defendants during the Class Period, as a proportion
12 of all such workweeks of the Settlement Class Members during the Class Period using the weighted
13 distribution detailed in paragraphs v to vii below.

14 (v) Each Settlement Class member employed as a Truck Driver under
15 the terms of an H-2A visa pursuant to any H-2A job order shall initially be allocated a weighted settlement
16 distribution of payments per work week equal to two and a half (2.5) times their work weeks recorded in
17 the Class Data;

18 (vi) Each Settlement Class member employed as a Truck Driver, and not
19 under the terms of an H-2A visa, with their paystub employer listed as SMD Logistics shall initially be
20 allocated a weighted settlement distribution of payments per work week equal to one eighth (1/8) of their
21 work weeks recorded in the Class Data (*i.e.*, multiply their work weeks by .125);

22 (vii) Each Settlement Class member employed as a Truck Driver, and not
23 under the terms of an H-2A visa, with their paystub employer listed at Fresh Foods and/or Rava Ranches
24 shall initially be allocated a weighted settlement distribution of payments per work week equal to their
25 work weeks recorded in the Class Data;

26 (viii) For each Settlement Class member who already received a payment
27 included within Defendants' Credit and deducted from the Base Settlement Amount as set forth in
28

1 Paragraph I.S. of the Settlement Agreement, the amount of their prior payment shall be subtracted from
2 their calculated initial pro rata settlement share;

3 (ix) Then all of the initial pro rata settlement allocations and AWP
4 Damages shall be added together. If the sum of the initial pro rata settlement allocations and AWP
5 Damages exceed the Net Settlement Amount, then each Settlement Class Members' Individual Settlement
6 Allocation shall be reduced proportionally. If the sum of the initial pro rata settlement allocations and
7 AWP Damages are less than the Net Settlement Amount, then each Settlement Class Members'
8 Individual Settlement Allocation shall be increased proportionally.

9 (x) If this Plan of Allocations results in any Settlement Class Member
10 being allocated less than \$200, then those Class Members will be allocated \$200, and other Settlement
11 Class Members' Individualized Settlement Allocation will be reduced proportionately.

12 (xi) The taxes on settlement payments to Class Members shall be as
13 follows: (1) the \$200 AWP Damages, plus 25% of the remaining Individual Settlement Allocation
14 pursuant to Section VI.4.(a) shall be treated as non-taxable payments of alleged interest and penalties for
15 which each participating Settlement Class Member shall be issued a Form 1099 INT by the Settlement
16 Administrator if such issuance is required by law; (2) 75% of the remaining Individual Settlement
17 Allocation pursuant to Section VI.4.(a) shall be for alleged wages for which each Participating
18 Settlement Class Member shall be issued a Form W-2 by the Settlement Administrator; (3) The wage
19 portion shall not be subject to payroll tax withholding (including the employee's portion of FICA,
20 FUTA, SDI, and any other mandated taxes withholding) during the time period a Class Member held an
21 H-2A visa. The Parties acknowledge and agree that this allocation represents a fair approximation of the
22 recovery sought in this case.

23
24 (xii) The Settlement Administrator shall make all applicable payroll
25 deductions for state and federal withholding taxes and any other applicable payroll deductions owed by
26 the Settlement Class Members from the taxable wage portions, resulting in a net wage amount.
27 Employer-side payroll taxes will also be based on and calculated off of the value of the Settlement Class
28

1 Members' taxable wage portions and paid accordingly, although no payroll taxes are owed on any
2 amounts awarded to any Settlement Class Member for the time he/she was employed pursuant to an H-
3 2A visa as provided for in 26 U.S.C. § 3121(b)(1). No deductions will be made from the AWPAs
4 Damages or the twenty-five percent non-wage portions of the Settlement Class Members' Individual
5 Settlement Allocations.

6
7 (xiii) As of the Effective Date, the amounts previously paid by
8 Defendants to Settlement Class Members and recorded as "Credits" on those Settlement Class
9 Members' Estimated Settlement Payment Notice, will be ordered to be agreements in settlement of
10 private litigation pursuant to 29 C.F.R. §501.5.(b), and shall irrevocably belong to the Settlement Class
11 Members who received such payments.

12
13 (b) PAGA Allocation

14 (i) Seventy-five percent of the \$10,000 allocated to PAGA penalties, or \$7,500, shall be paid
15 to the LWDA.

16 (ii) Twenty-five percent of the \$10,000 allocated to PAGA penalties, or \$2,500, shall be
17 distributed to the PAGA Members based the pro rata number of pay periods they worked for Defendants
18 as Truck Drivers during the PAGA Period compared to the number of pay periods worked by all PAGA
19 Members as Truck Drivers during the PAGA Period.

20 (iii) The PAGA awards are non-wage penalty recovery from which no deductions shall be
21 made. The Settlement Administrator shall issue IRS Form 1099s (if required) for the PAGA Members'
22 PAGA awards.

23 (iv) PAGA Members will receive their PAGA awards regardless of whether they are
24 Settlement Class Members and regardless of whether they exclude themselves from the Settlement
25 Class.

26 5. Procedures for Notice and Approval of Settlement and Distribution of Gross
27 Settlement Amount

1 As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary
2 Court approval of the Settlement, notifying Truck Drivers, obtaining final Court approval of the
3 Settlement, and distributing the Gross Settlement Amount.

4 (a) Motion for Preliminary Approval

5 Plaintiffs shall file a motion for preliminary approval of this Settlement in the Action requesting
6 conditional certification of a Settlement Class consisting of all Truck Drivers and approval of the notice
7 plan set forth herein and the form of notice attached hereto as Exhibits A and B and incorporated herein
8 by reference. Plaintiffs' motion for preliminary approval shall request that the Court schedule a final
9 fairness hearing to decide upon and order final approval and enter judgment.

10 (b) LWDA Notice

11 Plaintiffs shall submit this Settlement to the LWDA at the same time they file for preliminary
12 approval, in accordance with Cal. Lab. Code § 2699(1)(2).

13 (c) CAFA Notice

14 Within ten days after Plaintiffs move for preliminary approval of this Settlement, Defendants
15 will mail notices to the Attorney General of the United States, the Attorney General of the State of
16 California, and the Attorney General of any other state where an Employee resides according to
17 Defendants' records, in accordance with the Class Action Fairness Act of 2004.

18 (d) Notice to Truck Drivers

19 (i) Within thirty days of preliminary approval of this Settlement, Defendants shall provide
20 the Settlement Administrator with an excel formatted database file, containing column headers and
21 showing their respective Truck Drivers' names, all known addresses of record, all known telephone
22 numbers of record, all known email addresses of record, and social security numbers. Defendants shall
23 also provide in the same report the employee number or numbers assigned to each individual during
24 their employment, whether the workers are domestic or H-2A, specific dates of employment (including
25 seasonal start and stop dates and indication of any weeks not worked), the name of their paystub
26 employer (or employers) for each such workweeks in Defendant(s)' employ, and any Credit for prior
27 payments. Defendants shall provide the report in an electronic format reasonably acceptable to the
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1 Settlement Administrator (“Class Member Data File”). The Settlement Administrator shall provide
2 Plaintiffs’ counsel with a redacted version of the Class Member Data file, that does not include contact
3 information (addresses, telephone numbers, email addresses), does not include the employee number or
4 numbers, and does not include social security numbers (“Redacted Class Member Data File”), and
5 which does include each Class Members’ estimated recovery as shown on that Class Members’
6 Estimated Settlement Payment form. The Settlement Administrator and Plaintiffs’ counsel will keep the
7 Class Member Data File and Redacted Class Member Data File, respectively, confidential and will use it
8 only for the purposes described herein with respect to effectuating the Settlement and providing advice
9 to Class Members with respect to the Settlement. Plaintiffs’ counsel will destroy any copies of the
10 Redacted Class Member Data File within six months of the check stale date for the second round
11 distribution (if any) or within six months of the check stale date for the first round distribution if there is
12 no second round distribution.

13 (ii) Within fourteen (14) days after receipt of this Class Member Data File, the Settlement
14 Administrator shall provide the best practicable notice to Class Members by using mail, email, and/or
15 WhatsApp, and by creating a settlement website and class member telephone line with Spanish-language
16 assistance. Each communication shall consist of or link to the Court-approved Class Notice (Exhibit A
17 hereto) and Estimated Settlement Payment (Exhibit B hereto), which shall include personalized
18 information setting forth each Class Member’s estimated recovery, and including a Spanish-language
19 version prepared by a Court-certified interpreter. The Settlement Administrator shall report the type(s)
20 of notice made and the number of notices returned or unsuccessful as promptly as possible. Class
21 Members will have sixty (60) days from the communication of the Class Notice to opt-out of the
22 Settlement Class or object to the class portion of the Settlement (i.e. by the Objection / Opt-Out
23 Deadline). The Settlement Administrator shall use best practices to provide effective notice to Class
24 Members including by performing such additional searches as may be available using Social Security
25 Numbers or public information databases where initial notice is returned.

26 (iii) The Settlement Administrator will, on a weekly basis during and for a reasonable period
27 following the Objection / Opt-Out Deadline, provide updates to Plaintiffs’ Counsel and counsel for
28

1 Defendants as to the number of Truck Drivers who submitted (i) valid opt-out requests for exclusion;
2 and (ii) objections. The Settlement Administrator shall also provide Plaintiffs' Counsel and counsel for
3 Defendants copies of all objections and requests for exclusion received on a weekly basis during and for
4 a reasonable period following the Objection / Opt-Out Deadline. The weekly updates shall also report
5 all communications of Class Notices, including the number of transmissions that are returned
6 undeliverable, number of calls or responses, number of unique visitors to the settlement website, and all
7 efforts made to successfully communicate the Class Notice.

8 (iv) If Class Counsel has a reasonable need for contact information for a particular Class
9 Member, on an as-needed basis, Class Counsel shall request permission from Defendants' counsel to
10 obtain that information, which permission shall not be unreasonably withheld. Defendants' counsel
11 shall respond to any request for permission within three business days. After receiving permission from
12 Defendants' counsel or on the fourth business day without a response to their request, Plaintiffs may
13 request that contact information from the Settlement Administrator, copying Defendants' counsel. The
14 Settlement Administrator shall promptly furnish that Class Member's contact information to Class
15 Counsel, who shall hold it in confidence and use it only for purposes of communicating with that Class
16 Member about the Settlement.

17 (v) Within seven days after the Objection / Opt-Out Deadline, the Settlement Administrator
18 will prepare a declaration to be provided to Plaintiffs' Counsel and counsel for Defendants for filing in
19 support of Plaintiffs' motion for final approval attesting to the following: (i) its efforts to distribute the
20 Class Notice including all means by which notice was distributed; (ii) its receipt of any valid requests
21 for exclusion and its inability to deliver the class notice to any Settlement Class Members; (iii) the
22 number of Settlement Class Members and PAGA Members; (iv) the highest estimated award amount to
23 be paid to the Settlement Class Members and PAGA Members, along with the median and mean award
24 payments. Within seven days after the Objection / Opt-Out Deadline, the Settlement Administrator shall
25 further provide Plaintiffs' Counsel and counsel for Defendants copies of all objections and requests for
26 exclusion received. The Settlement Administrator will also prepare and submit to Plaintiffs' Counsel
27 and counsel for Defendants supplemental declarations as may be necessary. In the event the procedures
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1 in this paragraph are followed and the intended recipient of a class notice still does not receive the class
2 notice, the intended recipient shall remain a Settlement Class Member and will be bound by all terms of
3 the Settlement and any final judgment entered by the Court if the Settlement is approved by the Court.

4 (e) Procedures for Objecting

5 The class notice shall provide that Settlement Class Members who wish to object to the class
6 portion of the Settlement must file, deliver, or mail to the Court or provide to the Claims Administrator a
7 written statement objecting to the class portion of the Settlement no later than the Objection / Opt-Out
8 Deadline. Each objection must be on behalf of an individual Truck Driver, who must individually make
9 the Objection. Joint or mass objections are prohibited. To allow for proper identification, each
10 objecting Truck Driver must include in his objection some identification information such as an
11 Employee Identification Number, Social Security Number, birth date, or Passport Number. If the
12 Settlement Administrator is not able to identify the objecting Truck Driver using the information
13 provided, the Settlement Administrator shall request the objecting Truck Driver to provide additional
14 information to allow the Class Member's identification. The Parties will be permitted to respond in
15 writing to such objections prior to the final fairness hearing. Settlement Class Members who fail to
16 timely object in the manner specified above shall remain Settlement Class Members and shall be
17 deemed to have waived any objections and shall be foreclosed from making any objection (whether by
18 appeal or otherwise) to the Settlement. Employees who exclude themselves from the Settlement Class
19 may not object. Employees may not object to the release of PAGA claims or to the amount of PAGA
20 penalties.

21 (f) Procedures for Requesting Exclusion from the Settlement Class

22 The class notice shall provide that Truck Drivers who wish to exclude themselves from the
23 Settlement Class must submit a written statement requesting exclusion from the Settlement Class by the
24 Objection / Opt-Out Deadline. An exclusion request must express a desire to opt-out of the Settlement
25 Class. Such written request for exclusion must contain the Class Members' name and some additional
26 information to confirm identification such as an Employee Identification Number, Passport Number,
27 birth date, or Social Security Number, and be provided to the Settlement Administrator through one of
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1 the communication means available including mail, email, WhatsApp, or through completing a request
2 on the settlement website, and must be sent on or before the Objection / Opt-Out Deadline. If the
3 Settlement Administrator is not able to identify the Truck Driver requesting exclusion using the
4 information provided, the Settlement Administrator shall request that the Truck Driver requesting
5 exclusion provide other means to identify himself. Each request for exclusion must be on behalf of an
6 individual Truck Driver, who must individually request to be excluded. Joint or mass requests for
7 exclusion are prohibited. The date of the postmark on the return mailing envelope or the date of
8 submission via email, WhatsApp or settlement website shall be the exclusive means used to determine
9 whether a request for exclusion has been timely submitted. If the postmark is illegible, any return
10 mailing envelope received three or more days after the Objection / Opt-Out Deadline shall be deemed
11 untimely. Any Truck Driver who opts-out of the Settlement Class will not be entitled to any recovery
12 for the class portion of the Settlement and will not be bound by the class release or have any right to
13 object, appeal or comment thereon. Truck Drivers who fail to submit a valid and timely request for
14 exclusion on or before the Objection / Opt-Out Deadline shall be Settlement Class Members and shall be
15 bound by all terms of the Settlement and any final judgment entered in the Action if the Settlement is
16 approved by the Court. Settlement Class members will be bound by the release of PAGA claims
17 regardless of whether they exclude themselves from the Settlement Class.

18 (g) No Solicitation of Settlement Objections or Exclusions

19 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time
20 shall any of the Parties or their counsel seek to directly or indirectly solicit any Truck Driver to submit
21 written objections to the Settlement or requests for exclusion from the Settlement Class, or appeal from
22 the Court's final judgment.

23 (h) Final Settlement Approval Hearing and Entry of Final Judgment

24 Following expiration of the sixty-day notice period, with the Court's permission, a final fairness
25 hearing shall be conducted to determine final approval of the Settlement, final certification of the
26 Settlement Class, and the amount properly payable for (i) Plaintiffs' Counsel's fees and costs, (ii)
27 Plaintiffs' service awards, (iii) the Settlement Administrator's fees and expenses, and (iv) the amount
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1 allocated to PAGA penalties. Upon final approval of the Settlement by the Court at or after the final
 2 fairness hearing, the Parties shall present an order approving the Settlement and a final judgment for
 3 entry.

4 (i) Defendants' Funding of the Costs of Settlement Administration and Gross
 5 Settlement Amount

6 Defendants shall pay by Wire Transfer or ACH to a qualified settlement account established by
 7 the Settlement Administrator the entire Gross Settlement Amount of \$1,656,724, plus the sum of
 8 \$10,000 towards the cost of settlement administration (for a total amount of \$1,666,724) within fourteen
 9 days after the Effective Date. Defendants Fresh Harvest, Inc. and SMD Logistics, Inc. shall be
 10 responsible for payment of \$1,206,724.00 of the Gross Settlement Amount, and Defendants Fresh
 11 Foods, Inc., and Rava Ranches, Inc. shall be responsible for payment of \$450,000.00 of the Gross
 12 Settlement Amount. Defendants Fresh Harvest, Inc. and SMD Logistics, Inc. shall pay \$7284 of the
 13 Defendants' \$10,000 contribution towards the cost of settlement administration, and Defendants Fresh
 14 Foods, Inc., and Rava Ranches Inc shall pay \$2716 of the Defendants' \$10,000 contribution towards the
 15 cost of settlement administration. The total amount that Defendants shall pay for any and all purposes
 16 under this Settlement is the Gross Settlement Amount, subject to the exceptions identified in Paragraph
 17 I.T with respect to administrative costs and employer's share of payroll taxes. To the extent that
 18 administrative costs are less than \$10,000, the Settlement Administrator shall refund any excess amounts
 19 paid, in the proportion paid, to Defendants at the conclusion of Settlement Administration.

20 (j) Distribution of the Gross Settlement Amount

21 (i) The Settlement Administrator shall be responsible for distributing (i) Plaintiffs'
 22 Counsel's fees and costs, (ii) Plaintiffs' service awards, (iii) the Settlement Administrator's fees and
 23 expenses, (iv) the payments to the Settlement Class Members, and (v) the payments to the PAGA
 24 Members within fourteen days after receipt of the Gross Settlement Amount by Defendants. The
 25 Settlement Administrator shall be responsible for determining the amount to be paid to each Settlement
 26 Class Member and PAGA Member based on the Plan of Allocation included herein, Paragraphs
 27 VI.4.(a).(i)-(x) and VI.(b)(ii). To the extent a PAGA Member is also a Settlement Class Member, the
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1 PAGA Member's PAGA award will be added to their award as a Settlement Class Member and
2 provided in a single payment. The distribution of funds to Settlement Class Members who do not
3 exclude themselves from the settlement shall commence as soon as practicable after the Defendants fully
4 fund the settlement.

5 (ii) The Parties agree that many of the Settlement Class Members are foreign nationals who
6 may not be physically present in the United States at the time of payments to the Settlement Class
7 Members. The parties acknowledge that payment by issuance and mailing of a check may not be an
8 adequate method for international payments. Accordingly, the Parties agree that the Settlement
9 Administrator will use a reliable and secure method for ensuring that the payments are delivered to the
10 Settlement Class Member who at the time of the payments are not residing in the United States. The
11 Parties agree that the Settlement Administrator may, at each Settlement Class Member's individual
12 request, wire funds to the Settlement Class Member's specified bank account, or may also use Western
13 Union, Sigue Money Transfer, payments into the Mexican Telegrafos system, or other methods
14 requested by the Settlement Class Member that are equally reliable and secure. Settlement Class
15 Members who reside in the United States at the time the Settlement Administrator issues the payments
16 may request to have the payments issued to them by check mailed to their address in the United States.
17 Settlement Class Members that are domestic U.S. workers with a U.S. based address of record who do
18 not request a specific form of payment within 60 days after payment distribution commences shall have
19 a paper check mailed to the U.S. address of record. Those checks shall have 180 days of validity.
20 Settlement Class Members will have one hundred and eighty (180) days from the date that the
21 Defendants fully fund the settlement to receive their settlement payments before any payment to LWDA
22 or Second Distribution among Settlement Class Members occurs.

23 (iii) If a Settlement Class Member's funds cannot be distributed to that Settlement Class
24 Member, either because a check sent to that Settlement Class Member is not cashed and becomes stale
25 after 180 days, or because the Settlement Administrator cannot send the Settlement Class Member funds
26 because the Settlement Class Member resides outside the United States and does not contact the
27 Settlement Administrator with instructions for fund distribution, those unclaimed funds will be subject
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1 to distribution to the LWDA or a Second Distribution, as follows: After 180 days have passed, to the
2 extent there are unclaimed funds of at least \$7,500, the Settlement Administrator shall transmit that
3 amount to the LWDA. If the amount of unclaimed funds is less than \$7,500, the Settlement
4 Administrator will notify Defendant Fresh Harvest, Inc., of the difference between \$7,500 and the
5 amount of unclaimed funds, and Fresh Harvest, Inc., shall, within 14 days, transmit that amount to the
6 Settlement Administrator, who shall then, within seven days, transmit \$7,500 to the LWDA.

7 (iv) If there are still unclaimed funds remaining after the PAGA Payment has been
8 transmitted to the LWDA, the Settlement Administrator shall determine whether it is economically
9 feasible to effect a Second Distribution to Settlement Class Members who have claimed or cashed their
10 first Settlement Payment, and, if so, will make a Second Distribution within 30 days, dividing the
11 remaining money proportionally among those Settlement Class Members who received payments in
12 proportion to their prior Individual Settlement Allocation. If it is not economically feasible to distribute
13 any remaining unclaimed funds, or if there are unclaimed funds remaining after the Second Distribution,
14 such funds shall be donated to the *cy pres* recipient, the Food Bank for Monterey County.

15 (vi) The Parties agree and acknowledge that such unclaimed funds shall be in a non-interest
16 bearing Qualified Settlement Fund Account created pursuant to Internal Revenue Code Section 1.468B-
17 1 up until the time of disbursement to the *cy pres*. No interest will have accrued prior to disbursement
18 because the account has to be a checking account (non-interest bearing) in order to disburse. The Parties
19 understand and agree that because no interest will have accrued on the unclaimed funds prior to
20 disbursement there will be no obligation on the part of Defendants, the Settlement Administrator, or any
21 other person to pay any interest upon disbursement of the unclaimed funds to the *cy pres* under
22 California Code of Civil Procedure section 384, and further agree that any proposed Preliminary
23 Approval or Final Approval Order shall reflect the same.

24 (v) All costs and expenses associated with delivery of payments, as contemplated by this
25 paragraph, shall be made from the \$10,000 payment by Defendants to cover the costs of Settlement
26 Administration until that \$10,000 is exhausted, after which these costs and expenses will be deducted
27 from the Gross Settlement Amount.

28

1 (vii) The Settlement Administrator shall keep counsel for the Parties apprised of all
2 distributions from the Gross Settlement Amount and within 10 days of completion of distribution to the
3 Settlement Class Members, PAGA Members, *cy pres* beneficiary, and others pursuant to this
4 Agreement, the Settlement Administrator shall provide written certification, under penalty of perjury, of
5 such completion to counsel for all Parties. In particular, the Settlement Administrator shall provide
6 counsel for all Parties with the following information within ten days of the completion of fund
7 distribution: The total settlement fund, the total number of class members, the total number of class
8 members to whom notice was sent and not returned as undeliverable, the number and percentage of opt-
9 outs, the number and percentage of objections, the average, median, maximum, and minimum recovery per
10 Settlement Class Member, the method(s) of notice and the method(s) of payment to Settlement Class
11 Members, the number and value of checks not cashed or funds not distributed, the amounts distributed to
12 each *cy pres* recipient, and the administrative costs. Within 21 days of all monies having been distributed,
13 Plaintiffs' Counsel shall file with the Court, and request that the Settlement Administrator upload to the
14 Settlement Website, the information provided by the Settlement Administrator, plus information on the
15 attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, plaintiffs'
16 counsel's updated lodestar total, and the lodestar multiplier.

17 (k) Taxes:

18 (i) The Settlement Administrator shall also be responsible for calculating and withholding
19 all required state and federal taxes following the allocation set forth above in Paragraphs VI.4.(a).(ix)
20 and VI.4.(b).(iii). To the extent any tax returns must be filed for the Gross Settlement Amount, the
21 Settlement Administrator shall cause to be timely and properly filed all informational and other tax
22 returns, if any, necessary with respect to the Gross Settlement Amount. Any expenses and/or costs
23 incurred in connection with the operation and implementation of this paragraph (including, without
24 limitation, reasonable expenses of tax attorneys, accountants or other designees retained by the
25 Settlement Administrator as required for the preparation and filing of tax returns described in this
26 paragraph) shall be treated as, and considered to be, a cost of administration of the Settlement.

1 (ii) The Settlement Administrator shall determine the amount of employer payroll taxes due
2 on the Settlement Payments allocated as alleged wages as described above in Paragraph VI.4.(a).(xi),
3 and shall inform Defendants of these amounts, which shall be paid by Defendants to the Settlement
4 Administrator for transmission to appropriate taxing authorities within ten days of notification of the
5 amount by the Settlement Administrator. Such costs shall be allocated among Defendants based on the
6 number of workweeks individual Settlement Class Members were on the payroll for each respective
7 Defendant during the Settlement Class Period. As an example, and for illustration purposes only, if a
8 particular Settlement Class Member worked for Defendant Fresh Harvest, Inc. for 20 workweeks and
9 Defendant Fresh Foods, Inc. hired the same individual for 60 workweeks, Defendant Fresh Harvest, Inc.
10 would only be responsible for paying payroll taxes on the 20 workweeks attributed to it and Defendant
11 Fresh Foods, Inc. would be responsible for paying payroll taxes on the 60 workweeks attributed to it.

12
13
14 (l) Option to Void Settlement

15 If the number of Truck Drivers who submit timely valid requests for exclusion from the
16 Settlement Class total in number more than eight percent of the total Settlement Class Members, each
17 Defendant shall have, in its sole discretion, the option to void this Settlement. In order to exercise this
18 option, the voiding Defendant(s) must notify Plaintiffs' Counsel in writing within fourteen days after
19 receiving from the Settlement Administrator copies of all requests for exclusion as part of a final
20 exclusion report from the Settlement Administrator which is to be provided to Defendants in a single
21 transmission within seven days after the Objection / Opt-Out Deadline.

22 (m) Publicity

23
24 The Parties and their counsel agree that, prior to submitting the Settlement for Court
25 approval, they will keep the terms of the Settlement confidential except for purposes of communicating
26 with their respective clients and prospective Settlement Administrators only. No Party or their counsel
27 will issue a press release, reach out affirmatively to the press, or post information about the Settlement
28

1 on their firm website. Parties or counsel contacted by the press will say or email “I have no
2 comment. Please refer to the publicly filed documents in *Sarmiento et al v. Fresh Harvest et al*,
3 Northern District of California case number 5:20-cv-7974-BLF.” In discussing the Settlement in any
4 other context, the Parties and their counsel shall not disclose any information of any other Party that is
5 not available in publicly filed documents.

6
7 VII. Miscellaneous Provisions

8
9 1. Cooperation in Administration of the Settlement

10 The Parties agree to cooperate in the Settlement administration process and to make all
11 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
12 Settlement.

13 2. Cooperation if the Court requests changes to the Settlement Agreement

14 The Parties agree to cooperate in attempting to negotiate reasonably agreeable modifications to
15 the Settlement Agreement if suggested or required by the Court in order to obtain preliminary or final
16 approval of the Settlement.

17 3. Confidentiality of Documents

18 The Parties and Parties’ counsel will continue to abide by the terms of the Protective Order in
19 this case with respect to documents produced during the course of discovery. The Parties and Parties’
20 counsel will continue to maintain the confidentiality of any documents produced during the course of
21 mediation or settlement discussions as strictly confidential for purposes of settlement only. The Parties
22 and Parties’ counsel agree that none of the documents provided to them by the other Party shall be used
23 for any purpose other than litigation of the Action or settlement of the Action. The Parties and Parties’
24 counsel agree not to disclose any confidential information provided to them by the other Party.

25 4. No Effect on Employee Benefits

26 The service awards and settlement amounts paid to Plaintiffs, Settlement Class Members, and
27 PAGA Members shall be deemed not to be pensionable earnings and shall not have any effect on the
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1 eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement
2 plans, etc.) of the respective Plaintiffs, Settlement Class Members, or PAGA Members. The Parties
3 agree that any service awards and settlement payments paid to Plaintiffs, Settlement Class Members, and
4 PAGA Members under the terms of this Settlement do not represent any modification Plaintiffs',
5 Settlement Class Members', or PAGA Members' previously credited hours of service or other eligibility
6 criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by
7 Defendants or any of the Released Parties. Further, any service awards or settlement payments
8 hereunder shall not be considered "compensation" in any year for purposes of determining eligibility
9 for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan
10 sponsored by Defendants or any of the Released Parties.

11 5. Nullification of Settlement Agreement

12 In the event: (i) the Court does not finally approve the Settlement as provided herein; (ii) the
13 Court does not enter a final judgment as provided herein; or (iii) the Court's final judgment or final
14 approval order is reversed on appeal; this Settlement shall be without effect. In such a case, the Parties
15 and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the
16 date and time immediately prior to the execution of this Settlement, and the Parties shall proceed in all
17 respects as if this Settlement had not been executed, except that any fees already incurred by the
18 Settlement Administrator if any, shall be borne equally by the Parties (that is, split one-third each by
19 Plaintiffs, Fresh Food Defendants, Fresh Harvest Defendants). In the event an appeal is filed from the
20 Court's final judgment, or any other appellate review is sought prior to the Effective Date,
21 administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate
22 review.

23 6. No Admission By the Released Parties

24 The Released Parties, including Defendants, deny any and all claims alleged in
25 the Action and deny any and all wrongdoing whatsoever. This Settlement is not a concession or
26 admission and shall not be used against Defendants or any of the Released Parties as an admission or
27 indication with respect to any claim of any fault, concession or omission by Defendants or any of the
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1 Released Parties. Whether or not the Settlement is finally approved, neither the Settlement, nor any
2 document, statement, proceeding or conduct related to this Settlement, nor any reports or accounts
3 thereof, shall in any event be:

4 (a) construed as, offered or admitted in evidence as, received as, or deemed to
5 be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a
6 presumption, concession, indication or admission by any of the Released Parties of any liability, fault,
7 wrongdoing, omission, concession or damage, except for purposes of settling the Action pursuant to this
8 Settlement and/or with respect to any proceeding to enforce the terms of the Settlement Agreement or
9 Judgment; or

10 (b) disclosed, referred to or offered or received in evidence against any of the
11 Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative
12 action or proceeding except for purposes of settling the Action pursuant to this Settlement and/or with
13 respect to any proceeding to enforce the terms of the Settlement Agreement or Judgment.

14 The Released Parties, including Defendants, shall have the right to use this Settlement, including
15 the releases set forth above, to defend against any claims asserted by Settlement Class Members and
16 PAGA Members and the LWDA that are encompassed within the releases identified above, whether
17 such claims are asserted in the Action and/or any other lawsuit.

18 7. No Liens or Litigation Funding

19
20 Plaintiffs and Plaintiffs' Counsel represent and warrant that they have not used litigation
21 funding for this case, and that there are no liens or encumbrances on any amounts payable under this
22 Settlement for attorneys' fees and costs or for any amounts owing under the Settlement to Plaintiffs.

23
24 8. Exhibits and Headings

25 The terms of this Settlement include the terms set forth in the attached Exhibits, which are
26 incorporated by reference as though fully set forth herein. The exhibits to this Settlement are an integral
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1 part of the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
2 inserted for convenience of reference only and do not constitute a part of this Settlement.

3 9. Amendment or Modification

4 This Settlement may be amended or modified only by a written instrument signed by counsel for
5 all Parties or their successors-in-interest.

6 10. No Tax Advice

7 Each Party to this Settlement (for purposes of this section, the “acknowledging party” and each
8 party to this Settlement other than the acknowledging party, an “other party”) acknowledges and agrees
9 that (1) no provision of this Settlement, and no written communication or disclosure between or among
10 the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such
11 communication or disclosure constitute or be construed or be relied upon as, tax advice within the
12 meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (2) the
13 acknowledging party (a) has relied exclusively upon their own, independent legal and tax counsel for
14 advice (including tax advice) in connection with this Settlement, (b) has not entered into this Settlement
15 based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c)
16 is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other
17 Party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or
18 adviser to any other Party has imposed any limitation that protects the confidentiality of any such
19 attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon
20 disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including
21 any transaction contemplated by this Settlement.

22 11. Entire Agreement

23 This Settlement and attached exhibits constitute the entire agreement among the Parties with
24 respect to resolution of the Action. To the extent there are any other oral or written agreements relating
25 to the subject matter of this Settlement, this Settlement controls and supersedes all such agreements. No
26 oral or written representations, warranties or inducements have been made to any Party concerning this
27
28

1 Settlement or its exhibits other than the representations, warranties and covenants contained and
2 memorialized in this Settlement and attached exhibit.

3 12. Authorization of Counsel

4 Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom
5 they represent and who are signing this Settlement, to negotiate this Settlement and to take all
6 appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to
7 effectuate its terms, and to execute any other documents required to effectuate the terms of this
8 Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to
9 effect the implementation of the Settlement.

10 13. Binding on Successors and Assigns

11 This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of
12 the Parties hereto.

13 14. California Law Governs

14 All terms of this Settlement and the exhibits hereto shall be governed and interpreted according
15 to the laws of the State of California.

16 15. Counterparts

17 This Settlement may be executed in one or more counterparts, including via electronic signature
18 such as via DocuSign. All executed counterparts and each of them shall be deemed to be one and the
19 same instrument provided that counsel for the Parties to this Settlement shall exchange among
20 themselves original signed counterparts.

21 16. This Settlement is Fair, Adequate, and Reasonable.

22 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action
23 and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors,
24 present and potential. This Settlement was reached after extensive negotiations and multiple mediation
25 sessions.

1 17. Jurisdiction of the District Court

2 The Court shall retain jurisdiction with respect to the interpretation,
3 implementation and enforcement of the terms of this Settlement and all orders and judgments entered in
4 connection therewith as provided for by the federal rules and federal law, and the Parties and their
5 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
6 enforcing the settlement embodied in this Settlement and all orders and judgments entered in
7 connection therewith.

8 18. Cooperation and Drafting

9 Each of the Parties and their counsel has cooperated in the drafting and preparation of this
10 Settlement. Hence, in any construction made to this Settlement, the same shall not be construed against
11 any of the Parties.

12 19. Invalidity of Any Provision

13 Before declaring any provision of this Settlement invalid, the Court shall first attempt to construe
14 the provision valid to the fullest extent possible consistent with applicable precedents so as to render all
15 provisions of this Settlement valid and enforceable.

16 20. Settlement Based Upon Data

17 Defendants Fresh Harvest, Inc. and SMD Logistics, Inc. represent that they employed 144 Truck
18 Drivers who are a part of the Settlement Class and Defendants Fresh Foods, Inc. and Rava Ranches, Inc.
19 represent that they employed 54 Truck Drivers who are part of the Settlement Class, for a total of 198
20 Truck Drivers. In the event that the total number of Truck Drivers is equal to or greater than 207, than
21 the Settlement Amount shall be increased proportionately based upon such increase (“Escalator
22 Provision”). Any increase shall be proportionately allocated between Defendants based on the number
23 of additional Truck Drivers employed by each Defendant that exceeds the number they represented as
24 their Truck Drivers in this Agreement. Alternatively, in the event that this Escalator Provision is
25 triggered, each Defendant may, in its sole discretion, choose to change the ending date of the Settlement
26 Class Period for their Truck Driver employees to an earlier date in order to reduce or eliminate any
27 increase in the Settlement Amount.

21. Plaintiffs' General Release Remains Effective

By signing this Settlement, Plaintiffs are bound by the terms herein stated upon final approval, including without limitation the general release set forth above. Plaintiffs shall retain their rights as Settlement Class Members under this Settlement and understand that they may not opt out of the Settlement Class.

PLAINTIFFS

Date: _____

Rigoberto Sarmiento

Gustavo Luevano-Vaca

Date: _____

DEFENDANTS

Date: ~~March 8, 2023~~ 3/8/23

FRESH HARVEST, INC.

By: Matt Scaroni
Its: President

Date: March 8, 2023

SMD LOGISTICS, INC.

By: David Scaroni
Its: President

Date: _____

RAVA RANCHES, INC.

By: _____
Its: _____

Date: _____

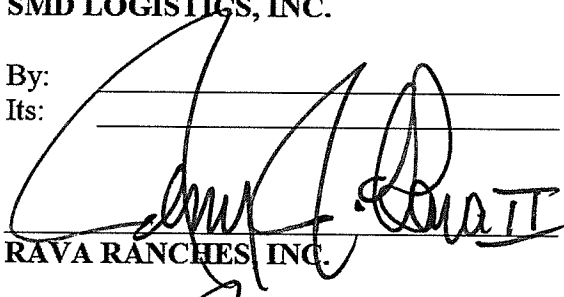
FRESH FOODS, INC.

By: _____
Its: _____

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SMD LOGISTICS, INC.

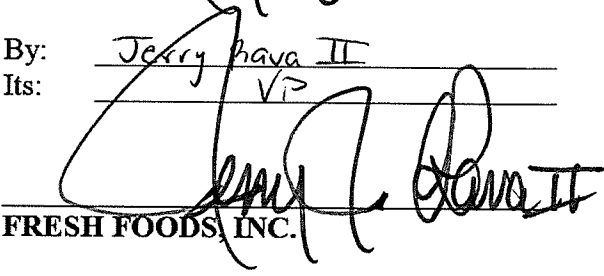
By: _____
Its: _____



Date: _____

RAVA RANCHES, INC.

By: Jerry Bava II
Its: VP



Date: 3/8/2023

FRESH FOODS, INC.

By: Jerry Bava II
Its: President/CEO

The following is a translation into Spanish, translated by Aimee Benavides, Federally Certified Interpreter

1 cada Demandado, a su entera discreción, puede optar por cambiar la fecha final del Periodo del Grupo
2 del Acuerdo para sus empleados Conductores de Camiones a una fecha anterior con el fin de reducir o
3 eliminar la necesidad de cualquier aumento en el Importe de Liquidación.

4 21. La Exoneración General de los Demandantes Permanece en Vigor

5 Al firmar este Acuerdo, Los Demandantes están obligados a los términos aquí expuestos tras su
6 aprobación definitiva, incluyendo sin limitación, la exoneración general establecida anteriormente. Los
7 Demandantes retienen sus derechos como Miembros del Grupo del Acuerdo en virtud de este Acuerdo y
8 comprenden que no pueden optar por no participar en el Grupo del Acuerdo.

9
10 PLAINTIFFS

11 Date: _____

Rigoberto Sarmiento

12 Date: 09-Mar-2023

Gustavo Luevano-Vaca Gustavo Luevano V
Gustavo Luevano Vaca (Mar 9, 2023 12:48 PST)

13
14 DEFENDANTS

14 Date: _____

15 _____
16 **FRESH HARVEST, INC.**

17 By: _____
18 Its: _____

18 Date: _____

19 _____
20 **SMD LOGISTICS, INC.**

21 By: _____
22 Its: _____

22 Date: _____

23 _____
24 **RAVA RANCHES, INC.**

25 By: _____
26 Its: _____

26 Date: _____

27 _____
28 **FRESH FOODS, INC.**

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8 comprenden que no pueden optar por no participar en el Grupo del Acuerdo.

9
10 PLAINTIFFS

11 Date: 08-Mar-2023 _____

Rigoberto Sarmiento  _____
Rigoberto Sarmiento (Mar 8, 2023 12:31 MST)

Gustavo Luevano-Vaca

13 Date: _____

14 DEFENDANTS

15 Date: _____

16 FRESH HARVEST, INC.

17 By: _____
18 Its: _____

19 Date: _____

20 SMD LOGISTICS, INC.

21 By: _____
22 Its: _____

23 Date: _____

24 RAVA RANCHES, INC.

25 By: _____
26 Its: _____

27 Date: _____

28 FRESH FOODS, INC.

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APPROVED AS TO FORM BY:

ATTORNEYS FOR PLAINTIFFS RIGOBERTO SARMIENTO AND GUSTAVO LUEVANO-VACA

LAW OFFICES OF SANTOS GOMEZ

Date: 3/9/2023

By: 

ATTORNEYS FOR DEFENDANTS FRESH HARVEST, INC. and SMD LOGISTICS, INC.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Date: 3/9/23

By: 

ATTORNEYS FOR DEFENDANTS FRESH FOODS, INC. and RAVA RANCHES, INC.

NOLAND, HAMERLY, ETIENNE & HOSS

Date: _____

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APPROVED AS TO FORM BY:

ATTORNEYS FOR PLAINTIFFS RIGOBERTO SARMIENTO AND GUSTAVO LUEVANO-VACA

LAW OFFICES OF SANTOS GOMEZ

Date: _____

By: _____

ATTORNEYS FOR DEFENDANTS FRESH HARVEST, INC. and SMD LOGISTICS, INC.

**SHEPPARD MULLIN RICHTER & HAMPTON
LLP**

Date: _____

By: _____

ATTORNEYS FOR DEFENDANTS FRESH FOODS, INC. and RAVA RANCHES, INC.

NOLAND, HAMERLY, ETIENNE & HOSS

Date: 3/9/23

By: 