

SETTLEMENT AGREEMENT

- A. This Settlement Agreement (“Agreement”) is made between Felipe de Jesus de Luna-Guerrero, Baldomero Gutierrez-de Luna, and Luis Manuel de Luna-Reyes, and all other similarly situated individuals who properly filed a Consent to Sue form with the U.S. District Court, Eastern District of North Carolina during the time period set by that Court in its September 30, 2004 Order (collectively referred to as “de Luna Plaintiffs”) and the North Carolina Growers’ Association, Inc. (“NCGA”) and Marcus Thigpen (collectively referred to as “de Luna Defendants”), and between José Manuel Garcia-Alvarez, Victor Vargas-Mendoza, Felipe de Jesus de Luna-Guerrero, Baldomero Gutierrez-de Luna, and Luis Manuel de Luna-Reyes, on behalf of all similarly situated class members (“Garcia-Alvarez Plaintiffs”) and the North Carolina Grower’s Association, Inc. (“NCGA”), Durwood Cook, James Pope, Jr., and Marcus Thigpen, on behalf of all similarly situated class members (“Garcia-Alvarez Defendants”) for the purpose of settling the various claims, controversies and disputes among these parties arising out of the facts and circumstances relating to two lawsuits: Felipe de Luna-Guerrero, et al. v. North Carolina Grower’s Association, et al., Civil Action No.:4:02-CV-173-H(4) (EDNC) and Garcia-Alvarez, et al. v. North Carolina Grower’s Association, et al., 04 CVS 14949 (Wake County Superior Court).
- B. In the de Luna lawsuit, Plaintiffs asserted claims against Defendants for violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., the North Carolina Wage and Hour Act, N.C.G.S. § 95-25.1, et seq., and common law breach of contract. After the Eastern District of North Carolina declined to consider the

state law claims, the Garcia-Alvarez Plaintiffs filed those claims in Wake County Superior Court.

C. By Order dated January 27, 2005, Wake County Superior Court Judge Howard Manning certified two Plaintiff classes and two Defendant classes in Garcia-Alvarez. The Garcia-Alvarez named Plaintiffs were certified to represent:

- i. Plaintiff Class #1: A class of persons under Rule 23(a), N.C.R.Civ.P., for declaratory relief, back wages, and liquidated damages under N.C. Gen. Stat. §§95-25.6, 95-25.22, and 95-25.22(a1) which consists of all alien or formerly alien workers who were, are and/or shall be jointly or severally employed by defendants NCGA, NCGA member Marcus Thigpen, NCGA member Durwood Cook, NCGA member James “Jimmy” Pope, Jr., and/or one or more other members of the NCGA at any time in the time period from December 23, 2000 and continuing thereafter through the date on which final judgment is entered in this action who performed and/or shall perform any work for defendants NCGA, Thigpen, Cook, Pope, and/or any member of the defendant class defined in ¶23 of the Complaint in the first workweek after that worker arrived and/or shall arrive in North Carolina pursuant to a labor certification and visa issued to the NCGA and those workers under 8 U.S.C. §§1184(c) and 1101(a)(15) (H)(ii)(a).
- ii. Plaintiff Class #2: A class of persons under Rule 23(a), N.C.R.Civ.P., for declaratory relief and compensatory damages under the common law of contracts, which consists of all alien or formerly alien workers who were, are, and/or shall be jointly or severally employed at any location in North Carolina by defendants NCGA, NCGA members Marcus Thigpen, Durwood Cook, and James “Jimmy” Pope, Jr., and/or one or more other members of the NCGA at any time in the time period from December 23, 1999 and continuing thereafter until the date final judgment is entered in this action, and who actually performed and/or shall perform any agricultural labor for defendants Thigpen, Cook, or Pope, or any other such NCGA member within that same time period in the first workweek after that worker arrived or shall arrive in North Carolina pursuant to a labor certification and visa under 8 U.S.C. §§1184(c) and 1101(a)(15)(H)(ii)(a), and pursuant to a contract formed with those workers under 20 C.F.R. §655.103(b) (describing the employer assurances) and 20 C.F.R. §655.102(b)(9) (setting the pay rate) and item 9 of the NCGA Clearance Orders and job offers made by the named defendants described in ¶42 of the Complaint that was or shall be accepted by the named plaintiffs and the plaintiff class defined in this paragraph.

D. The Garcia-Alvarez named Defendants were certified to represent:

- i. Defendant Class #1: Those members of the NCGA (and the person(s) who were the partner(s)/ owner/operator(s) of any corporate or partnership member of the NCGA) other than Durwood Cook, James Pope, Jr., and Marcus Thigpen who at any time in the time period from December 23, 2000 and continuing thereafter until the date final judgment is entered in this action that employed, jointly employed, shall employ, and/or shall jointly employ the named plaintiffs and/or one or more members of Plaintiff Class #1 that the named plaintiffs seek to represent in the first workweek after that worker arrived in North Carolina pursuant to a labor certification and visa issued to the NCGA and those workers under 8 U.S.C. §1101(a)(15)(H)(ii)(a).
- ii. Defendant Class #2: Those members of the NCGA (and the person(s) who were the partner(s)/owner/operator(s) of any corporate or partnership member of the NCGA) other than Durwood Cook, James Pope, Jr., and Marcus Thigpen who at any time from December 23, 1999 in the time period from December 23, 1999 and continuing thereafter until the date final judgment is entered in this action employed, shall employ, jointly employed, and/or shall jointly employ the named plaintiffs, and/or one or more members of Plaintiff Class #2 that the named plaintiffs seek to represent, in the first workweek after that worker arrived in North Carolina pursuant to a labor certification and visa issued to the NCGA under 8 U.S.C. §§1184(c) and 1101(a)(15)(H) (ii)(a), and pursuant to a contract formed with those workers by 20 C.F.R. §655.103(b) (employer assurances) and 20 C.F.R. §§655.102(b)(9) and 655.107 (setting the pay rate) and item 9 of the NCGA Clearance Orders and job offers made by the named defendants that was accepted by the named plaintiffs and the class that the named plaintiffs seek to represent.

E. The de Luna and Garcia-Alvarez Defendants have denied and continue to deny any liability. Nothing in this agreement shall constitute any admission or evidence of any violation of the law or other wrongful activity.

F. The de Luna Plaintiffs and de Luna Defendants and the Garcia-Alvarez Plaintiffs and Garcia-Alvarez Defendants wish to resolve all claims and controversy

between them arising out of this action and hereby enter into this Agreement for that express purpose.

NOW, THEREFORE, in consideration of the mutual covenants, the promises and other good and valuable considerations, the sufficiency of which hereby are acknowledged, the undersigned parties agree as follows:

1. **De Luna Consenting Parties** – The de Luna Defendants will pay back wages damages to the de Luna named Plaintiffs and to each other person who properly filed a Consent to Sue form with the U.S. District Court of the Eastern District of North Carolina during the time period set by that Court in its September 30, 2004 Order, for each year worked from 2000 to 2004, in accordance with the following formula:

$$\text{Back Wages} = [(\text{actual number of hours worked in the first workweek}) \times (\$5.15) + (\text{cost of transportation from home village to North Carolina}) + (\text{border crossing fee}) + (\text{visa cost})] - [(\text{wages actually paid during the first workweek}) + (\text{amount of transportation reimbursement})]$$

2. **De Luna Named Plaintiffs.** The de Luna Defendants will pay liquidated damages to the de Luna named Plaintiffs for each year worked from 2000 to 2004 in accordance with the following formula:

$$\text{Liquidated Damages} = [(\text{actual number of hours worked in the first workweek}) \times (\$5.15) + (\text{cost of transportation from home village to North Carolina}) + (\text{border crossing fee}) + (\text{visa cost})] - (\text{wages actually paid during the first workweek}).$$

3. **De Luna Plaintiffs' Ineligibility for Garcia-Alvarez Damages.** The de Luna plaintiffs shall not be eligible to receive additional back wages as per ¶6 below, but shall not lose their eligibility for current and future employment based on their receipt of back wages and liquidated damages as per ¶14.
4. **Payroll Records for de Luna.** For those years in which payroll records have not already been obtained from NCGA growers (2000, 2003 and 2004), the parties will calculate the amount of damages owed pursuant to ¶¶1-2 based on an average of each worker's damages for those years for which payroll records have been obtained. If no payroll records are produced by the de Luna Defendants for the specified worker for either 2001 or 2002, or both, then the parties will calculate the amount of damages for 2000, 2003, and/or 2004 (whichever years are applicable for each particular worker) based on an average of all de Luna Plaintiffs' wages for each of those years. There shall be no payment for any year in which a worker did not work.
5. **Distribution of de Luna Damages.** After final approval of the settlement of de Luna-Guerrero by the U.S. District Court for the Eastern District of North Carolina, Counsel for the de Luna Defendants shall provide Counsel for the de Luna Plaintiffs with an international money order for each de Luna Plaintiff in the amount of damages owed pursuant to ¶¶1-2. The cost of the international money order shall be deducted from each Plaintiff's damages. Counsel for the de Luna Plaintiffs shall mail the money orders to the Plaintiff's last known address. If the money order for a de Luna Plaintiff is returned, the de Luna parties shall make a reasonable effort to locate the Plaintiff in question. Fifty percent (50%) of the money remaining after 210 days of the initial mailing of the

payment shall then be returned to the de Luna Defendants, and fifty percent (50%) shall be distributed to the charities listed in ¶20.

6. **Garcia-Alvarez Fund.** –Garcia-Alvarez Defendant class representatives and class members (“Garcia-Alvarez grower Defendants”) shall pay a total of \$1.475 million into a fund to which the Garcia-Alvarez Plaintiff class members shall apply for payment. The deadline for payment shall be on or before June 30, 2006 or such other time as the Court may specify consistent with the time period provided in the Settlement Agreement for notice to the respective classes and comment and/or objection(s) to this Settlement Agreement and the date on which the settlement is approved. Defendants who do not make payments by that deadline shall owe an additional penalty of 25% of their pro rata share, and shall be subject to the contempt powers of the court. Garcia-Alvarez Defendant grower Defendants who do not make payment of their pro rata share by that deadline shall be responsible for any attorneys’ fees and costs associated with any attempts to collect from them after the deadline for payment has passed. The parties shall jointly request that a single judge hear all contempt proceedings.

For each season worked in the time period from 2000 to 2004 for any member of the NCGA, Garcia-Alvarez Plaintiffs (other than those who are de Luna Plaintiffs as well) who apply for reimbursement from the fund within the time period specified in ¶15 below shall receive a payment equal to the total of \$1.475 million divided by the total number of seasons worked between 2000 and 2004 by all plaintiff class members who file timely claims for reimbursement. De Luna Plaintiffs shall not receive additional damages pursuant to this paragraph.

7. **Worker Relief Fund.** – Defendant NCGA shall pay the sum of \$150,000 into a fund that shall be subject to the following conditions:

(a) Defendant NCGA shall pay that sum into an investment account, mutual fund, and/or other interest-generating account or instrument(s) that is mutually agreeable to the Defendant NCGA and the Farm Labor Organizing Committee, AFL-CIO (FLOC) within thirty (30) days of the date that the Court grants its final approval to this Settlement Agreement under Rule 23(c), N.C.R.Civ.P.;

(b) Defendant NCGA and FLOC shall designate a mutually agreeable accountant or other bookkeeper to maintain accounting/bookkeeping records relating to the income generated by the investment of any such money and any payment(s) made from any money in that fund.

(c) Upon mutual agreement of defendant NCGA and FLOC, that accountant, bookkeeper or such other person(s) or entity as defendant NCGA and FLOC may open, maintain, and/or close any checking and/or savings account(s) as may be useful for the allocation and/or distribution of any part or all of the principal, investment income, and/or interest that may be obtained and/or generated as a result of the payment and/or investment that is described in ¶7(a) above with the proviso that the identity of the financial institution in which any such checking and/or savings account must also be mutually agreeable to FLOC and Defendant NCGA;

(d) Upon mutual agreement of defendant NCGA and FLOC, that accountant, bookkeeper or such other person(s) or entity as defendant NCGA and FLOC may mutually designate in writing (written or electronically) may write draft(s) or negotiable instrument(s) in any amount(s) that may be mutually specified by both

defendant NCGA and FLOC with respect to any money maintained in that fund or in any checking and/or saving account(s) that may be maintained by that accountant or bookkeeper pursuant to ¶7(c) above with regard to any money in that account(s), fund or any income generated through the investment of the funds initially provided pursuant to this provision of the Settlement Agreement;

(e) The fund created by ¶7(a) above shall be used solely for the use and benefit of one or more members of one or both of the plaintiff classes. Potential uses of the monies in the fund could include, but are not limited to, return transportation expenses for members of the plaintiff class who need to return to Mexico before the end of their contract because of a family emergency, etc.;

f) On 24 hours notice (either written or electronically), any accountant or bookkeeper described in ¶7(b) above of this Settlement Agreement must allow a designated representative(s) of Defendant NCGA or FLOC to enter, inspect, and copy any records, file(s), document(s), or paper(s) that any such accountant or bookkeeper has received in connection with that accountant's or bookkeeper's management of the funds that are described in ¶7(a) above.

8. Visa, Border Crossing, and Travel Expenses.—

(a) Members of the defendant classes who are not subject to the collective bargaining agreement (“CBA”) between the NCGA and the Farm Labor Organizing Committee (“FLOC”), and who employ H2A workers in 2006 and/or 2007 shall be free to contract or employ any person(s) or entity to obtain, recruit, or otherwise assist any such member of one or both of the defendant classes to recruit, hire, provide services to, or otherwise employ any worker under the H2A program. However, in the event that any

such member of one or both of the defendant classes does employ any H2A worker(s) in 2006 and/or 2007 they shall be subject to a consent order which provides that:

(i) Visa and visa interview expenses required to obtain an H2A visa for any worker to be employed by any such Defendant grower incurred by H2A workers shall be paid by such grower Defendants and shall not at any time be charged to a grower's H2A workers.

(ii) For 2006, each H2A worker who is jointly and/or individually employed by such Defendants and/or some other grower association other than the NCGA may be required to pay up to an \$80 "H2A fee" via payroll deduction by that other grower association or by such Defendant grower who directly employs that worker in North Carolina, so long as the amount deducted in any such workweek does not reduce the worker's net pay below \$5.15 per hour or the applicable minimum wage under the Fair Labor Standards Act and/or North Carolina Wage and Hour Act, whichever is higher. The deduction shall be specified on the worker's paycheck as "H2A fee." Any Defendant grower who elects to make any such wage deduction shall obtain the wage deduction authorization required under the North Carolina Wage and Hour Act with regard to any wage deduction of the type described herein.

(iii) Other than the \$80 "H2A fee" described in ¶18(a)(iii) above, for 2006, each such grower Defendant shall not charge or collect, directly or indirectly, any money or anything of value from any H2A worker(s) who is designated or accepted for sole or joint employment by any such grower Defendant(s). For 2006, no such grower Defendant shall knowingly contract with any agent(s) or

representative(s) including, but not limited to, any entity or person(s) that any such grower Defendant or any agent(s) or representative(s) of any such grower Defendant knowingly hires, uses, or employs to recruit or provide any services or information who charges or collects, directly or indirectly, any money or anything of value from any such worker other than the actual cost of any border crossing fee charged by the U.S. government and the actual cost of any bus fare from the place of recruitment to the U.S. Consulate in Mexico or to any such worker's first place of employment in the United States of America;

(iv) For 2007, each such grower Defendant shall not charge or collect, directly or indirectly, any money or anything of value from any H2A worker(s) who is designated or accepted for sole or joint employment by any such grower Defendant(s). For 2007, no such grower Defendant knowingly shall contract with any agent(s) or representative(s) including, but not limited to, any entity or person(s) that any such grower Defendant or any agent(s) or representative(s) of any such grower Defendant knowingly hires, uses, or employs to recruit or provide any services or information who charges or collects, directly or indirectly, any money or anything of value from any such workers other than the actual cost of any border crossing fee charged by the U.S. government and the actual cost of any bus fare from the place of recruitment to the U.S. Consulate in Mexico or to any such worker's first place of employment in the United States of America ;

(v) Such Defendants shall reimburse H2A workers for the cost of the border crossing expenses that each H2A worker must pay to enter the USA and the actual cost of transportation to North Carolina from the place of recruitment on or before the first payday for the first workweek the worker is in North Carolina.

9. Escape Clause. The provisions of ¶8(a)(i)-(v) shall not apply to any of the defendant class members who are described in ¶8(a) above in 2007 if the holding under 29 U.S.C. § 206 in de Luna, et al. v. North Carolina Grower's Association, et al., 338 F.Supp.2d 649 (E.D.N.C. 2004), is overruled by a final decision of a North Carolina appellate court, a final decision of the Fourth Circuit, an amendment to the Fair Labor Standards Act, or a final rule promulgated under the Administrative Procedures Act that has not been enjoined, ruling that an H2A employee's payment of such expenses does not constitute a violation of the Fair Labor Standards Act. If this escape clause is triggered after the visa, border crossing, and travel expenses have been paid or reimbursed for 2007, no H2A worker who has received the benefit of any payment described in ¶8(a)(i)-(v) shall be required to make any repayment to any person or entity.

10. Costs of Class Notices. –Garcia-Alvarez Defendant NCGA shall pay the cost of printing and mailing or otherwise distributing all Court-ordered notices to the Garcia-Alvarez Plaintiff and Defendant classes, including a notice to the Plaintiff classes explaining the process for claiming damages. .

11. Garcia-Alvarez Notices to Plaintiff and Defendant Classes. The notice to Garcia-Alvarez Plaintiffs shall provide for a full release by participating workers of any claims which were asserted or could have been asserted related to payments the workers

made to come to the United States to work for the Defendants in 2000-2005, excluding any pending or potential grievance(s) that employee(s) of the NCGA and/or the NCGA grower members may have under the CBA relating to any expenses that employee(s) may have paid in excess of the normal and customary charges by Manpower of the Americas or any other recruiters used by Manpower of the Americas. So long as that arrival in North Carolina is expected on or before 15 March 2006, the Garcia-Alvarez Plaintiff class notice shall be provided by the Garcia-Alvarez Defendants to all current NCGA workers at the time of their arrival in North Carolina in 2006 (either hand delivered on the NCGA bus or delivered with some final mailing to those using their own outbound transportation). The notice shall be printed in Spanish only. The Garcia-Alvarez Defendants shall mail a copy of the notice to those workers not expected to arrive in North Carolina by 15 March 2006 at the time of the notice within ten (10) days of the date on which the Court files any Order giving its final approval of this settlement pursuant to Rule 23(c), N.C.R.Civ.P.. Garcia-Alvarez Plaintiffs shall waive their rights under the CBA to have a FLOC representative present if they sign an opt-out form or make objections to the settlement of these lawsuits.

12. **Stipulated Order and Joint Memoranda.** The parties shall submit a joint memorandum for preliminary and final approval of the settlement agreement to the U.S. District Court for the Eastern District of North Carolina and to Wake County Superior Court, along with a stipulated Order based upon the above agreed upon provisions.

13. **Notice to Claim Damages.** After final approval of this Settlement by the Wake County Superior Court, and after June 30, 2006, Garcia-Alvarez Defendants shall mail a notice to claim damages to each Garcia-Alvarez Plaintiff. Garcia-Alvarez Defendants

shall only mail that notice to Garcia-Alvarez Plaintiffs who were not employed by the NCGA between January 1 and July 31, 2006, and only those Plaintiffs shall be eligible to apply for damages. Garcia-Alvarez Plaintiffs receiving the notice must send in a form requesting that they be paid damages. Garcia-Alvarez Plaintiffs who receive the notice shall be given 180 days to apply for payment of damages, from the date the notice was initially mailed to class members. If a Garcia-Alvarez Plaintiff accepts payment as part of the class remedy in Garcia-Alvarez, then he/she shall not be eligible for employment in 2006, with the exception of the de Luna Plaintiffs, who shall remain eligible for employment in 2006.

14. **Grower Liability Spreadsheet.** – Garcia-Alvarez Defendants shall prepare a spreadsheet of the amount of liability for each grower Defendant who is a named grower defendant or member of one or both of the defendant classes certified in Garcia-Alvarez. The base liability of each named grower defendant and member of one or both of the Garcia-Alvarez defendant classes shall be equal to the total number of different H2A workers employed by that defendant during the 2000-05 seasons divided by the total number of different H2A workers employed by all NCGA members during the 2000-05 seasons, multiplied by \$1.475 million with the following exceptions:

- (a) If an H2A worker was employed by more than one grower Defendant during a particular season, the method of calculating base liability as described in ¶14 above shall be adjusted as follows:
 - (i) If an H2A worker, other than a short term or temporary worker, was employed by more than one grower, the employer shall share equally in the base liability.

(ii) If an H2A worker is a short term or temporary worker, the employing grower or growers of the short term or temporary worker will be responsible for twenty-five percent (25%) of the base liability and the remaining grower or growers will be responsible for seventy-five percent (75%) of the base liability.

(iii) A short term or temporary worker is defined as a worker who is so designated by the NCGA consistent with past billing practices for the provision of H2A workers.

This formula shall be employed for any financial obligations incurred by the Garcia-Alvarez grower Defendants under this Settlement Agreement, including those damages referred to in ¶14 above. Each Garcia-Alvarez Defendant shall pay the specific amount of his/her damages owed into an interest bearing account, (jointly controlled by the parties, through their respective counsel). Garcia-Alvarez grower Defendants who do not make payment of their pro rata share by that deadline shall be responsible for any attorneys' fees and costs associated with any attempts to collect from them after the deadline for payment has passed. Each individual grower Defendant shall be subject to the civil contempt powers of the Wake County Superior Court. The Garcia-Alvarez Plaintiffs will have the right to bring an individual civil contempt action in Wake County Superior Court against any individual Garcia-Alvarez grower Defendant who fails to pay his or her share of the liability as outlined in this paragraph by the deadline specified in ¶6. The parties stipulate that the Honorable Howard J.

Manning, Jr., Resident Superior Court Judge, shall have continuing jurisdiction to hear any such contempt proceedings.

15. **Distribution of Garcia-Alvarez Damages.** – Garcia-Alvarez Defendants shall pay the cost of distributing the damages to those members of the Garcia-Alvarez plaintiff classes who apply for, and are eligible for, damages under the terms of this Settlement Agreement. Defendants shall establish a Trust (*Fideicomiso*) with a major Mexican bank (“Bank”) that is mutually agreeable to the parties. This bank shall provide sufficient local branches that a branch will be available to most Garcia-Alvarez Plaintiffs within a reasonable travel distance of their home. The Trust shall establish an account in the Bank.

a) Each Garcia-Alvarez Plaintiff entitled to damages under this Settlement Agreement shall be entitled to receive those damages by going to a local branch of the Bank, presenting an official identification such as Mexican Voter Identification Card, passport and/or Mexican Military Service Identification Form, as required by applicable Mexican Banking Regulations, and receiving the full amount of damages corresponding to such worker, with no deductions for fees, service charges, etc. Bank fees shall be paid out of the accumulated interest, but any Bank fees in excess of the amount of interest shall be paid by Defendants. Claims shall then be paid in accord with the method stated in ¶ 6 above.. Defendants shall obtain and provide a monthly accounting from the Bank to plaintiffs’ counsel within 15 days from the date that each such accounting is provided to the NCGA and/or its representative(s).

In the event no reasonable and satisfactory method of distribution can be agreed upon in a timely manner by the parties via the Bank, Defendants shall still pay the cost of distribution to Garcia-Alvarez Plaintiff class members at no cost to those workers.

16. **Attorneys' Fees and Costs.** – De Luna Defendant NCGA shall pay Plaintiffs' attorneys for the number of hours and the rates set forth in Plaintiffs' fee petitions in de Luna, filed June 9, 2005, but shall not pay the requested enhancement. De Luna Defendant NCGA shall also pay for the costs and expenses set forth in that petition.

- a) De Luna Defendant NCGA shall pay for all de Luna time accumulated up to July 29, 2005 within 30 days of the U.S. District Court for the Eastern District of North Carolina's preliminary approval of the settlement in de Luna .
- b) Garcia-Alvarez Plaintiffs shall submit Garcia-Alvarez time records up to July 29, 2005 to the Garcia-Alvarez Defendants, and Garcia-Alvarez Defendants shall pay at the rates set forth in the de Luna fee petitions, within 30 days of the Court's final approval of the settlement in Garcia-Alvarez. Within 30 days of final approval of the Garcia-Alvarez settlement by the court, Garcia-Alvarez Defendants shall also pay for all time accumulated from July 29, 2005 through the date of that final approval at the rates set forth in the de Luna fee petition.

17. **Additional Fees and Expenses.** Time and expenses claimed in ¶16 above which were not submitted to Defendants by June 9, 2005 shall be paid as follows:

- a) Plaintiffs shall submit itemized time records on a bimonthly basis to Defendants and, with the exception of any time entry or entries that the

Defendants consider to be unreasonable, the Defendants shall pay within 30 days of receipt for all time recorded on those itemized time records at the same rates in the de Luna fee petition.

- b) In the event that that the Defendants consider a particular time entry or entries in an itemized time record to be unreasonable, they shall pay for all time entries that they do not contest, and include with that payment some written statement of what time entry or time entries they consider to be unreasonable and why with that payment within the time period specified in ¶17(a) above;
- c) Upon Plaintiffs' receipt of a fee payment for less than the full time billed **and** the written statement described in ¶17(b). above, Plaintiffs' counsel shall be required to confer with Defendants' counsel in good faith in an effort to resolve the dispute. If Plaintiffs' counsel is not provided with the written statement described in ¶17(b) above, the Defendants' failure to provide that written statement within that 30-day time period shall constitute a waiver of their right to contest a time entry as unreasonable for whatever reason;
- d) Upon receipt of the written statement described in ¶17(b). above, Plaintiffs' counsel shall be required to consult with Defendants' counsel in good faith in the 30-day following receipt of that same written statement. If those good faith efforts at consultation are not successful, Plaintiffs' counsel may move the court for an order requiring the Defendants to pay the contested fees;
- e) In the event that the Court determines that the Defendants' refusal to pay the contested fees was without a good faith basis in law or fact, the Defendants shall be responsible for paying for the attorney time expended by Plaintiffs'

counsel in the preparation, filing, and/or argument of any motion to the Court to obtain an order requiring the Defendants to pay those contested fees.

18. **Unclaimed Damages.** All unclaimed money damages remaining in the fund referred to in ¶6 (excluding interest and penalties listed in ¶¶6, 15, and 19) after an 180 day application period referred to in ¶13 shall be reallocated among those plaintiff class members who made a timely claim within the application period specified in ¶13 above pursuant to the method that is described in ¶6 above.

19. **Interest and Penalties.** - Any money paid by Garcia-Alvarez Defendants in this settlement shall be paid to a separate, jointly controlled interest bearing account, with interest divided equally among two 501(c)(3) organizations (Campaign for Migrant Worker Justice, Inc. and the North Carolina Chapter of National Farmworker Ministry), after all damages have been paid to Plaintiffs under the terms of this Settlement Agreement and the amount of any bank fees has been deducted from the interest earned. Any penalties paid by grower defendants as outlined in ¶6 and not used to pay damages owed to plaintiffs shall be divided among these charities.

20. **Continuing Jurisdiction** - The parties shall jointly request that the Honorable Resident Superior Court Judge Howard Manning, Jr. assume and retain continuing jurisdiction over this action for purposes of any motion, action or proceeding that may be brought by the named plaintiffs, any member of one or both of the plaintiff classes, and named defendant(s), and/or any member of one or both of the defendant classes to enforce the obligation(s) of any named plaintiff(s), any member of one or both of the plaintiff classes, any named defendant(s), and/or any member(s) of one or both of the defendant classes to fully and timely comply any provision(s) or requirement(s) of any

consent decree or order that may be entered pursuant to the terms of this Settlement Agreement.

21. **Press Releases.** The parties from each case shall not send any press release to the news media regarding the settlement. However, the parties may publicize this settlement on their respective websites, as well as in any information provided to funders, members and supporters.

22. **Dismissal.** The parties shall jointly request that the U.S. District Judge Malcolm Howard, Eastern District of North Carolina, not approve the de Luna settlement and not issue a final Order until the Garcia-Alvarez settlement is approved by a Wake County Superior Court Judge. After a final order is issued and all damages have been paid by the de Luna Defendants, the de Luna parties shall file a Stipulation of Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure, dismissing all claims against the de Luna Defendants in this lawsuit. The Garcia-Alvarez parties shall file a Stipulation of Dismissal pursuant to Rule 41 of the North Carolina Rules of Civil Procedure, dismissing all claims against the Garcia-Alvarez Defendants in this lawsuit after the Settlement Agreement has been finally approved, the time period for Plaintiffs to claim their damages pursuant to ¶14 has expired, and the time for Defendants to dispute any payment of attorney's fees pursuant to ¶18 has expired.

23. **Binding.** It is understood and agreed by the parties that this Agreement shall be binding and inure to the benefit of the Plaintiffs and Defendants and their respective, heirs, representatives, successors and assigns.

24. **Authority.** Plaintiffs' Counsel and Defendants' Counsel each affirm that they have full authority to bind the respective parties whom they represent in this action and to enter into this Agreement on behalf of those parties.

25. **Modification.** This Agreement may be modified only by a written document signed by all parties that makes specific reference to this Agreement.

26. **Multiple Originals and Counterparts.** This Agreement may be executed in multiple originals and separate counterparts each of which shall constitute an original and all of which taken together shall constitute the whole Agreement.

AGREED AND EXECUTED by the parties, acting by and through their respective counsel.

This the _____ day of _____, 2006.

COUNSEL FOR DEFENDANTS

COUNSEL FOR PLAINTIFFS

CONSTANGY, BROOKS & SMITH, LLC

LAW OFFICES OF ROBERT J. WILLIS

Date _____

Date _____

BY: _____

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