

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

_____)	
ROSALINO PEREZ-BENITES, et al.,)	
)	
Plaintiffs,)	
)	Case No. 1:07-cv-1048
v.)	
)	Judge Dawson
CANDY BRAND, LLC, et al.,)	
)	Class Action
Defendants.)	
_____)	

STIPULATION OF CLASS ACTION SETTLEMENT AGREEMENT

This Stipulation of Class Action Settlement Agreement (“Settlement”) is entered into by and between Defendants Candy Brand, LLC, Arkansas Tomato Shippers, LLC, Randy Clanton, Brooks Lisenbey, and Charles Searcy (collectively, “the Defendants”) and Plaintiffs Rosalino Perez-Benites, Luis Alberto Ascencio Vazquez, and Pascual Noriega Narvaez (collectively, the “Named Plaintiffs”), both individually and on behalf of the Fair Labor Standards Act (“FLSA”) opt-in Plaintiffs, and two classes totaling approximately 1,900 individuals certified by the Court on March 23, 2010, with respect to claims brought for breach of contract.

The Parties, each having received the benefit, advice, and representation of legal counsel of their own choice, and in exchange for good, sufficient and valuable consideration received and acknowledged and as more particularly described herein, do hereby execute and enter into this Settlement in order to resolve all of the disputes, claims and causes of action that were asserted in this action or that arise from the facts alleged in the First Amended Complaint, as described herein and subject to the recitals, terms and conditions set forth below.

RECITALS

1. Defendant Candy Brand, LLC was a grower and packer of tomatoes that employed the Named Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 Class Members between 2003 and 2007. Defendants Arkansas Tomato Shippers, LLC, Randy Clanton, Brooks Lisenbey, and Charles Searcy were owners and/or managers of Candy Brand, LLC during all or part of the certified Class period. The Court has determined that Defendants operated as joint employers of the Named Plaintiffs, the FLSA opt-in Plaintiffs, and the Rule 23 Class Members.

2. To fill their manpower requirements, the Defendants sought the importation of foreign nationals to perform work on a seasonal or temporary basis pursuant to H-2A work visas, in accordance with the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(H)(ii)(a). After being admitted to enter the United States, Defendants employed the Named Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 Class Members within the meaning of 29 U.S.C. § 203(g) and the H-2A regulations. The Plaintiffs filed their original complaint on June 1, 2007, on their own behalf and on behalf of proposed classes of more than 1,900 similarly situated farm laborers. Plaintiffs filed a First Amended Complaint on December 9, 2007. Plaintiffs filed and have pursued this action to recover unreimbursed expenses associated with obtaining H-2A visas, as well as unpaid wages and liquidated damages pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, and for breach of the H-2A work contracts. The action has been certified as a FLSA collective action with respect to the FLSA claims, and a Rule 23 class action with respect to the breach of contract claims.

3. In their First Amended Complaint, Plaintiffs alleged that Defendants violated the FLSA and their contracts by taking *de facto* wage deductions for Plaintiffs’ and other H-2A workers’ pre-employment visa, transportation and related expenses; failing to pay Plaintiffs and

other packing shed workers overtime wages; failing to pay Plaintiffs and other H-2A workers proper transportation and subsistence at the 50% period of their contracts and upon completion of their contracts; and failing to pay Plaintiffs and other field workers at the Adverse Effect Wage Rate for all hours worked.

4. On October 13, 2008, Plaintiffs filed a motion to certify the case as a collective action pursuant to 29 U.S.C. § 216(b) for pursuit of their FLSA claims.

5. On October 31, 2008, the Court conditionally certified the case as a collective action under the FLSA. The FLSA Class consists of all non-supervisory workers employed by Defendants at any time between June 1, 2004, and the date of judgment in this matter who were employed as H-2A temporary agricultural workers, or who were employed in the Defendants' packing shed operations, irrespective of visa status. After conditional certification, counsel for Plaintiffs mailed a court-approved Notice to potential FLSA opt-in Plaintiffs. At the close of the FLSA opt-in period, 96 individuals in addition to the three named Plaintiffs, filed consent forms to join the FLSA collective action. Subsequently, two of those individuals withdrew their consent to sue forms, leaving 94 individuals plus the three named Plaintiffs as the FLSA class members. *See* Exhibit A (list of named Plaintiffs and FLSA opt-in Plaintiffs).

6. On November 26, 2008, Plaintiffs filed a motion to certify the case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for pursuit of their breach of contract claims.

7. On March 23, 2010, the Court granted Plaintiffs' motion and certified two Classes. Class I consists of "[a]ll nonsupervisory workers employed by Defendants at any time between 2003 and the date of judgment in this matter who were employed pursuant to H-2A temporary work visas." Class II consists of "[a]ll nonsupervisory workers employed in the

Defendants' packing shed operations at any time between 2003 and the date of judgment in this matter—irrespective of visa status—who did not receive overtime pay during workweeks when they worked more than forty (40) hours.” Class counsel later mailed court-approved Class Notice to approximately 1,425 persons identified in Defendants' records as having met the class definitions. Class counsel was unable to mail notices to additional individuals who are members of the certified classes due to lack of contact information. The Notice informed class members of the lawsuit and provided them an opportunity to exclude themselves by completing a Class Exclusion Form enclosed with the Notice and filing it with the Court.

8. By the expiration of the Class Notice period, twenty-six (26) of the approximately 1,425 persons to whom notice was mailed had filed the Class Exclusion Form provided with the Class Notice. *See* Exhibit B (list of individuals excluded from class action and this Settlement).

9. During the nearly four-year pendency of this lawsuit, the Parties engaged in extensive discovery, including depositions of all three (3) individual Defendants, Rule 30(b)(6) depositions of the two (2) corporate Defendants, eight (8) FLSA opt-in Plaintiffs and Rule 23 Class Members, and six (6) third parties; comprehensive discovery of Defendants' payroll, accounting, and electronic records; and additional document discovery directed at both Plaintiffs and Defendants.

10. In March 2010, the parties participated in a full day of private mediation with an experienced neutral. However, they were unable to reach an agreement and proceeded with the completion of discovery and preparing motions for summary judgment.

11. The parties filed cross-motions for summary judgment with respect to all of the major legal issues in the case in July and August, 2010. On May 20, 2011, the Court entered a comprehensive Order granting Plaintiffs' motions for summary judgment and denying

Defendants' motions for summary judgment, leaving only a few issues remaining for trial.

12. Subsequent to the Court's May 20, 2011, Order on the summary judgment motions, the parties engaged in a number of discussions in an effort to settle this matter, culminating in this Settlement.

13. The Named Plaintiffs and Class Counsel believe that the Settlement reached with Defendants is fair, adequate, reasonable, and in the best interests of the Classes and the FLSA opt-in Plaintiffs.

NOW THEREFORE, in consideration of the foregoing recitals and prefatory phrases, and of the covenants and promises set forth in this Settlement and in exchange for other good, valuable, and sufficient consideration more specifically set forth in this Settlement and hereby acknowledged, the Named Plaintiffs—on behalf of themselves, the FLSA opt-in Plaintiffs, and the Classes—and the Defendants agree as follows:

I. TERMS OF SETTLEMENT

A. Payments and Settlement Fund.

1. Initial Payments.

On or before December 30, 2011, Defendants shall deliver certified checks made payable to the "Southern Poverty Law Center Client Trust Account" or electronically transfer funds to the Southern Poverty Law Center's Client Trust Account as follows:

- a. Brooks Lisenbey \$650,000.00
- b. Charles Searcy \$150,000.00.

The Southern Poverty Law Center will hold this \$800,000.00 in its Client Trust Account pending final approval of this Settlement by the Court and entry of a Judgment that becomes Final, as defined in Section I.L.

Once the Judgment becomes Final, the Southern Poverty Law Center will release \$750,000.00 of the above sums from its Client Trust Account to the Settlement Administrator to establish the Settlement Fund for the purpose of paying claims of the named Plaintiffs, FLSA opt-in Plaintiffs, Rule 23 Class Members, and the individual payments, as outlined in greater detail below. The remaining \$50,000.00 of the sums identified above—pending approval of the Court and entry of a Judgment that becomes Final—will be released from the Client Trust Account to the Southern Poverty Law Center and set aside to pay Settlement Administration Costs. All amounts paid by Defendants will be disbursed pursuant to this Settlement, and none of it will revert to the Defendants under any circumstances. This Settlement contemplates that the Settlement Fund will ultimately consist of a principal amount of \$1,212,500, plus 5% interest on the principal sum of \$462,500 calculated from January 1, 2012, to the date of payment. Specifically, the Settlement Fund should ultimately consist of the \$750,000 initial payment, the payment of \$437,500.00 plus 5% interest to be paid by Defendant Randy Clanton on or before September 3, 2012, as outlined in Section I.A.2, and the payment of \$25,000.00 plus 5% interest to be paid by Defendant Charles Searcy on or before September 3, 2012, as outlined in Section I.A.2.

The failure of either Defendant Brooks Lisenbey or Charles Searcy to pay the amount as listed above on or before December 30, 2011, will be considered a breach of this Settlement and result in a request that the Court enter judgment against all Defendants, jointly and severally, in the amount of \$1,939,672.78 with respect to the Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 class members, plus an additional amount totaling \$486,369.75 in costs and attorneys' fees payable to the Southern Poverty Law Center. In the event of a failure to pay pursuant to this Section I.A.1. that results in the entry of judgment against all Defendants, the remaining payment

provisions contained in Sections I.A.2. and I.A.3., the security provisions contained in Section I.A.4., and the consequences of breach of the payment provisions contained in Section I.A.5. shall be of no further force and effect.

If Defendant Brooks Lisenbey or Charles Searcy fail to pay the amount as listed above on or before December 30, 2011, then absent a separate agreement between the Plaintiffs and Defendant Brooks Lisenbey or Charles Searcy to accept the funds they have paid in exchange for marking any judgment against them as satisfied or partially satisfied, any funds paid pursuant to Section I.A.1. above will be returned to the individual who made their payment, on or before January 15, 2012.

2. Subsequent Payments by September 3, 2012.

On or before September 3, 2012, Defendants shall deliver to the Southern Poverty Law Center certified checks made payable directly to the Settlement Fund, or electronically transfer funds directly to the Settlement Fund as follows:

- | | | |
|----|----------------|--|
| a. | Randy Clanton | \$437,500.00, plus 5% simple interest from January 1, 2012 until date of payment |
| b. | Charles Searcy | \$25,000.00, plus 5% simple interest from January 1, 2012 until date of payment. |

Class Counsel will provide Defendants with more detailed information on or before August 15, 2012 with respect to the name on any certified checks to be paid to the Settlement Fund and/or electronic fund transfer information for the Settlement Fund.

3. Subsequent Payments by September 3, 2013.

On or before September 3, 2013, Defendants shall deliver certified checks made payable to the “Southern Poverty Law Center” or electronically transfer funds to the Southern Poverty Law Center as follows:

- a. Randy Clanton \$275,000.00, plus 5% simple interest from January 1, 2012 until date of payment.
- b. Charles Searcy \$25,000.00, plus 5% simple interest from January 1, 2012 until date of payment.

4. Security for Payment of Sums in Sections I.A.2. and I.A.3. and Consequences for Failure to Cooperate Fully with Finalizing Security Documents by January 31, 2012.

Defendant Randy Clanton's Payments pursuant to Sections I.A.2. and I.A.3. shall be secured by mortgages and/or other security instruments related to all real property he owns by himself or jointly with any other individual or entity, the packing shed facility in Hermitage, Arkansas owned by Clanton Farms, LLC, and the personal property associated with the packing shed facility in Hermitage, Arkansas—personal property whose ownership is currently in dispute. Defendant Randy Clanton has disclosed to the Plaintiffs that Plaintiffs' would be second lienholders with respect to the real property owned by Defendant Randy Clanton by himself or jointly with any other individual or entity, with the exception of his home and the surrounding five acres of land, in which case the Plaintiffs would be third lienholders. Defendant Randy Clanton has also disclosed to Plaintiffs that Plaintiffs would be third lienholders with respect to the real property comprising the packing shed facility in Hermitage, Arkansas that is owned by Clanton Farms, LLC, as well as the personal property associated with the packing shed facility. Defendant Randy Clanton has also disclosed to Plaintiffs that the second lien on the real property comprising the packing shed facility in Hermitage, Arkansas that is owned by Clanton Farms, LLC, as well as the personal property associated with the packing shed facility, is in the approximate amount of \$300,000 and may not be increased. Defendant Randy Clanton understands that Plaintiffs' have relied upon these disclosures being accurate in entering into this Settlement, and that their position as only second lienholders, or third

lienholders with respect to certain property, are material terms of this Settlement with respect to Defendant Randy Clanton that, if they were not accurate, the Plaintiffs would not enter into this Settlement. The mortgages and/or other security instruments and any related documents securing Defendant Randy Clanton's payment are still being prepared and, upon completion, will be filed with the Court as part of this Settlement and be considered part of this Settlement. If a title search reveals that Plaintiffs will not be second or third position lienholders with respect to the real property as discussed above based on the disclosures of Defendant Randy Clanton, or if the real property becomes further encumbered to someone other than the Plaintiffs or the Southern Poverty Law Center between December 16, 2011, and a date within ten (10) days of finalizing all mortgages and/or other security instruments related to the real property, that shall be considered a breach of this Settlement and result in a request that the Court enter judgment against Defendants Randy Clanton, Candy Brand, LLC, and Arkansas Tomato Shippers, LLC, jointly and severally, in the amount of \$1,939,672.78 with respect to the Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 class members, plus an additional amount totaling \$486,369.75 in costs and attorneys' fees payable to the Southern Poverty Law Center. Defendants may only contest the judgment amount identified above to the extent of any payments made by any Defendant pursuant to Sections I.A.1., I.A.2., and I.A.3.

Failure by Defendant Randy Clanton or any individual or entity with whom he owns real property individually or jointly, or failure by Clanton Farms, LLC to cooperate fully to complete all steps necessary to finalize any mortgages and/or other security instruments and any related documents prior to January 31, 2012, shall be considered a breach of this Settlement and result in a request that the Court enter judgment against Defendants Randy Clanton, Candy Brand, LLC, and Arkansas Tomato Shippers, LLC, jointly and severally, in the amount of \$1,939,672.78 with

respect to the Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 class members, plus an additional amount totaling \$486,369.75 in costs and attorneys' fees payable to the Southern Poverty Law Center. Defendants may only contest the judgment amount identified above to the extent of any payments made by any Defendant pursuant to Sections I.A.1., I.A.2., and I.A.3.

The failure of Defendant Brooks Lisenbey and/or any entity he owns or operates, or any entity that Defendant Lisenbey claims to own an interest in the personal property associated with the packing shed facility to cooperate fully to complete all steps necessary to finalize any security instruments related to the personal property associated with the packing shed facility in Hermitage, Arkansas—personal property whose ownership is currently in dispute—prior to January 31, 2012, shall be considered a breach of this Settlement and result in a request that the Court enter judgment against Defendant Brooks Lisenbey, Candy Brand, LLC, and Arkansas Tomato Shippers, LLC, jointly and severally, in the amount of \$1,939,672.78 with respect to the Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 class members, plus an additional amount totaling \$486,369.75 in costs and attorneys' fees payable to the Southern Poverty Law Center.

Defendants may only contest the judgment amount identified above to the extent of any payments made by any Defendant pursuant to Sections I.A.1, I.A.2, and I.A.3.

Defendant Charles Searcy's payment pursuant to Sections I.A.2 and I.A.3. above shall be secured by a mortgage on real property owned by Drew Acceptance Company, Inc. The mortgage and related documents securing Defendant Charles Searcy's payment are still being prepared and, upon completion, will be filed with the Court as part of this Settlement and be considered part of this Settlement agreement. Failure by Defendant Charles Searcy, or failure by Drew Acceptance Company, Inc. to cooperate fully to complete all steps necessary to finalize any mortgage and/or related documents prior to January 31, 2012, shall be considered a breach

of this Settlement and result in a request that the Court enter judgment against Defendants Charles Searcy, Candy Brand, LLC, and Arkansas Tomato Shippers, LLC in the amount of \$1,939,672.78 with respect to the Plaintiffs, FLSA opt-in Plaintiffs, and Rule 23 class members, plus an additional amount totaling \$486,369.75 in costs and attorneys' fees payable to the Southern Poverty Law Center. Defendants may only contest the judgment amount identified above to the extent of any payments made by any Defendant pursuant to Sections I.A.1, I.A.2, and I.A.3.

5. Consequences of Breach of Payment Provisions in Sections I.A.2. and/or I.A.3.

Following completion of all mortgage and/or security instruments and related documents as contemplated in Section I.A.4. above, the failure by Defendant Randy Clanton to make payment pursuant to Sections I.A.2. and/or I.A.3. shall be considered a breach of this Settlement and result in a request that the Court enter judgment against Defendants Randy Clanton, Candy Brand, LLC, and Arkansas Tomato Shippers, LLC, jointly and severally, in the amount of \$890,625.00, plus 5% interest from January 1, 2012 until date of payment of the judgment, less any credits for amounts paid by Defendant Randy Clanton individually pursuant to Sections I.A.2 and I.A.3. of this Settlement prior to the breach, plus costs and attorneys' fees at the rate of \$250 per hour associated with Plaintiffs' efforts to cure the default and/or to move for entry of judgment, any subsequent proceedings necessary to enforce and collect the judgment, and/or any efforts to foreclose or otherwise execute on any mortgages and/or security interests being provided to secure the payments required by Sections I.A.2. and I.A.3. above. Of the \$890,625.00 identified above, \$546,875.00, plus 5% interest from January 1, 2012, shall be considered part of the Settlement Fund, with any remaining balance, plus 5% interest from January 1, 2012, being considered costs and attorneys fees payable to the Southern Poverty Law

Center.

Following completion of the mortgage documents as contemplated in Section I.A.4. above, failure by Defendant Charles Searcy to make payment pursuant to Sections I.A.2. and/or I.A.3. shall be considered a breach of this Settlement and result in a request that the Court enter judgment against Defendants Charles Searcy, Candy Brand, LLC, and Arkansas Tomato Shippers, LLC in the amount of \$62,500.00, plus 5% interest from January 1, 2012 until date of payment of the judgment, less any credits for amounts paid by Defendant Charles Searcy individually pursuant to Sections I.A.2 and I.A.3. of this Settlement prior to the breach, plus costs and attorneys' fees at the rate of \$250 per hour associated with Plaintiffs' efforts to cure the default and/or to move for entry of judgment, any subsequent proceedings necessary to enforce and collect the judgment, and/or any efforts to foreclose or otherwise execute on the mortgage being provided to secure the payments required by Sections I.A.2. and I.A.3. above. Of the \$62,500.00 identified above, \$31,250.00, plus 5% interest from January 1, 2012, shall be considered part of the Settlement Fund, with any remaining balance, plus 5% interest from January 1, 2012, being considered costs and attorneys fees payable to the Southern Poverty Law Center.

The parties to this Settlement stipulate that the Court shall have jurisdiction to enforce the terms of this Settlement, including authority to enter judgment in favor of Plaintiffs and against any defaulting party(ies).

B. Costs and Attorneys' Fees.

Subject to the approval of the Court, Defendants will pay Class Counsel costs and attorneys' fees associated with the prosecution of this action in the principal amount of \$300,000.00, plus interest. This figure does not include the \$50,000.00 that will be set aside for

the costs of Settlement Administration from the initial payment of \$800,000.00 as outlined in Section I.A.1. above. Class Counsel will not seek costs and attorneys' fees in excess of the principal amount of \$300,000.00, and Defendants will not oppose Plaintiffs' request for costs and fees. If the Court approves costs and fees for Class Counsel in an amount less than \$300,000.00, any difference (i.e. the remaining balance) will be required to be paid by the Defendants directly to the Settlement Fund. Under no circumstances will the amounts to be paid below revert to the Defendants. This Settlement contemplates that Class Counsel's costs and attorneys' fees of \$300,000.00, plus interest, will be comprised of the payments to be made by Randy Clanton and Charles Searcy as outlined in Section I.A.3. above.

C. Settlement Administration Costs.

As outlined above, \$50,000 of the initial \$800,000.00 in payments made by the Defendants will be set aside and used at the discretion of Class Counsel to pay costs associated with the administration of the Settlement Fund, including, but not limited to, costs associated with sending notices and/or otherwise notifying Class Members of this Settlement, all costs and fees associated with 1-800 calls from Class Members placed to Class Counsel regarding this Settlement, all costs and fees associated with locating Class Members to assist them in filing claims, all costs and fees associated with contacting and/or locating FLSA opt-in Plaintiffs and Class Members (including costs related to any agents hired by Class Counsel) to provide them their Settlement payments, as well as any expenses to be paid to the Settlement Administrator. Any portion of the \$50,000 Settlement Administration Costs that remains unused after all Claims have been paid shall be transferred to the Southern Poverty Law Center's general account as compensation for its time spent administering the Settlement Fund.

D. Notice of Default; Waiver of Right to File Bankruptcy Petition For Limited Time.

In the event that one or more of the Defendants fail to make any of the payments as set forth above in Sections I.A.2 and/or I.A.3., Plaintiffs shall provide said Defendant(s) and any individuals or entities who have pledged security on behalf of the defaulting Defendant(s) with written notice of non-compliance with the Settlement payment provisions and provide them 10 business days from the date of the written notice to cure the defect. Defendants and any individuals or entities who pledge security on their behalf agree that any written notice to be provided pursuant to this section will be sent via email and U.S. mail in accordance with Section V.11. below, and/or to any other person or entity they designate in writing to Class Counsel to receive such notices. In the event that the payment default is not cured within 10 business days of the date of the written notice, Plaintiffs may immediately begin proceedings related to any security interests related to the defaulting Defendant(s) and may also move the Court for entry of judgment.

All Defendants agree that they will not file a bankruptcy petition within ninety-one (91) days following their payment of the amounts set forth in Section I.A. above. The filing of a bankruptcy petition by any or all of the Defendants, or any or all of the individuals or entities providing security for the payment of the amounts set forth in Section I.A., will not relieve the non-filing Defendant(s) or the non-filing individuals or entities providing security from the payment obligations as outlined in Sections I.A., and shall not prevent Plaintiffs from seeking the entry of judgment against any or all of the non-filing Defendant(s) and/or taking any actions with respect to the security provided by the non-filing Defendant(s) and/or the individuals or entities providing security for the

payment of the amounts set forth in Section I.A.

E. Appointment of Settlement Administrator.

The Parties will ask the Court to appoint Settlement Services, Inc., a qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Settlement with respect to the performance of its duties. The Settlement Administrator will open and administer an interest-bearing account or accounts (“Settlement Fund Account(s)”) approved by Class Counsel with a unique Tax Payer Identification Number. The monetary payments described above in section I.A. will be transferred into this Settlement Fund Account(s) upon final approval of the Court and entry of a Judgment that becomes Final. The Settlement Fund Account(s) will constitute a qualified settlement fund within the meaning of Treasury Regulations §§ 1.468B-1, et seq., and it will be created, managed, and disbursed by the Settlement Administrator under the supervision and at the direction of Class Counsel. Defendants shall hereby be deemed to have made an election under Section 468B of the Revenue Code to have the Settlement Fund treated as a “qualified settlement fund.” Defendants shall timely furnish a statement to the Settlement Administrator that complies with Treasury Regulation § 1.468B-3(e) and shall attach a copy of the statement to its federal income tax return that is filed for the taxable year in which Defendants make the required payments. Defendants will have no responsibilities or liabilities with respect to the Settlement Fund Account(s), its administration, or distribution therefrom.

In addition to the above, the Settlement Administrator’s duties shall include responsibility for all tax reporting, tax withholding, and tax withholding payments to appropriate governmental agencies associated with payments from the Settlement Fund to

the Named Plaintiffs, the FLSA opt-in Plaintiffs, and the Class Members. In association with these duties, the Settlement Administrator will calculate the employers' share of taxes (FICA, FUTA, SUTA) due on any payments designated as wages made to the named Plaintiffs, FLSA opt-in Plaintiffs, and the Class Members who file Claim Forms. Upon the close of the Claims Period, the Settlement Administrator shall inform the Defendants of the amount of the employer's share of taxes in writing by sending the same by email and regular mail to the Defendants in accordance with Section V.11. below, and the Defendants will pay such amount into the Qualified Settlement Fund within ten (10) business days of the date of the notification by the Settlement Administrator. Defendants' obligation to pay the employer's share of taxes is in addition to the amounts Defendants have agreed to pay pursuant to the preceding sections, and they shall be jointly and severally liable for the payment of these amounts.

The Settlement Administrator will provide Class Counsel an invoice for their services on a monthly basis.

F. Notice to Class Members of Class Action Settlement.

Within 10 business days of the later of Defendants' compliance with the payment provisions outlined in Section I.A.1. or preliminary approval by the Court of this Settlement and the Notice and Claim Form, Class Counsel will mail the attached Notice of Class Action Settlement and Claim Form (attached hereto in English as Exhibit C) in Spanish to each of the Class Members whose last known address is in Mexico, and in Spanish and English to each of the Class Members whose last known address is in the United States. The Notice of Class Action Settlement describes this litigation, the settlement terms, how to file a Claim, the procedure for a class member to object to the proposed settlement and/or attend the fairness

hearing scheduled by the Court, and the procedure to opt-out of this class action settlement.

Class Counsel will file a Notice with the Court upon completion of the mailing.

G. Notice Pursuant to the Class Action Fairness Act

Within 10 business days of Defendants' compliance with the payment provisions outlined in Section I.A., Defendants will, pursuant to the Class Action Fairness Act ("CAFA"), mail the notice and documents required by CAFA to the Attorney General of the United States and the appropriate state official in the states of Arkansas, Arizona, California, Georgia, Missouri, Mississippi, North Carolina, Oklahoma, Texas and Wisconsin. The Parties believe that no other state entities other than those identified above need to be notified of this Settlement pursuant to CAFA. Defendants shall file a Notice with the Court upon completion of the required CAFA mailings.

H. Claims Process.

The Notice of Class Action Settlement to be mailed upon preliminary approval by the Court will include a Claim Form.

(1) Notice and Claims Process.

The Claim Form will explain that the deadline for submitting claims for payment from the Settlement Fund will be nine (9) months from the date the Forms are mailed. All FLSA opt-in Plaintiffs and Class Members who submit valid claims at any time before the close of the Claims Period shall be considered "Claiming Class Members" and entitled to receive their full proportionate share of the Settlement Funds.

(2) Submission and Validation of Claims.

Class Counsel, and any Settlement Administrator or other third-party engaged for this purpose, shall be solely responsible for determining the appropriate methods for the submission

of claims and for reviewing and adjudging their validity. The large majority of FLSA opt-in Plaintiffs and Class Members live in rural areas of Mexico where incoming and outgoing mail service is slow and unreliable and the availability of fax and photocopying services may be limited or expensive. As such, Class Counsel shall be empowered to determine, in their reasonable judgment, (a) that confirmation of identity by telephone (*e.g.*, through the provision of personal information sufficient to verify identity), electronic mail or other means of written or oral communication is sufficient to validate a claim and/or (b) that a claim may be validated based on a writing other than the approved Claim Form.

The three named Plaintiffs will not be required to submit any Claim Forms, their participation as named Plaintiffs and class representatives being sufficient to establish a Claim, and they will automatically be considered “Claiming Class Members”.

Where a named Plaintiff, FLSA opt-in Plaintiff, or Class Member is deceased, upon receipt of proper identification and documentation of the payee’s interest, payment will be made to the class member’s estate or, in the event there is no estate, to the class member’s next of kin in the following priority: (1) spouse; (2) children; (3) parents; (4) siblings; and (5) other relatives.

I. Distribution of Payments from the Settlement Fund.

Class Counsel has calculated the total damages owed to each named Plaintiff, FLSA opt-in Plaintiff, and Class Member based on the violations of law established in the Court’s May 20, 2011, Order on the parties’ motions for summary judgment. Those figures were previously reviewed for accuracy by Jorge Rivero, Plaintiffs’ damages expert and a former official with the United States Department of Labor’s Wage and Hour Division. The Settlement Fund will be distributed based on those calculations, as follows:

(1) Individual Payments

In consideration for their commitment to the pursuit of the claims in this action on behalf of themselves and the Classes, and pending their submission of Claim Forms (with the exception of the three named Plaintiffs), \$48,000 of the Settlement Fund will be paid to the following individuals in the following amounts, reflecting the extent of their individual participation in the prosecution of this action:

Rosalino Perez Benites	\$5,000.00
Luis Alberto Ascencio Vazquez	\$5,000.00
Pascual Noriega Narvaez	\$5,000.00
Blas Burboa Leyva	\$3,000.00
Diego Arriaga Guzman	\$3,000.00
Maria Mireya Cortes Gonzales	\$3,000.00
Maria Elena Martinez Morales	\$3,000.00
Jose Dolores Ramirez Reyes	\$3,000.00
Jose Antonio Estrada Ascencio	\$3,000.00
Jacqulyon LaVerne Ware	\$3,000.00
Margarita Eloisa Plasensia	\$3,000.00
Juan Pablo Ascencio Vazquez	\$2,000.00
Alfonso Noriega Vazquez	\$2,000.00
Rogelio Cortes Gonzales	\$1,000.00
Estanislao Ramirez Reyes	\$1,000.00
Salvador Amezcua Sosa	\$1,000.00
Alejandro Julian Anselmo Torres	\$1,000.00
Lorenzo Gonzalez Gutierrez	\$1,000.00.

If one or more of the above-named individuals does not file a Claim Form by the submission deadline, then any amounts allocated above to him/her will revert to the Settlement Fund to be disbursed to the Claiming Class Members.

(2) FLSA Liquidated Damages

Each Claiming Class Member who was a FLSA opt-in Plaintiff and appears on Exhibit A will receive the full amount of the FLSA liquidated damages associated with moneys owed to him/her pursuant to the FLSA, as calculated by Class Counsel.

(3) Total Proportionate Shares.

Each Claiming Class Member's proportionate total share of the Settlement Fund will be calculated as follows:

- (a) Each Claiming Class Member will receive a proportionate share of the Settlement Fund that will consist of the \$750,000.00 initial payment, the payment of \$437,500.00 plus 5% interest to be paid by Defendant Randy Clanton on or before September 3, 2012, and the payment of \$25,000.00 plus 5% interest to be paid by Defendant Charles Searcy on or before September 3, 2012, minus the Individual Payments, minus the FLSA Liquidated Damages, plus any interest earned on the Settlement Fund Account(s) between the time it is established by the Settlement Administrator and the end of the Claim Period. Each Claiming Class Member's proportionate share of the Settlement Fund will be based upon the damages owed to them based on the Court's May 20, 2011, summary judgment order, as previously calculated by Class Counsel, in proportion to the damages owed to all other Claiming Class Members' based on the Court's May 20, 2011, summary judgment order, as previously calculated by Class Counsel.
- (b) A named Plaintiff or Claiming Class Member who disagrees with the damages calculated by Class Counsel must submit additional documentation to Class Counsel that would allow Class Counsel to further analyze the Claiming Class Member's work history with the Defendants and adjust their damage calculations accordingly. Objections and documentation must be submitted to Class Counsel and received by Class Counsel prior to the close of the Claim Period. The decision of Class Counsel with respect to any challenges to the damages calculations shall be final.

(4) Distribution of Settlement Fund Shares.

Class Counsel will provide the Settlement Administrator the list of named Plaintiffs, FLSA opt-in Plaintiffs, and Class Members entitled to receive payment from the Settlement Fund and the amounts they are to receive, as well as instructions on how the money will be disbursed and provided to the named Plaintiffs, FLSA opt-in Plaintiffs, and Class Members, most of whom reside in Mexico and are, therefore, unable to cash checks issued from a United States bank. The Settlement Administrator will make disbursement of funds from the Settlement Fund Account as directed by Class Counsel. Class Counsel will work with third parties to facilitate the coordination and delivery of the Settlement Funds to the named Plaintiffs, FLSA opt-in Plaintiffs, and Class Members, primarily through notifying

them that funds are available for their retrieval at a designated bank in Mexico, or at a Western Union location. Any Settlement Funds not collected by the named Plaintiffs, FLSA opt-in Plaintiffs, and/or the Class Members within 150 days of Class Counsel or their agents' first attempts to contact the individual named Plaintiff, FLSA opt-in Plaintiff, and/or Class Member to advise them of the availability of their Settlement Share shall revert back to the Settlement Fund Account for inclusion in the funds available and be considered "Residual Funds."

(5) Residual Funds.

- (a) Monies, if any, remaining in the Settlement Fund Account as a result of the accrual of interest on the Fund after the Settlement Shares were calculated and/or the funds that were not collected by the Class Members as outlined in section I.I.(4) above, will be used first to pay any claims submitted after the deadline described above in section I.H. but before December 31, 2012 ("Late Claims"). Late Claims will be paid only after the final distribution and will not be paid if no monies remain in the Fund after the final distribution.
- (b) If monies remain in the Settlement Fund Account after full satisfaction of all Late Claims, then they will be applied to pay costs incurred by Class Counsel in administering the Settlement, to the extent they exceed the funds provided for in Section I.C.
- (c) If monies still remain after the payment of all such costs, they shall be distributed to Farmworker Justice, Inc., a 501(c)(3), tax exempt organization that provides, among other things, free legal services to H-2A workers.

J. Nature of Settlement Funds.

The Parties to this Settlement acknowledge that the Class Members employed on H-2A visas paid, on average, \$500 per season in costs and fees associated with obtaining their H-2A visa and traveling to the United States to work for Defendants. The parties agree that payments to Class Members filing claims as part of this Settlement (and who were employed on H-2A visas) up to and including \$500 per work season are for the purpose of reimbursing those Class Members for the expenses they incurred to obtain their H-2A visas and travel to the United States to work for the Defendants. Based on this understanding, no taxes will be withheld or

paid by either Defendants or the Settlement Administrator with respect to payments to those Class Members up to and including \$500 per work season.

Payments to Class Members may include distribution of each Claiming Class Member's proportionate share of the interest income generated by the Settlement Fund Account(s). The Settlement Administrator will report this income to the appropriate taxing authorities and the class members, if necessary.

K. Retaliation Prohibited.

Defendants agree that neither they nor any of their agents will retaliate, directly or indirectly, in any manner, against any person because of his or her participation in the prosecution of this action or participation in the Claims Process, including but not limited to the named Plaintiffs and the FLSA opt-in Plaintiffs, the named Plaintiffs' and FLSA opt-in Plaintiffs' family members, declarants and/or witnesses who provided testimony in support of the lawsuit, or any other person who has cooperated or participated in the prosecution of this action. Defendants further agree that neither they nor any of their agents will discourage, directly or indirectly, in any manner, any Class Member from filing a Claim.

L. Effective Date.

This Settlement Agreement shall become effective after the Court approves it and enters a Judgment that becomes Final. "Final" means the last of the following dates, as applicable:

- (1) The last date on which a notice of appeal from the Judgment may be filed, and none is filed.
- (2) If a timely appeal from the Judgment is filed, the last of the following dates:
 - (a) The last date by which a petition for review by the United States Court of Appeals for the Eighth Circuit or the United States Supreme Court's decision affirming the Judgment may be filed, and none is filed;
 - (b) The last date by which a petition for a writ of *certiorari* to the United

States Supreme Court of a decision by the United States Court of Appeals for the Eighth Circuit affirming the judgment may be filed, and none is filed;

- (c) If a petition for review by the United States Court of Appeals for the Eighth Circuit, or a petition for a writ of *certiorari* to the United States Supreme Court, seeking review of the Judgment or of the United States Court of Appeals for the Eighth Circuit's decision on an appeal from the Judgment is timely filed, the date on which the highest reviewing court renders its decision denying the petition (where the immediately lower court affirmed the Judgment) or affirming the Judgment.

M. Mutual Releases.

- (1) Named Plaintiffs and FLSA opt-in Plaintiffs.

On the Settlement Effective Date, the Named Plaintiffs, individually and on behalf of the FLSA opt-in Plaintiffs, their attorneys, agents, successors, affiliates, heirs and assigns, fully, finally and forever release, discharge and hold harmless Defendants and their partners, directors, officers, employees, attorneys, agents and anyone acting or authorized to act on their behalf, including Randy Clanton Farms, Inc., from any and all claims and demands that were asserted in this case or arise from the facts alleged in Plaintiffs' First Amended Complaint related to the Fair Labor Standards Act. For purposes of this release, it is expressly acknowledged by all parties and Randy Clanton Farms, Inc. that the release only applies to those claims related to the 2003-2007 seasons in which Candy Brand, LLC was actively engaged in farming operations.

- (2) Named Plaintiffs and Rule 23 Class Members.

On the Settlement Effective Date, the Named Plaintiffs, individually and on behalf of the Rule 23 Classes, their attorneys, agents, successors, affiliates, heirs and assigns, fully, finally and forever release, discharge and hold harmless Defendants and their partners, directors, officers, employees, attorneys, agents and anyone acting or authorized to act on their behalf, including Randy Clanton Farms, Inc. from any and all claims and demands that were asserted or could

have been asserted in this case or arise from the facts alleged in Plaintiffs' First Amended Complaint. For purposes of this release, it is expressly acknowledged by all parties and Randy Clanton Farms, Inc. that the release only applies to those claims related to the 2003-2007 seasons in which Candy Brand, LLC was actively engaged in farming operations.

(3) Defendants.

The Defendants and Randy Clanton Farms, Inc., and their attorneys, agents, successors, affiliates, heirs, and assigns, fully, finally and forever release, discharge and hold harmless the named Plaintiffs, the FLSA opt-in Plaintiffs, and the Rule 23 Class Members, their attorneys, agents, and anyone acting or authorized to act on their behalf from any and all claims, demands, and causes of action for all matters that arise from or are related to the claims and defenses alleged in this case.

II. PRELIMINARY COURT APPROVAL AND NOTICE OF CLASS ACTION SETTLEMENT

In conjunction with filing this Settlement with the Court, the Parties will also submit a proposed Notice of Class Action Settlement and Claim Form, attached as Exhibit C, that describes the Classes, the terms of Settlement, who is eligible to claim monetary benefits under the Settlement and how to file a Claim, estimates of the monetary benefits the Settlement will provide for Claiming Class Members, the Class Members' right to file objections to the settlement or to opt out of the Settlement, the date for a fairness hearing, and a deadline and instructions for submitting objections, and a toll-free number that may be used to direct questions to Class Counsel. The Parties will jointly move the Court for preliminary approval of the Settlement, the Notice of Class Action Settlement, and the Claim Form. The Parties will also submit a joint proposed Preliminary Approval Order.

III. FINAL COURT APPROVAL

All Parties agree to take such actions as are reasonably necessary to obtain the Court's Final Approval of this Settlement, including filing memoranda in opposition to any objections to this Settlement or its terms and defending this Settlement from any challenges at any Fairness Hearing. Should the Court not grant Final Approval of this Settlement or its terms then this Settlement shall immediately be null and void unless the parties or their successors in interest agree otherwise in writing. In the event the Court does not grant Final Approval of this Settlement, Class Counsel will be required to return any or all of the \$800,000.00 paid pursuant to Section I.A.1 above to the individual Defendant(s) who made the payment within 20 days of the Court denying Final Approval of the Settlement.

IV. FINAL JUDGMENT

As soon as practicable after the close of the hearing on the fairness, reasonableness and adequacy of this Settlement and its terms, Class Counsel and Defendants shall request and shall take such actions as are reasonably necessary to have the Court grant a Final Judgment in the lawsuit by entering a final order which provides that the Court approves this Settlement and its terms as fair, reasonable and adequate, provides for the implementation of all of the Settlement's terms and provisions, approves the individual payments outlined in Section I.I.(1), awards costs and attorneys' fees as outlined in Sections I.A. and I.B., finds that the notice given to the class satisfied the requirements of due process and Rule 23(e) of the Federal Rules of Civil Procedure, dismisses the claims of the named Plaintiffs, FLSA opt-in Plaintiffs, and the Classes with prejudice, and retains jurisdiction to enforce the provisions of this Settlement.

V. ADDITIONAL PROVISIONS

1. The Parties to this Settlement shall not, directly or indirectly, in any way exercise,

and they, and all of them, do hereby waive any and all rights they, or any of them, have or may have to appeal from any order of Court entered pursuant to and in accordance with this Settlement. This waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. This paragraph does not preclude Plaintiffs or Class Counsel from appealing any refusal by the District Court to award the full individual payments outlined in Section I.I.(1), and/or the full costs and attorneys' fees outlined in Sections I.A. and I.B.

2. The Parties to this Settlement, including their employees, agents, and attorneys, agree that they will not solicit or advise Class Members to request exclusion from the Class and will not represent, or arrange representation for, any potential Class Member in requesting exclusion from the class and/or filing a separate action.

3. This Settlement, including the Recitals and Exhibits, supersedes any prior agreements or understandings between the Parties with respect to settlement. Upon their completion, the security agreements required by Section I.A.4. shall be filed with the Court and will become part of this Settlement.

4. The Parties agree to ask the Court to retain jurisdiction of this matter to enforce the terms of this Settlement, including enforcing the terms requiring completion of security agreements prior to a final fairness hearing on this Settlement.

5. The Parties represent and warrant to each other that they have the full power and authority to enter into this Settlement, and that they have not assigned, pledged, encumbered or in any manner transferred or conveyed any portion of the claims or causes of action covered by this Settlement.

6. The Parties represent and warrant to each other that they understand this

Settlement in its entirety and that they have been represented by and consulted with their respective counsel in connection with the negotiating, drafting and execution of this Settlement.

7. With the exception of the security agreements required by Section I.A.4. that have not yet been completed and, once filed, will modify or amend this Settlement, this Settlement may be modified or amended only by a writing signed by all Parties or their successors-in-interest.

8. The Settlement shall be binding upon and inure to the benefit of the Parties, and as applicable, their respective personal representatives, agents, executors, heirs, administrators, successors, assigns, officers, directors, shareholders, subsidiaries, parents or affiliated partnerships, corporations or divisions and employees.

9. This Settlement shall be interpreted according to Arkansas law, and federal law where applicable.

10. This Settlement may be executed in one or more counterparts which, once fully executed, shall constitute one original and binding Settlement. A photocopy or facsimile copy of any signature on this Settlement shall be considered as valid as an original signature.

11. All notices, demands, or other communications given under this Settlement, with the exception of documents filed via the Court's CM/ECF system, will be in writing and addressed as follows:

To the Plaintiffs, the FLSA opt-in Plaintiffs, and the Class:

James Knoepp
Michelle Lapointe
Southern Poverty Law Center
233 Peachtree Street NE, Suite 2150
Atlanta, GA 30303
jim.knoepp@splcenter.org
michelle.lapointe@splcenter.org

To Defendants Candy Brand, LLC, Arkansas Tomato Shippers, LLC, Charles Searcy, and Drew Acceptance Company, Inc.:

Hani W. Hashem
Hashem Law Firm PLC
P.O. Box 739
Monticello, AR 71657
hwh@hashemlawfirm.com

Charles Searcy
201 S. Main Street
Monticello, AR 71655
csearcy@ccc-cable.net

To Defendant Brooks Lisenbey:

J. Paul Davidson
Davidson Law Firm
P.O. Box 1300
Little Rock, AR 72203
pauld@dlf-ar.com

To Defendant Randy Clanton, Judy Clanton, Randy Clanton Farms, Inc., and Clanton Farms, LLC:

F. Mattison Thomas, III
103 East Main Street, Suite D
El Dorado, AR 71730
matt@southarklegal.com

The Parties may from time to time change their address for purposes of this section by providing written notice of such change to the other Parties.

[Signatures begin on following page.]