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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MANUEL CHAVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TROPICAL PLAZA NURSERY, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 30-2020-01122820-CU-OE-CXC

*[Assigned for all purposes to Hon. Peter
Wilson; Dept. CX-102]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 13, 2021

Time: 2:00 p.m.

Dept: CX-102

Complaint filed: January 9, 2020

Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 Plaintiff Manuel Chavez (“Plaintiff”) hereby submits the following supplemental brief in
3 response to the Court’s Ruling Re Plaintiff’s Motion for Preliminary Approval for Class Action
4 Settlement dated April 8, 2021 (the “Ruling”). After reviewing the Court’s Ruling, Plaintiff and
5 Defendant Tropical Plaza Nursery, Inc. (“Defendant”) (Plaintiff and Defendant are collectively
6 referred to as the “Parties”) amended the Stipulation of Settlement (“Settlement Agreement”), the
7 Notice of Pendency of Class Action and Proposed Settlement (“Class Notice”), and the Notice of
8 Estimated Settlement Award in accordance with the issues identified by the Court.

9 Plaintiff addresses each issue raised in the Court’s Ruling. The Amendment to the
10 Settlement Agreement is attached to the concurrently filed Declaration of Sean M. Blakely
11 (“Blakely Decl.”) as Exhibit 1. The final versions of the Class Notice and Notice of Estimated
12 Settlement Award are attached to the Blakely Decl. as Exhibit 2 and 3, respectively. Redline
13 versions of the Class Notice and Notice of Estimated Settlement Award are attached to the
14 Blakely Decl. as Exhibit 4 and 5, respectively. A redline version of the [Proposed] Order is
15 attached to the Blakely Decl. as Exhibit 8.

16 Plaintiff addresses each issue raise in the Court’s Ruling.

17 **The Settlement**

18 1. The Court’s Ruling states: “*The Settlement should be revised so that the parties*
19 *file with the Court all disputes submitted by class members, the evidence submitted, and the*
20 *resolution of those disputes. Although the Settlement Administrator may make the initial decision,*
21 *the Settlement should be revised so that the Court shall have the right to review any decision*
22 *made by the settlement administrator regarding a claim dispute.*”

23 The Parties amended the Settlement Agreement to address the Court’s concerns. See
24 Exhibit 1, at Section 9(E). Specifically, the Parties amended the Settlement Agreement so that
25 all disputes, including any supporting documentation, and any initial determination by the
26 Settlement Administrator, are filed with Court. *Id.* The Parties further revised the Settlement
27 Agreement to make clear that the Court shall make the final determination regarding the eligibility
28 for and amount of Settlement Awards. *Id.*

1 2. The Court’s Ruling states: “*The Dispute Form attached as Exhibit 2 to the*
2 *Settlement provides that Defendant’s records “will control” unless the disputing Class member*
3 *is “able to provide documentation that establishes otherwise and that ‘[Defendant’s] records are*
4 *mistaken.” However, Plaintiff alleges that Defendant had a policy of time-shaving and paying*
5 *only for hours scheduled rather than hours worked. This suggests that Defendant’s time and pay*
6 *records are not accurate. Therefore, it appears unfair that Defendant’s records “will control”*
7 *unless the disputing Class Member provides documentation to show otherwise. Moreover, the*
8 *Settlement language is more neutral and does not state that Defendant’s records “will control”.*

9 The Parties revised the Notice of Estimated Settlement Award to address the Court’s
10 concerns. See Exhibit 3 to Blakely Decl.

11 3. The Court’s Ruling states: “*At final approval Counsel should provide billing*
12 *records in support of its fees and documentation of its costs. Further, Plaintiff’s counsel must*
13 *disclose whether they have any fee-splitting arrangement with any other counsel, or confirm none*
14 *exist. (Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler (2012) 212 Cal.App.4th 172, 184;*
15 *California Rules of Court, rule 3.769(b).)”*

16 In connection with his Motion for Final Approval of Class Action Settlement, Plaintiff
17 will submit Class Counsel’s billing records for attorneys’ fees and costs, and will provide
18 information regarding any fee-split agreement. Blakely Decl., ¶ 9.

19 4. The Court’s Ruling states: “*The Court will determine the appropriate amount of*
20 *Plaintiff’s enhancement at final approval. At final approval, Plaintiff should submit a declaration*
21 *addressing the factors set forth in Golba v. Dick’s Sporting Goods, Inc. (2015) 238 Cal.App.4th*
22 *1251, 1272 and Clark v. Am. Residential Servs. LLC (2009) 175 Cal.App.4th 785, 804, including*
23 *an estimate of the hours spent on this litigation.”*

24 In connection with his Motion for Final Approval of Class Action Settlement, Plaintiff
25 will provide a declaration addressing the enhancement factors identified by the Court and case
26 law. Blakely Decl., ¶ 9.

27 5. The Court’s Ruling states: “*Section ¶9.D in the Settlement should be revised to*
28 *remove the reference to requiring an objector to provide the legal bases for his or her objection*

1 *and supporting papers. An objector may provide this information, but it is not required.”*

2 The Parties amended the Settlement Agreement to address the Court’s concerns. *See*
3 Exhibit 1 to Blakely Decl.

4 6. The Court’s Ruling states: *“The Settlement Administrator’s quote is not to exceed*
5 *\$7,500. Lawrence Decl., at 16 and Ex. B. Why do the parties seek \$10,000 in settlement*
6 *administration costs?”*

7 The Parties amended the Settlement Agreement to make clear that the Parties will request
8 settlement administration costs of \$7,500. *See* Exhibit 1 to Blakely Decl.

9 7. The Court’s Ruling states: *“Plaintiff is required to submit his PAGA Notice letter*
10 *dated January 13, 2020 as alleged in the FAC, at ¶ 57.”*

11 Plaintiff’s January 13, 2020 PAGA letter is attached to concurrently filed Blakely Decl.
12 as Exhibit 6.

13 8. The Court’s Ruling states: *“The parties have not indicated whether they are aware*
14 *of any related matters.”*

15 The Parties are not aware of any related matters which assert similar claims or causes of
16 action against Defendant. Blakely Decl., ¶ 8.

17 **Class Notice**

18 1. The Court’s Ruling states: *“The Class Notice is to be revised consistent with the*
19 *issues addressed above.”*

20 The Parties revised the Class Notice to be consistent with the issues addressed in this
21 Supplemental Brief. *See* Exhibit 2 to Blakely Decl.

22 2. The Court’s Ruling states: *“Does Class Notice need to be translated in any other*
23 *language? The certified transcription of the Spanish version of the Class Notice should be*
24 *submitted to the Court.”*

25 The Parties contend the Notice Packet should be sent in English and Spanish. A certified
26 transcription of the Spanish version of the Class Notice is attached as Exhibit 7 to the concurrently
27 filed Blakely Decl.

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1 3. The Court’s Ruling states: “*The Section "How Can I Claim Money From the*
2 *Settlement" at p. 4 makes no reference to the wage statement amount of the settlement.*”

3 Pursuant to the Stipulation of Settlement, each participating Settlement Class member
4 who was employed by Defendant at any time from January 9, 2019 to the date of preliminary
5 approval shall receive a portion of the “Wage Statement Amount” proportionate to the number of
6 workweeks worked during this time period. *See* Stipulation of Settlement, ¶ 4(B)(iii).

7 The Section of the Class Notice titled “How can I claim money from the Settlement”
8 informs Settlement Class members that if they do nothing, they will be entitled to their share of
9 the Settlement based on, among other things, “the proportionate number of workweeks you
10 worked between January 9, 2019 and the date of preliminary approval.” Therefore, the Class
11 Notice does in fact reference the “Wage Statement Amount.” The Notice of Estimated Settlement
12 Award also informs Settlement Class members of the number of workweeks they worked during
13 the Wage Statement time period (i.e., January 9, 2019 through the date of preliminary approval).

14 4. The Court’s Ruling states: “*The last paragraph on p. 4 should be revised to inform*
15 *Class Members that the Court shall have the right to review any decision made by the settlement*
16 *administrator.*”

17 The Parties revised the Class Notice to indicate that the Court has the right to review any
18 initial determination made by the Settlement Administrator. *See* Exhibit 2 to Blakely Decl.

19 5. The Court’s Ruling states: “*On p. 5, a date for the Final Approval hearing should*
20 *be proposed and filled in the Class Notice. The Court sets Final Approval hearings on Thursdays*
21 *at 2 p.m.*”

22 The Parties propose September 30, 2021 at 2:00 p.m. for the final approval hearing. This
23 date has been added to the Class Notice. *See* Exhibit 2 to Blakely Decl.

24 6. The Court’s Ruling states: “*Will the Settlement Administrator's website include*
25 *any other documents in this case aside from the Final Judgment? If so, the website should be*
26 *included in the "How Do I Get Additional Information" section at p. 5.*”

27 The Parties propose that the Settlement Administrator’s website only include the Final
28 Judgment.

1. The Court's Ruling states: "*The proposed order is to be revised consistent with the issues addressed above.*"

2. The Court's Ruling states: "*Settlement and Notice should be attached to the proposed order as an exhibit.*"

3. The Court’s Ruling states: “*The parties should propose a date for the final approval hearing.*”

4. The Court's Ruling states: "*The proposed order does not include the not to exceed amounts for Settlement.*"

Respectfully submitted,
HAINES LAW GROUP, APC

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