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Attorneys for Plaintiff

**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]*

**[AMENDED PROPOSED] ORDER
GRANTING 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 The Motion of Plaintiff Manuel Chavez (“Plaintiff”) for Preliminary Approval of Class
2 Action Settlement came on regularly for hearing before this Court on May 13, 2021 at 2:00 p.m.
3 This Court, having considered the proposed Stipulation of Settlement (the “Settlement”), and the
4 amendment to the Settlement; having considered Plaintiff’s Motion for Preliminary Approval of
5 Class Action Settlement, Memorandum of Points and Authorities in support thereof, and
6 supporting declarations filed therewith; and good cause appearing, HEREBY ORDERS THE
7 FOLLOWING:

8 1. The Court GRANTS preliminary approval of the class action settlement as set
9 forth in the Settlement and finds its terms to be within the range of reasonableness of a settlement
10 that ultimately could be granted approval by the Court at a Final Fairness Hearing. For purposes
11 of the Settlement, the Court finds that the proposed Settlement Class is ascertainable and that
12 there is a sufficiently well-defined community of interest among the members of the Settlement
13 Class in questions of law and fact. Therefore, for settlement purposes only, the Court grants
14 conditional certification of the following Settlement Class:

15 All current and former non-exempt employees who are or were
16 employed by Tropical Plaza Nursery, Inc. in the position of field
17 worker in the State of California during the time period of January
18 9, 2016 through the date of preliminary approval of the settlement
19 (“Class Period”).

20 2. For purposes of the Settlement, the Court designates named Plaintiff Manuel
21 Chavez as Class Representative, and designates Paul K. Haines and Sean M. Blakely of Haines
22 Law Group, APC as Class Counsel.

23 3. The Court designates Phoenix Settlement Administrators as the third-party
24 Settlement Administrator for mailing notices.

25 4. The Court approves, as to form and content, the Class Notice, Notice of Estimated
26 Settlement Award, and Request for Exclusion Form, attached as Exhibits 1, 2, and 3, respectively,
27 to this Proposed Order.

28 5. The Court preliminarily approves the Settlement Agreement and the amendment
thereto, attached as Exhibits 4 and 5, respectively, to this Proposed Order.

1 6. The Court finds that the form of notice to the Settlement Class regarding the
2 pendency of the action and of the Settlement, and the methods of giving notice to members of the
3 Settlement Class, constitute the best notice practicable under the circumstances, and constitute
4 valid, due, and sufficient notice to all of the Settlement Class members. The form and method of
5 giving notice complies fully with the requirements of California Code of Civil Procedure section
6 382, California Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California
7 and United States Constitutions, and other applicable law.

8 7. The Court further approves the procedures for the Settlement Class members to
9 opt out of or object to the Settlement, as set forth in the Class Notice.

10 8. The procedures and requirements for filing objections in connection with the Final
11 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
12 presentation of any Settlement Class member's objection to the Settlement in accordance with the
13 due process rights of all members of the Settlement Class.

14 9. The Court directs the Settlement Administrator to mail the Class Notice to the
15 members of the Settlement Class in accordance with the terms of the Settlement.

16 10. The Class Notice shall provide at least sixty (60) calendar days' notice for
17 Settlement Class members to opt out of, or object to, the Settlement.

18 11. The Final Fairness Hearing on the question of whether the Settlement should be
19 finally approved as fair, reasonable, and adequate is scheduled in Department CX-102 of this
20 Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701 on September 30, 2021
21 at 2:00 p.m.

22 12. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement
23 should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether
24 a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's
25 application for reasonable attorneys' fees (in an amount not to exceed \$133,333.33),
26 reimbursement of litigation expenses (in an amount not to exceed \$20,000.00), enhancement
27 payment to Plaintiff (in an amount not to exceed \$5,000.00), settlement administration costs (in
28 an amount not to exceed \$7,500.00), and payment to the Labor & Workforce Development

Agency (“LWDA”) for penalties under the Labor Code Private Attorneys General Act (“PAGA”) (in an amount not to exceed \$15,000.00) should be granted.

13. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement, attorneys’ fees, litigation expenses, Plaintiff’s enhancement payment, payment to the LWDA, and settlement administration costs, prior to the Final Fairness Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

14. An implementation schedule is below:

Event	Date
Defendant to provide Class Data to the Settlement Administrator no later than [10 business days after preliminary approval]:	May 27, 2021
Settlement Administrator to mail the Notice Packet to Settlement Class members no later than [10 business days after receiving Class Data]:	June 11, 2021
Deadline for Settlement Class members to request exclusion from, or object to, the Settlement [60 calendar days after mailing]:	August 10, 2021
Deadline for Plaintiff to file his Motion for Final Approval of Class Action Settlement:	September 8, 2021
Final Fairness Hearing:	September 30, 2021

15. Pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

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1 16. Counsel for the parties are hereby authorized to utilize all reasonable procedures
2 in connection with the administration of the Settlement which are not materially inconsistent with
3 either this Order or the terms of the Settlement.

4 **IT IS SO ORDERED.**

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6 Dated: _____, 2021

Honorable Peter Wilson
Judge of the Superior Court

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EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who are or were employed by Tropical Plaza Nursery, Inc.
in the position of field worker in the State of California during the time period of January 9, 2016 through
<<PRELIM APPROVAL DATE>> (“Class Period”).

PLEASE READ CAREFULLY

YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in the matter of *Manuel Chavez v. Tropical Plaza Nursery, Inc.*, Orange County Superior Court Case No. 30-2020-01122820-CU-OE-CXC (the “Action”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Tropical Plaza Nursery, Inc.’s (“Tropical Plaza”) records show that you were employed at Tropical Plaza as a non-exempt employee in the position of field worker in California between January 9, 2016 and <<PRELIM APPROVAL DATE>> (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

1 Plaintiff Manuel Chavez ("Plaintiff") brought this Action against Tropical Plaza on a class and representative action
2 basis on behalf of a class of non-exempt employees in the position of field worker within the State of California who
3 are or were employed by Tropical Plaza from January 9, 2016, through <<PRELIM APPROVAL DATE>>. Plaintiff
4 is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class
5 members, are known as "Class Counsel."

6 Plaintiff alleges that Tropical Plaza failed to pay Settlement Class members all minimum and overtime wages owed;
7 failed to provide all meal periods in accordance with California law; failed to authorize and permit all rest periods in
8 accordance with California law; failed to timely pay all wages owed upon separation of employment; and failed to
9 furnish accurate and itemized wage statements to Settlement Class members. As a result of the foregoing alleged
10 violations, Plaintiff alleges that Tropical Plaza engaged in unfair business practices and is liable for civil penalties
11 under the Labor Code Private Attorneys General Act ("PAGA").

12 Tropical Plaza denies Plaintiff's claims and denies that it has violated any laws or done anything wrong. Tropical
13 Plaza also denies that it owes Settlement Class members any wages, restitution, penalties, damages, or other amounts.
14 Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission
15 of liability on the part of Tropical Plaza, by whom all liability is expressly denied.

16 The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience,
17 and interference with its business operations, Tropical Plaza has agreed to settle the Action on the terms summarized
18 in this Notice. After Class Counsel had the opportunity to review certain relevant information, the Settlement was
19 reached after mediation and arm's length negotiations between the parties.

20 The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses
21 to liability potentially available to Tropical Plaza, the risk of denial of class certification, the inherent risk of trial on
22 the merits, and the delays and uncertainties associated with ongoing litigation.

23 **If you are still employed by Tropical Plaza, your decision about whether to participate in the Settlement will**
24 **not affect your employment.** California law and Tropical Plaza's policy strictly prohibit unlawful retaliation.
25 Tropical Plaza will not take any adverse employment action against or otherwise target, retaliate, or discriminate
26 against any Settlement Class member because of his/her decision to either participate or not participate in the
27 Settlement.

28 ***Who are the Attorneys?***

Attorneys for Plaintiff/Settlement Class:

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Attorneys for Tropical Plaza:

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www.walravenlaw.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who are or were employed by Tropical Plaza in the position of field worker in the State of California from January 9, 2016 through <<PRELIM APPROVAL DATE>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Tropical Plaza as described below.

Tropical Plaza has agreed to pay \$400,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including payments to Settlement Class members, Class Counsel's attorneys' fees and expenses, settlement administration costs, payment to the Labor & Workforce Development Agency ("LWDA") for its share of civil penalties under the PAGA, and the Class Representative enhancement payment.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount, which is currently estimated at \$133,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 in verified costs incurred in connection with the Action.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Parties request setting aside up to \$10,000.00 from the Gross Settlement Amount to pay the settlement administration costs.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$5,000.00 to compensate him for his service and extra work provided on behalf of the Settlement Class.

PAGA Payment to State of California. The parties have agreed to allocate \$20,000.00 towards the Settlement of the PAGA claims in the Action. \$15,000.00 will be paid to the State of California Labor & Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$5,000.00 will be allocated to Settlement Class members as described below.

Calculation of Individual Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement. The Net Settlement Amount is estimated at approximately \$216,666.67, and will be divided as follows:

- (i) 85% of the Net Settlement Amount will be allocated to all participating Settlement Class members in proportion to the number of workweeks that he or she worked during the Class Period.
- (ii) 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount" and will be allocated in equal amounts to all participating Settlement Class members whose employment with Tropical Plaza ended at any time between January 9, 2017 through <<PRELIM APPROVAL DATE>>.
- (iii) 5% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Tropical Plaza at any time from January 9, 2019 to <<PRELIM APPROVAL DATE>> shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the time period of January 9, 2019 to <<PRELIM APPROVAL DATE>>.
- (iv) \$5,000.00 of the Gross Settlement Amount has been designated as the "PAGA Amount." Each participating Settlement Class member who was employed by Tropical Plaza at any time from January 9, 2019 to <<PRELIM APPROVAL DATE>> shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the time period of January 9, 2019 to <<PRELIM APPROVAL DATE>>.

Payments to Settlement Class members. If the Court grants final approval of the Settlement, individual Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion from the Settlement. Settlement checks will be valid for 180 days. Any checks that were not cashed within 180 days will escheat to the California State Controller Unclaimed Property Fund in the name of the Settlement Class member.

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: 20% as "wages," for which an IRS Form W-2 will be issued; and 80% as "penalties" and "interest" for which an IRS Form 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the individual Settlement Awards. The Settlement Administrator, Tropical Plaza and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Tropical Plaza, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (collectively the “Released Parties”), from all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to authorize and permit all rest periods in accordance with California law; (d) failure to provide all meal periods in accordance with California law; (e) failure to furnish accurate and itemized wage statements; (f) failure to pay all wages owed upon separation of employment; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; (h) all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories described above or on any of the claims, causes of action, or legal theories of relief pled in the FAC; and (i) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Class Period. Notwithstanding the foregoing, the PAGA settlement and release provisions outlined in subsection (h) will apply to all Settlement Class members whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendant at any time from January 9, 2019 through the date of preliminary approval of this Settlement and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PAGA Amount described above, and will release all claims for civil penalties under the PAGA that were or could have been alleged based on the claims, causes of action or legal theories of relief pled in the FAC, whether they submit a valid and timely Request for Exclusion or not.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Tropical Plaza between January 9, 2017 and <<PRELIM APPROVAL DATE>>, and the proportionate number of workweeks you worked between January 9, 2019 and <<PRELIM APPROVAL DATE>>, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Tropical Plaza between January 9, 2017 and <<PRELIM APPROVAL DATE>>, and the proportionate number of workweeks you worked between January 9, 2019 and <<PRELIM APPROVAL DATE>>. The information contained in Tropical Plaza’s records regarding each of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

1 The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to
2 resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding
3 any dispute will be final.

4 Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself
5 by sending to the Settlement Administrator an executed Request for Exclusion Form no later than **<<RESPONSE**
6 **DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your
7 signature. A Request for Exclusion Form is included with this Notice.

8 Send the Request for Exclusion Form directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR**
9 **CONTACT INFO>>**. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the
10 Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion
11 of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request**
12 **for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and
13 you will be bound by the terms of the Settlement.

14 Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court
15 rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement,
16 or any portion of it, you may mail a written objection to the Settlement Administrator at **<<INSERT**
17 **ADMINISTRATOR CONTACT INFO>>**. All objections and correspondence must be sent directly to the Settlement
18 Administrator, please do not send objections or correspondence to the Court. Any objections will be provided to the
19 Court by Plaintiff in connection with the Final Approval Hearing. Your written objection should include your name,
20 address, as well as contact information for any attorney representing you regarding your objection, the case name
21 and number, each specific reason in support of your objection, and any legal or factual support for each objection
22 together with any evidence in support of your objection. Objections should be in writing and must be postmarked
23 on or before **<<RESPONSE DEADLINE>>**. Notwithstanding the foregoing, you do not need to object in writing to
24 be heard at the Final Approval Hearing.

25 You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING**
26 **DATE/TIME>>** in Department CX102 of the Orange County Superior Court, located at 751 West Santa Ana
27 Boulevard, Santa Ana, California 92701. You have the right to appear either in person or through your own attorney
28 at this hearing. All objections or other correspondence must state the name and number of the case, which is *Manuel*
Chavez v. Tropical Plaza Nursery, Inc., Orange County Superior Court Case No. 30-2020-01122820-CU-OE-CXC.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the
Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do
not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on
<<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX102 of the Orange County Superior Court,
located at 751 West Santa Ana Boulevard, Santa Ana, California 92701. The Court will also be asked to rule on Class

Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, and the Class Representative enhancement payment. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

If the Court grants Final Approval, the Court will issue a final judgment which shall be posted on the Settlement Administrator's website (<http://www.phoenixclassaction.com>).

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, during regular court hours. You may also visit the Orange County Superior Court website at www.occourts.org to inspect the Court's files by going to the "Online Case Access" tab, selecting "Civil Case & Document Access," and entering the case number information. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE TO THE COURT, TROPICAL PLAZA, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

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EXHIBIT 2

1 **NOTICE OF ESTIMATED SETTLEMENT AWARD**

2 **MANUEL CHAVEZ V. TROPICAL PLAZA NURSERY, INC.**
3 **ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2020-01122820-CU-OE-CXC**

4 Please complete and return this Form to <<ADMINISTRATOR CONTACT INFO>> ONLY IF (1) your personal
5 contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is
6 your responsibility to keep a current address on file with the Settlement Administrator.

7 **(I) Please type or print your name:**

8 _____
9 (First, Middle, Last)

10 **(II) Please type or print the following identifying information if your contact information has changed:**

11 _____
12 Former Names (if any)

13 _____
14 New Street Address

15 _____
16 City

17 _____
18 State

19 _____
20 Zip Code

21 **(III) Information Used to Calculate Your Settlement Award:**

22 According to Tropical Plaza Nursery, Inc.'s ("Tropical Plaza") records:

23 (a) you worked for Tropical Plaza in California from _____ to _____;

24 (b) you worked _____ Workweeks between January 9, 2016, and <<PRELIM APPROVAL DATE>>, for
25 Tropical Plaza;

26 (c) you worked _____ Workweeks between January 9, 2019 and <<PRELIM APPROVAL DATE>>, for
27 Tropical Plaza; and

28 (d) your employment with Tropical Plaza <<DID/DID NOT>> end between January 9, 2017 and
<<PRELIM APPROVAL DATE>>.

Based on the above, your Settlement Award is estimated at \$ _____.

**(IV) If you disagree with items (a), (b), (c), and/or (d) in Section (III) above, please explain why in the space
provided below and include copies of any supporting evidence or documentation with this Form:**

If you dispute the above information from Tropical Plaza's records, Tropical Plaza's records will control unless you
are able to provide documentation that establishes otherwise and that Tropical Plaza's records are mistaken. If there
is a dispute about whether Tropical Plaza's information or yours is accurate, and the dispute cannot be resolved
informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice
of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

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EXHIBIT 3

REQUEST FOR EXCLUSION FORM

Manuel Chavez v. Tropical Plaza Nursery, Inc.
Orange County Superior Court
Case No. 30-2020-01122820-CU-OE-CXC

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

PHOENIX SETTLEMENT ADMINISTRATORS
MANUEL CHAVEZ V. TROPICAL PLAZA NURSERY, INC.
SETTLEMENT ADMINISTRATOR

ADDRESS
ADDRESS
PHONE
FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Manuel Chavez v. Tropical Plaza Nursery, Inc.*, Orange County Superior Court Case No. 30-2020-01122820-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *MANUEL CHAVEZ V. TROPICAL PLAZA NURSERY, INC.* LAWSUIT. I UNDERSTAND THAT IF I TIMELY SUBMIT THIS REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name _____ Telephone Number _____

Address _____

Date _____ Signature _____

Last Four Digits of Social Security Number: _____

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EXHIBIT 4

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Manuel Chavez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Tropical Plaza Nursery, Inc. (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines and Sean M. Blakely of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Brian A. Selvan of Walraven & Westerfeld, LLP.

On January 9, 2020, Plaintiff filed a Class Action Complaint against Defendant in Orange County Superior Court, in the matter entitled *Manuel Chavez v. Tropical Plaza Nursery, Inc.*, Case No. 30-2020-01122820-CU-OE-CXC (the “Action”). On May 26, 2020, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”). The FAC alleges the following causes of action: (i) failure to pay all overtime wages; (ii) minimum wage violations; (iii) rest period violations; (iv) meal period violations; (v) wage statement penalties; (vi) waiting time penalties; (vii) unfair competitions; and (viii) civil penalties under the Private Attorneys General Act (“PAGA”).

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who are or were employed by Tropical Plaza Nursery, Inc. in the position of field worker in the State of California during the time period of January 9, 2016 through the date of preliminary approval of the settlement (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved, does not become Final as defined below, or is terminated or materially modified without agreement of the parties, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

1. **Release by Settlement Class Members and Plaintiff.** Upon the complete funding of the Gross Settlement Amount, Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (collectively the “Released Parties”), as follows:

1 A. Settlement Class members will release all claims, causes of action, and legal
2 theories alleged or which could have been alleged based on the facts in the operative
3 First Amended Class and Representative Action Complaint (“FAC”), including: (a)
4 failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure
5 to authorize and permit all rest periods in accordance with California law; (d)
6 failure to provide all meal periods in accordance with California law; (e) failure to
7 furnish accurate and itemized wage statements; (f) failure to pay all wages owed
8 upon separation of employment; (g) all claims for unfair business practices that
9 could have been premised on the facts, claims, causes of action or legal theories of
10 relief pled in the FAC; (h) all claims for civil penalties under the PAGA that were
11 or could have been alleged based on the claims, causes of action or legal theories
12 described above or on any of the claims, causes of action, or legal theories of relief
13 pled in the FAC; and (i) all damages, penalties, interest, costs (including attorney’s
14 fees), and other amounts recoverable under said claims or causes of action as to the
15 facts and/or legal theories alleged or which could have been alleged in the FAC
16 (collectively, the “Released Claims”). The period of the Release shall extend to the
17 limits of the Class Period. Notwithstanding the foregoing, the PAGA settlement
18 and release provisions outlined in subsection (h) will apply to all Settlement Class
19 members whether or not they exclude themselves from the class action settlement.
20 Settlement Class members who were employed by Defendant at any time from
21 January 9, 2019 through the date of preliminary approval of this Settlement and
22 submit a valid and timely Request for Exclusion shall still be entitled to their
23 portion of the PAGA Amount described below, and will release all claims for civil
24 penalties under the PAGA that were or could have been alleged based on the claims,
25 causes of action or legal theories of relief pled in the FAC, whether they submit a
26 valid and timely Request for Exclusion or not.
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3. **Gross Settlement Amount.** As consideration and subject to the express condition
precedent that this Settlement Agreement becomes Final (as defined below), Defendant
agrees to pay a non-reversionary “Gross Settlement Amount” of Four Hundred Thousand
Dollars and Zero Cents (\$400,000.00) in full and complete settlement of the Action, as
follows:

A. The Parties have agreed to engage Phoenix Settlement Administrators as the
“Settlement Administrator” to administer this Settlement.

B. The term “Final” and “Final Effective Date” means: (i) that the Settlement
Agreement has received Final Approval by the Court and there were no timely
objections or intervener requests filed, or that any timely objections and/or
interveners have been withdrawn; or, (ii) in the event that one or more timely
objections or interventions has/have been filed and not withdrawn, then upon the
passage of the applicable date for an objector or intervener to seek appellate review
of the Court’s order of Final Approval, without a timely appeal having been filed;
or, (iii) in the event that a timely appeal of the Court’s order of Final Approval has

been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court's Final Approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

C. The Gross Settlement Amount shall be deposited with the Settlement Administrator within fifteen (15) business days of the Final Effective Date.

D. This is a non-reversionary settlement. The Gross Settlement Amount includes:

(1) All payments (including interest) to the Settlement Class;

(2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Ten Thousand Dollars and Zero Cents (\$10,000.00);

(3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff's Class Representative Enhancement Payment in recognition of his contributions to the Action and his service to the Settlement Class. If Plaintiff's request for his enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members;

(4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00). If Class Counsel's request for attorneys' fees and/or reimbursement of litigation costs is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members; and

(5) Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Fifteen Thousand Dollars and Zero Cents (\$15,000.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00) will be payable to the Settlement Class as the “PAGA Amount.”

D. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

E. **Escalator Clause.** Defendant represents there are approximately 5,128 workweeks worked by Settlement Class members during the Class Period. If the number of workweeks worked by Settlement Class members during the Class Period is more

1 than 10% greater than this figure (i.e., if there are 5,641 or more workweeks worked
2 by Settlement Class members), Defendant agrees to increase the Gross Settlement
3 Amount on a proportional basis (i.e., if the actual number of workweeks were 20%
4 greater than 5,128, Defendant would agree to increase the Gross Settlement
5 Amount by 20%).

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4. **Payments to the Settlement Class.** Settlement Class members are not required to submit
a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards
will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Gross Settlement Amount
the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class
Counsel’s costs and expenses, Plaintiff’s Class Representative enhancement
payment, the LWDA’s share of the PAGA payment, and the Settlement
Administrator’s fees and expenses for administration. The remaining amount shall
be known as the “Net Settlement Amount.”

B. From the Net Settlement Amount, the Settlement Administrator will calculate each
Settlement Class member’s Settlement Award based on the following formula:

i. Payments to all participating Settlement Class members: Eighty-Five
percent (85%) of the Net Settlement Amount will be distributed to all
participating Settlement Class members based on each participating
Settlement Class member’s proportionate Workweeks worked during the
Class Period, and will be calculated by multiplying 85% of the Net
Settlement Amount by a fraction, the numerator of which is the participating
Settlement Class member’s number of Workweeks worked during the Class
Period, and the denominator of which is the total Workweeks worked by all
participating Settlement Class members during the Class Period.

ii. Waiting Time Amount: Ten Percent (10%) of the Net Settlement Amount
shall be designated as the “Waiting Time Amount.” Each participating
Settlement Class member whose employment with Defendant ended at any
time from January 9, 2017 to the date of preliminary approval, shall receive
an equal, pro-rata share of the Waiting Time Amount. In other words, the
Waiting Time Amount will be divided equally among all participating
Settlement Class members whose employment with Defendant ended at any
time from January 9, 2017 to the date of preliminary approval.

iii. Wage Statement Amount: Five percent (5%) of the Net Settlement Amount
shall be designated as the “Wage Statement Amount.” Each participating
Settlement Class member who was employed by Defendant at any time
from January 9, 2019 to the date of preliminary approval shall receive a
portion of the Wage Statement Amount proportionate to the number of
Workweeks that he or she worked during the period from January 9, 2019
to the date of preliminary approval, and which will be calculated by
multiplying 5% of the Net Settlement Amount by a fraction, the numerator
of which is the participating Settlement Class member’s number of

Workweeks worked from January 9, 2019 to the date of preliminary approval, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during the time period from January 9, 2019 to the date of preliminary approval.

- iv. PAGA Amount: Each participating Settlement Class member who was employed by Defendant at any time from January 9, 2019 to the date of preliminary approval (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount that has been designated as the “PAGA Amount” proportionate to the number of Workweeks that he or she worked during the period from January 9, 2019 to the date of preliminary approval, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of Workweeks worked from January 9, 2019 to the date of preliminary approval, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members from January 9, 2019 to the date of preliminary approval (including those who submit a valid and timely Request for Exclusion from the class action settlement).

C. Within ten (10) calendar days following Defendant’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel.

D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 80% as penalties and interest; and 20% as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

E. Each Settlement Class member who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the State Controller to be deposited in the Unclaimed Property Fund for the benefit of the Settlement Class member whose check was not cashed.

F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be One Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of up to Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking permission to pay up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines and Sean M. Blakely of Haines Law Group, APC as Class Counsel;
- C. Appointing Manuel Chavez as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;

- 1 E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable,
2 and adequate;
- 3 F. Approving the form and content of the Notice Packet (which is comprised of the
4 Class Notice, Request for Exclusion Form, and Notice of Estimated Settlement
5 Award), and directing the mailing of same; and
- 6 G. Scheduling a Final Approval hearing.

7 9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall
8 be notified as follows:

- 9 A. Within ten (10) business days after entry of an order preliminarily approving this
10 Agreement, Defendant will provide the Settlement Administrator with the names,
11 last known addresses, phone numbers, social security numbers, the dates of
12 employment and the number of Workweeks worked by each Settlement Class
13 member while employed during the Class Period (the "Class Data"). The Class
14 Data shall be provided to the Settlement Administrator in an electronic format
15 reasonably satisfactory to the Settlement Administrator.
- 16 B. Within ten (10) business days from receipt of the information provided for in
17 Paragraph 9(A), the Settlement Administrator shall: (i) run the names of all
18 Settlement Class members through the National Change of Address ("NCOA")
19 database to determine any updated addresses for Settlement Class members; (ii)
20 update the address of any Settlement Class member for whom an updated address
21 was found through the NCOA search; (iii) calculate the estimated Settlement
22 Award for each Settlement Class member; and (iv) mail a Notice Packet to each
23 Settlement Class member at his or her last known address or at the updated address
24 found through the NCOA search, and retain proof of mailing.
- 25 C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of
26 the settlement must complete and mail a Request for Exclusion Form to the
27 Settlement Administrator within sixty (60) calendar days of the date of the initial
28 mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that a Settlement Class member who wishes to
exclude themselves from the Settlement must submit a Request for Exclusion
Form by the Response Deadline. The Request for Exclusion Form must: (1)
contain the name, address, telephone number and the last four digits of the
Social Security number of the Settlement Class member; (2) contain a statement
that the Settlement Class member wishes to be excluded from the Settlement;
(3) be signed by the Settlement Class member; and (4) be postmarked by the
Response Deadline and mailed to the Settlement Administrator at the address
specified in the Class Notice. If the Request for Exclusion Form does not
contain the information listed in (1)-(3), it will not be deemed valid for
exclusion from the Settlement, except a Request for Exclusion Form not
containing a Settlement Class member's telephone number and/or last four

1 digits of the Social Security number will be deemed valid. The date of the
2 postmark on the Request for Exclusion Form shall be the exclusive means used
3 to determine whether a Request for Exclusion has been timely submitted. Any
4 Settlement Class member who requests to be excluded from the Settlement
5 Class will not be entitled to any recovery under this Settlement Agreement and
6 will not be bound by the terms of the Settlement or have any right to object,
7 appeal or comment thereon. Notwithstanding the foregoing, the PAGA
8 settlement and release provisions will apply to all Settlement Class members
9 whether or not they exclude themselves from the class action settlement.
10 Settlement Class members who were employed by Defendant at any time from
11 January 9, 2019 through the date of preliminary approval of this Settlement and
12 submit a valid and timely Request for Exclusion shall still be entitled to their
13 portion of the PAGA Amount described above, and will release all claims for
14 civil penalties under the PAGA that were or could have been alleged based on
15 the claims, causes of action or legal theories of relief pled in the FAC, whether
16 they submit a valid and timely Request for Exclusion or not.

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18 ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage
19 any Settlement Class member to object to the Settlement or opt out of the
20 Settlement Class or encourage any Settlement Class member to appeal from the
21 final judgment.

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23 iii. Notwithstanding any other provisions of this Agreement, in the event that ten
24 percent (10%) or more of the total Settlement Class members opt out of the
25 settlement, Defendant shall have the right, in its sole discretion, to nullify the
26 settlement within ten (10) days after expiration of the opt-out period by
27 providing written notice to Plaintiff's Counsel. In the event that Defendant
28 exercises this right, the Parties' conditional agreement to class certification will
be inadmissible and will have no effect in this matter or in any claims brought
on the same or similar allegations, and the Parties shall revert to the respective
positions they held prior to entering into the Settlement Agreement

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30 D. Objections. Settlement Class members who do not request exclusion may object to
31 this Settlement Agreement as explained in the Class Notice by filing a written
32 objection with the Settlement Administrator (who shall serve all objections as
33 received on Class Counsel and Defendant's counsel, as well as file all such
34 objections with the Court). Defendant's counsel and Class Counsel shall file any
35 responses to objections no later than the deadline to file the Motion for Final
36 Approval, unless the objections are filed within ten (10) days of the Motion for
37 Final Approval filing deadline, in which case Defendant's counsel and Class
38 Counsel shall have ten (10) days to file a response to the objections. To be valid,
any objection should: (1) contain the objecting Settlement Class member's full

1 name and current address, as well as contact information for any attorney
2 representing the objecting Settlement Class member for purposes of the objection;
3 (2) include all objections and the factual and legal bases for same; (3) include any
4 and all supporting papers, briefs, written evidence, declarations, and/or other
5 evidence; and (4) be postmarked no later than the Response Deadline. Settlement
6 Class members may also appear at the final approval hearing to orally object, even
7 if they have not submitted a written objection.

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9 E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a
10 Settlement Class member shall disclose the amount of the Settlement Class
11 member's estimated Settlement Award as well as all of the information that was
12 used from Defendant's records in order to calculate the Settlement Award,
13 including the Settlement Class member's number of Workweeks worked during the
14 Class Period, whether the Settlement Class member's employment with Defendant
15 ended during the time period of January 9, 2017 to the date of preliminary approval,
16 and the number of workweeks worked from January 9, 2019 to the date of
17 preliminary approval. Settlement Class members will have the opportunity, should
18 they disagree with Defendant's records regarding the information stated in the
19 Notice of Estimated Settlement Award, to provide documentation and/or an
20 explanation to show contrary information. Any such dispute, including any
21 supporting documentation, must be mailed to the Settlement Administrator and
22 postmarked by the Response Deadline. If there is a dispute, the Settlement
23 Administrator will consult with the Parties to determine whether an adjustment is
24 warranted. The Settlement Administrator shall determine the eligibility for, and the
25 amounts of, any Settlement Awards under the terms of this Settlement Agreement.
26 The Settlement Administrator's determination of the eligibility for and amount of
27 any Settlement Award shall be binding upon the Settlement Class member and the
28 Parties.

18 F. Any Notice Packets returned to the Settlement Administrator as non-delivered on
19 or before the Response Deadline shall be re-mailed to the forwarding address
20 affixed thereto. If no forwarding address is provided, the Settlement Administrator
21 shall make reasonable efforts, including utilizing a "skip trace," to obtain an
22 updated mailing address within five (5) business days of receiving the returned
23 Notice Packet. If an updated mailing address is identified, the Settlement
24 Administrator shall resend the Notice Packet to the Settlement Class member
25 immediately, and in any event within three (3) business days of obtaining the
26 updated address. The address identified by the Settlement Administrator as the
27 current mailing address shall be presumed to be the best mailing address for each
28 Settlement Class member. It will be conclusively presumed that, if an envelope so
mailed has not been returned within thirty (30) days of the mailing, the Settlement
Class member received the Notice Packet. Settlement Class members to whom
Notice Packets are re-mailed after having been returned as undeliverable to the
Settlement Administrator shall have fourteen (14) calendar days from the date of
re-mailing, or until the Response Deadline has expired, whichever is later, to submit
a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed
shall inform the recipient of this adjusted deadline. If a Settlement Class member's

Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative enhancement payment, LWDA payment, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree that they have not and will not publish the Settlement Agreement, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff, the Settlement Class, or the Settlement on their website, and shall not contact any reporters or media regarding the Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the

addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Brian A. Selvan, Walraven & Westerfeld LLP, 20 Enterprise, Suite 310, Aliso Viejo, California 92656; bselvan@walravenlaw.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com.

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

[SIGNATURES ON FOLLOWING PAGE]

1 DATED:

Tropical Plaza Nursery, Inc.

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4 By: /s/ L.F.

5
6 DATED: February 18, 2021

Manuel Chavez

7
8 By: /s/ Manuel Chavez
Plaintiff and Settlement Class Representative

9
10 **APPROVED AS TO FORM:**

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12 DATED:

WALRAVEN & WESTERFELD, LLP

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15 By: /s/ Brian Selvan

16 Brian Selvan
Attorneys for Defendant

17
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19 DATED:

HAINES LAW GROUP, APC

20
21 By: /s/ Sean M. Blakely

22 Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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EXHIBIT 5

HAINES LAW GROUP, APC

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Attorneys for Defendant

**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 the Hon. Peter
Wilson, Dept. CX-102]*

**AMENDMENT TO STIPULATION OF
SETTLEMENT**

Complaint Filed: January 9, 2020
Trial Date: None Set

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Section 3(D)(2): is hereby deleted and replaced in its entirety with the following “All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00).”

Section 9(D): **Objections** is hereby deleted and replaced in its entirety with the following “Settlement Class members who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant’s

counsel via e-mail, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days from the date of service of the objections by the Settlement Administrator to file a response to the objections. All objections should contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection. Settlement Class members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.

Section (9)(E): Notice of Estimated Settlement Award / Disputes is hereby deleted and replaced in its entirety with the following: "Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Defendant's records in order to calculate the Settlement Award, including the Settlement Class member's number of Workweeks worked during the Class Period, whether the Settlement Class member's employment with Defendant ended during the time period of January 9, 2017 to the date of preliminary approval, and the number of workweeks worked from January 9, 2019 to the date of preliminary approval. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Parties shall file all disputes submitted by Settlement Class members, along with any evidence submitted and any initial determination by the Settlement Administrator, with the Court. If there is a dispute, the Settlement Administrator will consult with

the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall initially determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. However, the Court shall have the right to review the Settlement Administrator's initial determination, and the Court shall make the final determination regarding the eligibility for and amount of any Settlement Award, and the Court's determination shall be binding upon the Settlement Class member and the Parties."

In all other respects, the Settlement Agreement entered into on or about February 17, 2021 remains unchanged and in full force and effect.

AGREED TO AND ACCEPTED.

DATED: May 4, 2021

Tropical Plaza Nursery, Inc.

By: /s/ L.F.

DATED: May 3, 2021

Manuel Chavez

By: /s/ Manuel Chavez
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: May 4, 2021

WALRAVEN & WESTERFELD, LLP

By: /s/ Brian Selvan
Brian Selvan
Attorneys for Defendant

1 DATED: May 3, 2021

HAINES LAW GROUP, APC

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3 By: /s/ Sean M. Blakely

4 Paul K. Haines

5 Sean M. Blakely

6 Attorneys for Plaintiff
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