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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

FATIMA ALMAZAN on behalf of
decendent ANALI ALMAZAN,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BOTANX, LLC, and DOES 1 to 50,
inclusive,

Defendants.

Case No.: 30-2020-01122459-CU-OE-
CXC

*[Assigned for all purposes to the
Honorable Lon F. Hurwitz]*

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

Date: July 28, 2023
Time: 1:30 p.m.
Dept.: CX103

*[Filed concurrently with Supplemental
Declaration of Adrian R. Bacon]*

Complaint filed: January 8, 2020
FAC filed: March 24, 2021
Trial Date: None set.

1 **I. INTRODUCTION**

2 On or about April 28, 2023, the Court continued the hearing on preliminary approval for a
3 second time due to a set of thirty-four (34) noted issues, including procedural errors, in Plaintiff's
4 moving papers. The Court ordered Plaintiff's counsel to submit supplemental declarations and
5 briefing addressing each of these issues, along with red-lined versions of all revised papers.

6 At the outset, Plaintiff's counsel appreciates the opportunity to rectify each procedural
7 errors in its moving papers via supplemental briefing and declaration. Plaintiff's counsel asks
8 that this Court excuse their errors, and assures this Court that these will not happen again.

9 As fully outlined below, Plaintiff's counsel has corrected each of the noted issues, and
10 as ordered by the Court, provides explanation of how the pending issues were resolved, with
11 precise citation to any corrections or revisions.

12 **II. EXPLANATION OF ISSUE RESOLUTION**

13 **A. Issues Nos. 1, 2, 3 – Formatting and Content of Electronic Submissions**

14 **Issue No. 1** – The Court noted various errors relating to the bookmarks and text-search
15 functions for the Exhibits attached to the Amended Declaration of Adrian R. Bacon ("Amended
16 Dec."). As a correction to this error, each exhibit to the Supplemental Declaration of Adrian R.
17 Bacon (Supp. Dec.) has been properly bookmarked and made text-searchable. (See **Exhibit 1** to
18 Supp. Dec., fully executed Class Action Settlement Agreement (the "Settlement"), with red-lined
19 revisions; **Exhibit 2** to Supp. Dec., Agreement with revisions implemented; **Exhibit 3** to Supp.
20 Dec., proposed Class Notice, with red-lined revisions; **Exhibit 4** to Supp. Dec., proposed Class
21 Notice, with revisions implemented; **Exhibit 5** to Supp. Dec., proposed Opt-Out Form, with red-
22 lined revisions; **Exhibit 6** to Supp. Dec., proposed Opt-Out Form, with revisions implemented;
23 **Exhibit 7** to Supp. Dec., proposed Information Sheet; **Exhibit 8** to Supp. Dec., proposed
24 Preliminary Approval Order, with red-lined revisions; **Exhibit 9** to Supp. Dec., proposed
25 Preliminary Approval Order, with revisions implemented; and **Exhibit 10** to Supp Decl., proof of
26 notice to the LWDA).

27 In the previous submission to the Court, and as noted in Paragraph 1, footnote 1 of the
28 Amended Declaration, Plaintiff's counsel believed it had updated the labeling of exhibits to be

1 Exhibits 1-5 instead of Exhibits A-E and to have proper bookmarking. Exhibit 1, the Settlement
2 Agreement, also had Exhibits A-D attached to it, which were revised to be identified as Exhibits 1-
3 A and so on.

4 Although Plaintiff's counsel corrected the bookmarks to the exhibits Amended Declaration
5 as ordered by the Court, due to clerical error, it filed an incorrect version of the declaration with
6 incorrect exhibits. Thus, as noted by the Court, the Amended Declaration still contained
7 bookmarking errors. These issues have now been addressed in the Supplemental Declaration. Once
8 again, Plaintiff's counsel is cognizant of the Court's limited resources and appreciates the chance
9 to address these issues. Plaintiff's counsel apologizes to the Court for this error—it should not have
10 happened, and will not happen again.

11 **Issue No. 2** – The Court noted a typographical error in the caption page of the Amended
12 Declaration specifically in regard to the department number identified in the document (C20). The
13 error has been amended to reflect Department CX103 in the Supp. Dec.

14 **Issue No. 3** – The Court indicated that no settlement including a PAGA claim will be
15 approved absent submissions of all pre-filing notice(s) provided to the LWDA. Plaintiff's counsel
16 hereby submits such notices. Supp Decl. ¶ 12; **Exhibit 10**.

17 **B. Issues Nos. 4-18 – Revisions to Settlement Agreement**

18 **Issue No. 4** – The Court ordered further briefing on the maximum and realistic values and
19 discounts of all claims in the FAC which are released as part of this settlement. In the
20 contemporaneous Declaration, counsel have set forth a more robust description of the damages
21 analysis conducted in the case, as required under *Kullar v. Foot Locker Retail, Inc.*, (2008) 168
22 Cal.App.4th 116. Supp. Decl. ¶¶ 13-29. The maximum potential damages owed to the Class, as
23 calculated by Counsel were capped at approximately \$1.4 million, with an additional up to
24 \$286,329 in PAGA penalties that might be awarded to the LWDA and aggrieved employees. Supp
25 Decl. ¶ 28. These figures were subject to many merits, certification and damages defenses, as
26 described in prior filings. Defendant contends that the Class is owed, at most, a number in the “low
27 five figures” and that the class was not certifiable so ultimately Class would receive zero. Supp
28 Decl. ¶ 29.

1 **Issue No. 5** – The Court requested further information about the value assigned to PAGA
2 claims, including both a full valuation of both the maximum and realistic penalties with
3 discounting. Based on calculations by Plaintiff’s counsel at mediation, the maximum recoverable
4 PAGA penalties in this case are \$286,329. 75% of those penalties would go to the LWDA not to
5 the aggrieved employee members of the Class. Class Counsel believes it is likely the Court would
6 reduce the penalties by about 75% to somewhere in the range of \$70,000. Supp. Decl. ¶¶ 26-31.

7 **Issue No. 6** – The Court ordered further explanation regarding Plaintiff’s counsel’s analysis
8 of Defendant’s company records related to its financial position and the impact of Covid. Prior to
9 mediation, Defendant’s counsel provided “profits and loss” statements for the preceding years,
10 which indicated a *substantial* decline in gross sales, net profit, and net income after Covid and at
11 the time of these negotiations. Further, the figures in these documents suggested that Defendant
12 would have been hindered in its ability to pay a classwide judgment. Defendant provided
13 information about its anticipated future expenses not reflected on the P&L statements, as well as
14 information about a decline of the business during the pandemic that resulted in it laying off
15 employees and reducing its current staff size from 44 employees to 32 employees. Class Counsel
16 describes this diligence in greater detail in the contemporaneous declaration. (Supp. Dec. ¶¶ 32-
17 35). What was clear from the exchange was that a settlement in an amount greater than that which
18 was negotiated could have resulted in Defendant going out of business and Class Members losing
19 their jobs. Thus, having reviewed this information, Plaintiff’s counsel determined that the
20 Settlement is a fair, adequate, and reasonable compromise of the claims at issue.

21 **Issue No. 7** – The Court ordered further information relating Class Member recovery,
22 seeking a determination of high and low payments, as well as Plaintiff’s individual share.

23 The Claims Administrator will send checks to each Participating Class Member for the
24 amount of his or her Individual Settlement Share. The recovery sums will range depending on each
25 Class Member’s Workweeks during the Class Period. The Class data shows that the largest number
26 of workweeks is 350, the lowest is 1, and Plaintiff worked 161 workweeks. The total amount of
27 money projected to be paid to Class Members (after fees, costs and incentive award) is \$11.84 per
28 workweek. Total workweeks for the Class are 10,906. Using these figures, counsel estimates that

1 the lowest payout to a Class Member will be \$11.84, and the highest will be \$4,145.27. Plaintiff's
2 projected estimated recovery is \$1,906.83. Participating Class Member will receive on average
3 \$764.30. This average payment was calculated by taking the current estimate of the Net
4 Settlement Amount (\$129,166.67), inclusive, and dividing it equally between 169 Class
5 Members ($\$129,166.67/169 = \764.30). Supp Decl. ¶¶ 36-38.

6 **Issue No. 8** – The Court required updated data as to class size because the class period runs
7 through September 21, 2022. The current Class List was produced by Defendant and shows a class
8 size of 169, which has been confirmed by Defendant. This updated class size does not trigger the
9 escalation clause. Section (III)(E)(17) of the Agreement was revised to account for this increase in
10 class size. (Supp. Dec. ¶ 39; Ex. 1, 2).

11 **Issue No. 9** – Section (III)(E)(11) of the Settlement Agreement is revised to permit the
12 proportionate increase in the “Gross Settlement Amount” per the escalation clause outlined in
13 Section (III)(E)(17). A specific formula for this has been added to the release to clarify the issue.
14 In turn, Section (III)(E)(17) was revised to provide further specificity in terms of Class Members,
15 Aggrieved Employees, and Qualifying Work Weeks. (Supp. Dec. ¶ 40; Ex. 1, 2). Information
16 produced by Defendant shows there are 169 Class Members, and 72 Aggrieved Employees. There
17 are 10,906 total workweeks in the Class Period (which runs from January 8, 2016 to September 21,
18 2022) and 2,848 PAGA periods in the PAGA Period (which runs from January 8, 2019 to
19 September 21, 2022). Supp. Decl. ¶¶ 40-41.

20 **Issue No. 10** – Section (III)(E)(10) of the Settlement Agreement is revised to permit the
21 payment checks to remain negotiable for 180 days, up from 90 days. (Supp. Dec. ¶ 42; Ex. 1, 2).

22 **Issue No. 11** – The deadline for Objections and Requests for Exclusion was revised to be
23 60 days in Section (III)(C)(2). The deadline for notice of disputes was revised to be 60 days in
24 Section (III)(E)(14). In the case of remailing in each of the previous procedures, the respective
25 deadline was revised to add an additional 15 days to these deadlines in the event of a remailing of
26 the Notice of Class Settlement. (Supp. Dec. ¶ 43; Ex. 1, 2).

27 **Issue No. 12** – Section (VI)(A) of the Agreement is revised to require Court approval for
28 amendments to the Agreement. (Supp. Dec. ¶ 44; Ex. 1, 2).

1 **Issue No. 13** – The Court stated that: “A combined PAGA and Class Release will not be
2 approved. Separate releases are required.” Counsel have separated out the release for Class Claims
3 and for PAGA Claims into two sections, as specified in Section (V)(A) and (V)(B) of the
4 Agreement. Both releases are narrowly tailored to address the Court’s concerns about scope. Supp
5 Decl. ¶ 45.

6 **Issue No. 14** – Section (V)(A) of the Agreement is revised to address the Court’s order
7 regarding the original language of the release: “based on the subject matter alleged in the Action.”
8 The release is revised to separate class and PAGA claims. As to class claims, the release is limited
9 to claims asserted in the operative complaint, or that could have been asserted in the operative
10 complaint based on the facts alleged therein. As to PAGA claims, the release is limited to claims
11 asserted in the PAGA pre-filing notice submitted to the LWDA; or claims that could be asserted
12 against the Released Parties based on the factual allegations therein or in the operative complaint.
13 (Supp. Dec. ¶ 46; Ex. 1, 2).

14 **Issue No. 15** – Section (V)(C) (formerly (V)(B)) of the Agreement is revised to remove the
15 covenant not to sue. (Supp. Dec. ¶ 47; Ex. 1, 2).

16 **Issue No. 16** – Section (V)(C) (formerly (V)(B)) of the Agreement is revised to clarify that
17 no other consideration was provided for Plaintiff’s release. (Supp. Dec. ¶ 48; Ex. 1, 2).

18 **Issue No. 17** – Section (III)(E)(1) of the Agreement is revised to include that “Employer-
19 side payroll taxes shall be paid by Defendant.” (Supp. Dec. ¶ 49; Ex. 1, 2).

20 **Issue No. 18** – The Court ordered the submission of the Proof of Service of the Settlement
21 and Moving Papers to the LWDA. Plaintiff’s counsel hereby submits Proof of Service. (**Exhibit 10**
22 to Supp. Dec., Proof of Service of the Settlement and Moving Papers to the LWDA).

23 **C. Issues Nos. 19-28 – Revisions to Class Notice**

24 **Issue No. 19** – If applicable, the issues relating to the Settlement Agreement have been
25 similarly revised in the Notice. The deadline for Disputes, Objections and Requests for Exclusion
26 was revised to be 60 days from the date of mailing by the administrator. In the case of remailing in
27 each of the previous procedures, the respective deadline was extended by an additional 15 days.
28 (Supp. Dec. ¶ 51; Ex. 3, 4).

1 **Issue No. 20** – Notice is revised to be consistent in terms of unclaimed settlement payments,
2 specifying that unclaimed sums will be paid to “the California Controller's Unclaimed Property
3 Fund in the name of the Class Member.” (Supp. Dec. ¶ 52; Ex. 3, 4).

4 **Issue No. 21** – Reference to “Wage Release Agreement” was removed from the Notice.
5 (Supp. Dec. ¶ 53; Ex. 3, 4).

6 **Issue No. 22** – Notice is revised to direct recipients who wish to opt out to use “Opt-Out
7 Form.” (Supp. Dec. ¶ 54; Ex. 3, 4).

8 **Issue No. 23** – Objection process was simplified, requiring only that class members send
9 objection to administrator. Plaintiff’s counsel will thereafter disclose any objections in full to the
10 Court. (Supp. Dec. ¶ 55; Ex. 3, 4).

11 **Issue No. 24** – Notice is revised to advise class members of the Administrator website as
12 means to give notice and obtain copy of final judgment and other pertinent information relating to
13 the Settlement. (Supp. Dec. ¶ 56; Ex. 3, 4).

14 **Issue No. 25** – Notice is revised to advise class members of the Court website as means of
15 accessing case documents. (Supp. Dec. ¶ 57; Ex. 3, 4).

16 **Issue No. 26** – Notice and Opt-Out Forms are revised to advise class members that opting
17 out of the Settlement will not result in opting out of the PAGA settlement and they will still receive
18 a PAGA payment. (Supp. Dec. ¶ 58; Ex. 3, 4, 5, 6).

19 **Issue No. 27** - The Court noted a typographical error in the Proposed Class Notice,
20 specifically in regard to the department number identified the document (CX101). This error has
21 been amended to reflect Department CX103. (Supp. Dec. ¶ 59; Ex. 3, 4).

22 **Issue No. 28** – The Notice will be mailed in English and Spanish language versions.
23 Counsel planned to do this but hadn’t noted it in the prior papers, but do so now. The description
24 of Class Notice in Section 1(H) of Settlement Agreement is revised to specify the translation where
25 appropriate. (Supp. Dec. ¶ 60; Ex. 1, 2, 3, 4).

26 **D. Issues Nos. 29-32 – Revisions to Proposed Order**

27 **Issue No. 29** – As ordered by the Court, the Notice is attached to the Proposed Order as
28 Exhibit 1, and the Proposed Order leaves a blank for the Court to write in the ROA affixed to the

1 filing of Class Counsel’s Supplemental Declaration, since the ROA is unknown (and could be one
2 of two numbers) until after it is filed. Supp. Dec. ¶ 61; Ex. 8, 9).

3 **Issue No. 30** – All references to “conditional” and/or “preliminary” disbursements are
4 removed. Instead, the language was revised to hold the amounts were fair and reasonable
5 preliminarily, subject to further determination at Final Approval. (Supp. Dec. ¶ 62; Ex. 8, 9).

6 **Issue No. 31** - The Court noted a typographical error in the Proposed Order, specifically in
7 regard to the department number identified in the document (Dept. 20). This error has been
8 amended to reflect Department CX103. (Supp. Dec. ¶ 63; Ex. 8, 9).

9 **Issue No. 32** - Issue No. 32 identifies a typographical error referencing “Paragraph 22g” in
10 Paragraph 10 of the Proposed Order. The Proposed Order has been revised. (Supp. Dec. ¶ 64; Ex.
11 8, 9).

12 **E. Issues Nos. 33, 34 – Other Issues**

13 **Issue No. 33** – The Court inquired as to whether there is an operative fee-split or referral
14 agreement in this action. Plaintiff’s counsel will provide a co-counsel of 10% of the awarded
15 attorneys’ fees to “NM Law, APC”, the probate firm which handled the probate law aspect of the
16 appointment of the current representative Plaintiff Fatima Almazan, following the tragic passing of
17 the original representative Plaintiff, Anali Almazan. (Supp. Dec. ¶ 65).

18 **Issue No. 34** – As of the filing of this supplemental brief, Plaintiff’s counsel is unaware of
19 any pending cases which could be affected by the settlement of claims in this matter. No notice of
20 related cases have been served. Further, Plaintiff’s counsel undertook a search in the LWDA site
21 and found no pending cases which could be affected by this settlement. Plaintiff’s counsel also
22 inquired with Defendant on multiple occasions relating to the existence of any such pending cases,
23 and Defendant’s counsel confirmed that no such cases are pending at the moment. (Supp. Dec. ¶
24 66).

25 **III. CONCLUSION**

26 Plaintiff’s counsel once again apologizes for its errors, and hopes that the above
27 explanation and revisions to its moving papers are satisfactory to the Court.
28

1 Accordingly, Plaintiff's counsel humbly asks that this Court certify the Class, for
2 settlement purposes only, pursuant to Code of Civil Procedure § 382, preliminarily approve
3 the Settlement, direct that Class Notice be disseminated, schedule a Final Fairness Hearing,
4 and enter the [Proposed] Order.

5
6 Dated: July 13, 2023

Respectfully submitted,
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

7
8 By: 
9 Todd M. Friedman
 Adrian R. Bacon
 Attorneys for Plaintiff

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I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is the Law Offices of Todd M. Friedman, P.C., 21031 Venture Blvd., Ste. 340, Woodland Hills, CA 91364.

On **July 13, 2023**, I served the document(s) described as: **AMENDED MOTION FOR PRELIMINARY APPROVAL; AMENDED DECLARATION OF ADRIAN R. BACON; AND [PROPOSED] ORDER** on the interested parties in this action by sending a true copy thereof to interested parties as follows:

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Woodland Hills, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Woodland Hills, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Orange, California, by e-mail delivery on the parties listed herein at their most recent known email address.

Krista DiMercurio
Magarian & DiMercurio, APLC
krista@magarianlaw.com

[] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 13, 2023, in Orange, California.


Todd M. Friedman