

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com
mgeorge@toddfllaw.com

Attorneys for Plaintiff
FATIMA ALMAZAN on behalf of ANALI ALMAZAN

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

FATIMA ALMAZAN on behalf of decedent
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

**SUPPLEMENTAL DECLARATION OF
ADRIAN R. BACON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I, Adrian R. Bacon, declare:

1. I am a partner at The Law Offices of Todd M. Friedman, P.C. and an attorney in good standing duly admitted to the State Bar of California and before this Court and an attorney of record for Plaintiff Fatima Almazan on behalf of decedent Anali Almazan (“Plaintiff”) in this class action against Defendant Botanx, LLC (“Defendant”).

2. This supplemental declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement in the above-captioned action. Except for those matters stated on information and belief, which I am informed and believe are true and correct, I have personal knowledge of all matters set forth herein. If called as a witness, I could and would competently testify thereto.

12

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

18

4. **Issue No. 1** – Each exhibit has been properly bookmarked and made text-searchable. In the previous submission to the Court, and as noted in Paragraph 1, footnote 1 of the Amended Declaration of Adrian R. Bacon (“Amended Declaration”), a former associate of mine assisted me in assembling the papers for filing. I had emphasized the importance of ensuring that the papers adhere to the Court’s Order, and we spent time preparing the papers in a manner which on my review, did in fact conform to the Court’s requirements. However, unfortunately an error was made in assembling the papers when it came time to file the papers. My former associate left the firm shortly after the Court issued its Order, but when I spoke to him about it, he informed me he had filed it correctly. I knew that was unlikely given the Court’s harsh words directed at my firm, so I looked into it myself.

1 5. As best as I can surmise, I believed what happened was when we reviewed the
2 documents, we updated the labeling of exhibits to be Exhibits 1-5 instead of Exhibits A-E and to
3 have proper bookmarking. Exhibit 1, the Settlement Agreement, also had Exhibits A-D attached
4 to it, which were revised to be identified as Exhibits 1-A and so on. Although we corrected the
5 bookmarks to the exhibits to the Amended Declaration as ordered by the Court, due to clerical
6 error, my office filed an incorrect version of the declaration. Thus, as noted by the Court, the
7 Amended Declaration still contained bookmarking errors. These issues have now been addressed.
8 Plaintiff's counsel is cognizant of the Court's limited resources and appreciates the chance to
9 address these issues. I apologize to the Court for this error—it should not have happened, and I
10 will take measures at my firm to prevent this from happening in the future.

11 6. A true and correct copy of the Class Action Settlement Agreement (the
12 "Settlement"), with red-lined revisions, is attached as **Exhibit 1**. A true copy of the fully executed
13 Class Action Settlement Agreement with revisions implemented is attached as **Exhibit 2**.

14 7. A true and correct copy of the proposed Class Notice, with red-lined revisions, is
15 attached hereto as **Exhibit 3**. A true and correct copy of the proposed Class Notice with revisions
16 implemented is attached hereto as **Exhibit 4**. I am also attaching a copy of Exhibit 4 to the
17 Proposed Order granting Preliminary Approval, as requested by the Court, which is why there are
18 two Class Notice documents attached to this Declaration.

19 8. A true and correct copy of the proposed Opt-Out Form, with red-lined revisions, is
20 attached hereto as **Exhibit 5**. A true and correct copy of the proposed Opt-Out Form with
21 revisions implemented is attached as **Exhibit 6**.

22 9. A true and correct copy of the proposed Information Sheet is attached hereto as
23 **Exhibit 7**. No changes were made except to update the year to reflect 2023.

24 10. A true and correct copy of the proposed Preliminary Approval Order, with red-lined
25 revisions, is attached hereto as **Exhibit 8**. A true and correct copy of the proposed Preliminary
26 Approval Order, with revisions implemented is attached hereto as **Exhibit 9**. Exhibit 9-A reflects
27 the Class Notice which is attached to the Preliminary Approval Order.

28 11. **Issue No. 2** – The Court noted a typographical error in the caption page of the

Amended Declaration specifically in regard to the department number identified in the document (C20). The error has been amended to reflect Department CX103.

12. **Issue No. 3** – The Court indicated that no settlement including a PAGA claim will be approved absent submissions of all pre-filing notice(s) provided to the LWDA. My office had advised the LWDA of the settlement back on November 17, 2022, when we submitted the prior filed approval papers as well as the previous settlement agreement to the LWDA through its online portal. Contemporaneous to the filing of this Declaration, I am submitting all filings of today's date to the LWDA so the LWDA has the amended settlement agreement. I have printed a copy of the confirmation page I received after submitting, as well as a printout of the case on the LWDA website showing the documents were submitted both today and back on November 17, 2022. A true and correct copy of these documents, reflecting notice to the LWDA of this Settlement is attached hereto as **Exhibit 10**. I will update the Court prior to final approval if the LWDA contacts my office regarding the Settlement. At this time, preliminary approval can proceed, because more than 60 days will pass before Final Approval, and the Class will not be bound by any judgment at this time until the LWDA has a chance to intervene. Also, the LWDA has already received notice of the Settlement in its substantially similar form and has not objected.

Issues Nos. 4-18 – Revisions to Settlement Agreement

13. **Issue No. 4** – The Court ordered further briefing on the maximum and realistic values and discounts of all claims in the FAC which are released as part of this settlement.

14. In my opening declaration filed on July 13, 2022 at paragraphs 50-64, I had previously provided a damages analysis that I believe satisfied the requirements of *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, and which is in line with similar analysis that I have laid out in other wage and hour class action settlements. I'll repeat that analysis herein and provide more detail and context on what I did to determine these figures.

15. This case has several buckets of claims, which are described as follows:

- a. Meal break premiums owed to Class members for failure to provide timely and otherwise compliant meal breaks
- b. Rest break premiums owed to Class members for failure to provide timely

1 and otherwise compliant meal breaks

2 c. Off the Clock claims for time worked off the Clock by Class Members

3 d. Labor Code § 226 and § 203 penalties stemming derivatively from the
4 aforementioned violations; and

5 e. PAGA Penalties deriving from the aforementioned Labor Code violations.

6 16. These core allegations comprise the scope of the release, and the scope of the claims
7 at issue in the Complaint.

8 17. The primary case theory in this matter that my office believed was supported by a
9 class certification position was Defendant's meal break practices. We requested in discovery
10 copies of the time and payroll records for the Class Members, and I personally reviewed them, in
11 formulating a damages theory for the meal break claims.

12 18. As I said in my prior declaration, from the beginning of the class period, up until
13 the time that we filed the lawsuit, Defendant's records, on my review, showed that there was a
14 90% violation rate, meaning that 90% of the time, a meal break was either less than 30 minutes,
15 not provided at all, or was provided after the requisite 6th hour of work under the Labor Code,
16 meaning it was late. After we filed suit, Defendant's violation rate dropped precipitously to
17 approximately 10%, which I took to mean that there was a problem with enforcing the meal break
18 rules prior to receiving notice of our suit, and Defendant substantially cleaned it up after being
19 sued to the point where there were very little provable damages after that point. A 10% non-
20 compliance rate in my opinion is so low that it evidences that these were likely isolated events
21 that could be explained by employees choosing to take late breaks, not being forced to by their
22 employer. However the same could not be said for the 90% non-compliance rate, which in my
23 opinion, was so close to 100% that it showed a complete lack of enforcement by the employer
24 over the requirements of the Labor Code. Defendant strongly contested this characterization, but
25 for purposes of my damages analysis, I had to assume that every time there was a violation on the
26 time records, it meant that the Class members could potentially, for purposes of their maximum
27 potential recovery, recover a meal period premium. I used the data provided by Defendant to
28 calculate the number of workweeks for the Class, as well as their average rates of pay (\$12.50 per

hour), and the number of Class Members, and extrapolated these findings across the applicable periods where non-compliance time records were found. After doing so, I determined that meal period damages for the Class would be capped at approximately \$408,354.26. Defendant could argue plausibly that the inability to prove or corroborate alleged meal period violation not memorialized by records precludes liability for a significant portion of the damages alleged. This was both a class certification argument, and a merits argument, as well as affecting damages. However, for purposes of the *Kullar* analysis, I assume every instance is a violation for which the Class is owed money, even if that ultimately would not have been proven at trial. This was our strongest claim.

19. I also want to point out that while this analysis is based on the data for 159 employees, and the Class increased marginally to 169 employees (which we accounted for and protected the Class with the escalator provision), these additional workweeks and employees after the analysis would have been during the substantial compliance period, after Defendant had cleaned up its practices, so I don't actually think it is likely the Class would be owed any more money as a result of the slight increase in its size after the case was settled. This statement is backed up by my personal review of the strong easily identifiable trends in the timekeeping data throughout the class period.

20. As I said in my prior declaration, I did the same thing for rest breaks – I assumed a 90% violation rate for rest breaks prior to suit, and a 10% violation rate after suit, putting the practices in line with my findings of the meal break data. While rest breaks are not documented like meal breaks, our client informed us that nobody got rest breaks, and so this 90% violation rate was fairly close to 100% and accounted for a near total non-compliance. I felt comfortable given the records I had reviewed using this figure. Defendant took the position that there were zero meal and rest break violations because the policies complied with the law, and the decision to not take them was the employee's decision, not the employer's. While that may have been proven true (in whole or in part) at trial, nonetheless, for purposes of the maximum possible damages analysis under *Kullar*, I assumed that the violations were as rampant as they appeared on their face. The Class could not have recovered more than 100% violation rate, so a 90%

violation rate seemed to me to be a realistic maximum recovery mirroring the meal break data.

21. Rest break damages were thus capped at \$408,354.26.

22. Additionally, there were claims for off the clock wages due and owing from the argument that Class Members were not paid for time outside of their normal hours worked, such as visiting the site during the night to turn off the mixer. However, this claim was super specific to Plaintiff and was not plausibly something that other class members would have experienced, after discussing the claims further with Defendant. Plaintiff was a manager who worked after hours alone by occasionally locking up and shutting off machinery and other off the clock duties that others were not expected to do. The general practice as uncovered in discovery based on policies and practices was that people only worked on the clock. This was not the type of claim that was subject to class-wide proof. And of course, while there may have been a handful of isolated incidents where some small number of class members occasionally performed duties off the clock, there was no way to quantify this figure, or to assign a class-wide damage to it. Accordingly, I place zero value on the release of this claim for purposes of a *Kullar* analysis. I have no reason to believe any Class Members other than Plaintiff worked of the clock.

23. As I said in my prior declaration, I calculated § 226 and § 203 penalties for the Class as well, using the same data provided in discovery. I assumed that every pay period during the applicable statute of limitations period and where the violations occurred pre-suit had a violation of at least either the meal or rest break provisions of the Labor Code, and thus, there was a 100% non-compliance rate regarding § 226 and § 203. Using this figure, I was also able to determine damages under §§ 203 and 226 and pursuant to PAGA.

24. My office calculated § 226 penalties at \$190,886.

25. My office calculated § 203 penalties at approximately \$390,000.

26. The PAGA penalties in this case were also calculated at mediation and were determined based on the same time period as the § 226 penalties as it was assumed there was a PAGA violation for every employee, during every pay period. However, it should be pointed out again that the additional PAGA and pay periods after the settlement which are rolled into the escalator clause, are during time periods where Defendant cleaned up their practices and were

1 substantially compliant with the requirements under the law. I do not believe there to be a
2 significant likelihood of recovery of any penalties after such improvements were made to the
3 practices, based on my review of the discovery.

4 27. PAGA penalties were calculated at a maximum amount of \$286,329, which is
5 comprised of \$95,443 in § 558 penalties, and \$190,886 in § 2699(f) penalties. These penalties
6 would absolutely have been subject to reduction by the Court at trial. Case law on the issue shows
7 that courts reduce penalties by between 30% (see *Thurman v. Bayshore Transit Management,*
8 *Inc.*, (2012) 203 Cal.App.4th 1112) and in some cases over 90%. See *Carrington v. Starbucks*
9 *Corp.*, (2018) 30 Cal.App.5th 504. I think this particular case with its facts falls somewhere
10 between *Thurman* and *Carrington*. My best guess at what I think the Court would do in this case
11 (including both the severity of the violation and the financial/confiscatory concerns) is reduce the
12 penalties by about 75% to somewhere in the range of \$70,000 if we prevailed and proved all of
13 our claims. Again, for the sake of my *Kullar* duties, the maximum recoverable PAGA penalties
14 in this case are \$286,329. 75% of those penalties would go to the LWDA not to the aggrieved
15 employee members of the Class.

16 28. As I stated in my prior declaration, the maximum recoverable damages to the Class
17 based on the records produced in discovery were capped at approximately \$1.4 million, with an
18 additional up to \$286,329 in PAGA penalties that might be awarded to the LWDA and aggrieved
19 employees. For the reasons I described in my prior declaration regarding risks, I believe these
20 figures were subject to a likelihood of significant reductions based on the positions taken by
21 Defendant.

22 29. Defendant took the position in its own damages analysis that the Class was owed
23 at most a number in the “low five figures” and that the class was not certifiable so ultimately
24 Class would receive zero.

25 30. **Issue No. 5** – The Court wanted further information about the value assigned to
26 PAGA claims, including both a full valuation of both the maximum and realistic penalties with
27 discounting. As stated above, the maximum recoverable PAGA penalties in this case based on
28 our calculations are \$286,329. 75% of those penalties would go to the LWDA not to the aggrieved

1 employee members of the Class. Also, I believe it is likely the Court would reduce the penalties
2 by about 75% to somewhere in the range of \$70,000.

3 31. This was based on 1,908 PAGA periods at the time of the mediation. The number
4 of PAGA periods increased after mediation to 2,848 but included only those additional pay
5 periods where there was substantial compliance as a result in a change to the practices following
6 suit. Therefore, I do not believe these additional pay periods that fall within the PAGA release
7 would add any substantial value to the damages, because there wouldn't be more than a de minimis
8 number of violations of the Labor Code during that time, based on our review of the discovery.

9 32. **Issue No. 6** – The Court ordered further explanation regarding Plaintiff's counsel's
10 analysis of Defendant's company records related to its financial position and the impact of Covid.
11 Prior to mediation, Defendant's counsel provided "profits and loss" statements for the preceding
12 years, which indicated a *substantial* decline in gross sales, net profit, and net income after Covid
13 and at the time of these negotiations. Further, the figures in these documents suggested that
14 Defendant would have been hindered in its ability to pay a classwide judgment, because even a
15 mid-six figure classwide judgment would have crippled its cash flow and operations during a time
16 when their business was already suffering due to the economic conditions of the time.

17 33. In addition, Defendant's counsel disclosed that it had reduced employee headcount,
18 cut expenses, deferring the payment of debts, and taken other similar measures as a means to curb
19 the impact of its financial position at the time, partly due to the pandemic. For instance, they
20 indicated that the current employee headcount at the time was down to 32, from a 2019 year end
21 employee headcount of 44. This was consistent with the FTE analysis I had looked at in the class
22 data. They also provided more information about the profit and loss statement, advising that it
23 had yet to be reconciled for year end expenses and inventory counts, and also provided context to
24 the cash on hand figures in their financial records, because the company needed to hold on to
25 certain cash amounts to cover end of year expenses like rent, utilities and payroll as they did not
26 have a traditional line of credit. They also had invested in equipment right before the pandemic
27 and were making payments on that while their revenues had substantially declined, further
28 limiting operation cash on hand.

1 34. Based on my diligence, I believe that if we had negotiated a settlement any larger
2 than we did, Defendant would have had to take on more debt, during a critical time that could
3 have sunk its business entirely. Given the nature of the violations, and the fact that dozens of
4 class members were currently employed by Defendant, I did not think this was a good idea to
5 push further. I got the best settlement I could, and I feel strongly that it is fair given the potential
6 risks, and the maximum recoverable damages.

7 35. Thus, having reviewed this information, I determined that the Settlement is a fair,
8 adequate, and reasonable compromise of the claims at issue.

9 36. **Issue No. 7** – The Court ordered further information relating Class Member
10 recovery, seeking a determination of high and low payments, as well as Plaintiff's individual share.
11 As outlined in Paragraph 50 of the Amended Declaration, the Settlement provides meaningful
12 relief to absent Class Members. The Claims Administrator will send checks to each Participating
13 Class Member for the amount of his or her Individual Settlement Share. The recovery sums will
14 range depending on each Class Member's Workweeks during the Class Period.

15 37. Further, assuming 100% participation and with an average pre-tax estimated
16 payment, those Participating Class Member will receive on average \$764.30. This average
17 payment was calculated by taking the current estimate of the Net Settlement Amount
18 (\$129,166.67), inclusive, and dividing it equally between 169 Class Members ($\$129,166.67/169 =$
19 $\$764.30$). I believe it is fair and reasonable as the claims for Class Members are substantively
20 similar, despite the rate of pay differences, and given that this is reflective of the damages each
21 individual would be entitled to at trial on average as a result therefrom.

22 38. Defendant represented that the total number of Workweeks worked by the Class
23 during the Class Period is 10,906, which means that Class Members are projected to receive a net
24 sum of approximately \$11.84 per qualifying workweek. Some Class Members worked for
25 Defendant for the entire Class Period, which is 350 workweeks. Those members are projected to
26 receive the maximum amount of approximately \$4,145.27. Some Class Members worked for
27 Defendant only a couple of days, and therefore only worked for one workweek. Such a Class
28 member would receive a projected estimated amount of \$11.84 and would represent the minimum

1 amount of recoverable damages. Plaintiff worked for Defendant at the beginning of the Class
2 Period through February 5, 2019, a total of 161 workweeks, and is projected to receive
3 approximately \$1,906.83.

4 39. **Issue No. 8** – The Court required updated data as to class size because the class
5 period runs through September 21, 2022. As of the filing of the declaration, Defendant has
6 provided information showing the class size is 169. This updated class size does not trigger the
7 escalation clause, which is triggered only if the Class size increased above 180. Section
8 (III)(E)(17) of the Agreement was revised to account for this increase in class size.

9 40. **Issue No. 9** – Section (III)(E)(11) of the Settlement Agreement is revised to permit
10 the proportionate increase in the “Gross Settlement Amount” per the escalation clause outlined in
11 Section (III)(E)(17). Specifically, we added a formula showing the exact dollar amount the Gross
12 Settlement Fund would be increased by in the event that the escalator clause is triggered, on a per
13 employee basis. In turn, Section (III)(E)(17) was revised to provide further specificity in terms
14 of Class Members, Aggrieved Employees, and Qualifying Work Weeks.

15 41. According to information produced by Defendant, there are 169 Class Members,
16 and 72 Aggrieved Employees. There are 10,906 total workweeks in the Class Period (which runs
17 from January 8, 2016 to September 21, 2022) and 2,848 PAGA periods in the PAGA Period
18 (which runs from January 8, 2019 to September 21, 2022).

19 42. **Issue No. 10** – Section (III)(E)(10) of the Settlement Agreement is revised to permit
20 the payment checks to remain negotiable for 180 days, up from 90 days.

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

26 44. **Issue No. 12** – Section (VI)(A) of the Agreement is revised to require Court
27 approval for amendments to the Agreement.

28 45. **Issue No. 13** – The Court stated that: “A combined PAGA and Class Release will

not be approved. Separate releases are required.” Counsel have separated out the release for Class Claims and for PAGA Claims into two sections, as specified in Section (V)(A) and (V)(B) of the Agreement. Both releases are narrowly tailored to address the Court’s concerns about scope.

46. **Issue No. 14** – Section (V)(A) of the Agreement is revised to address the Court’s order regarding the original language of the release: “based on the subject matter alleged in the Action.” The release is revised to separate class and PAGA claims, with the PAGA claims being addressed in a new section - (V)(B). As to class claims, the release is limited to claims asserted in the operative complaint, or that could have been asserted in the operative complaint based on the facts alleged therein. As to PAGA claims, the release is limited to claims asserted in the PAGA pre-filing notice submitted to the LWDA; or claims that could be asserted against the Released Parties based on the factual allegations therein or in the operative complaint.

47. **Issue No. 15** – Section (V)(C) (formerly (V)(B)) of the Agreement is revised to remove the covenant not to sue.

48. **Issue No. 16** – Section (V)(C) (formerly (V)(B)) of the Agreement is revised to clarify the Service Award requested for Plaintiff, and that no other consideration was provided for Plaintiff’s release. I can attest to the Court that there is no separate side agreement for Plaintiff and the only consideration provided to Plaintiff for this Settlement is that which the other Class Members are receiving (based on the number of work weeks), plus any discretionary incentive award issued by the Court (which is technically not consideration, as it is discretionary and up to the Court to determine based on separate standards).

49. **Issue No. 17** – Section (III)(E)(1) of the Agreement is revised to include that “Employer-side payroll taxes shall be paid by Defendant.”

50. **Issue No. 18** – A true and correct copy of the aforementioned proof that my office submitted the Settlement to the LWDA is attached hereto as **Exhibit 10**.

Issues Nos. 19-28 – Revisions to Class Notice

51. **Issue No. 19** – If applicable, the issues relating to the Settlement Agreement have been similarly revised in the Notice. The deadline for Disputes, Objections and Requests for Exclusion was revised to be 60 days from the date of mailing by the administrator. In the case of

1 remaining in each of the previous procedures, the respective deadline was extended by an
2 additional 15 days.

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

6 53. **Issue No. 21** – Reference to “Wage Release Agreement” was removed from the
7 Notice.

8 54. **Issue No. 22** – Notice is revised to direct recipients who wish to opt out to use
9 “Opt-Out Form”.

10 55. **Issue No. 23** – Objection process was simplified, requiring only that class members
11 send objections to administrator. My office will thereafter disclose any objections to the Court at
12 Final Approval.

13 56. **Issue No. 24** – Notice is revised to advise class members of the Administrator
14 website as means to give notice and obtain copy of final judgment, as well as other pertinent
15 information.

16 57. **Issue No. 25** – Notice is revised to advise class members of the Court website as
17 means of accessing case documents.

18 58. **Issue No. 26** – Notice and Opt-Out Forms are revised to advise class members that
19 opting out of the Settlement still results in a PAGA payment, and that Class Members cannot opt
20 out of the PAGA portion of the Settlement.

21 59. **Issue No. 27** - The Court noted a typographical error in the Proposed Class Notice,
22 specifically in regard to the department number identified the document (CX101). This error has
23 been amended to reflect Department CX103.

24 60. **Issue No. 28** – The Notice will be mailed in English and Spanish language versions.
25 The claims administrator included this in the original quote that I requested from them prior to
26 the filing of preliminary approval. The description of Class Notice in Section 1(H) of Settlement
27 Agreement is revised to require the translation where appropriate.

28 ///

Issues Nos. 29-32 – Revisions to Proposed Order

61. **Issue No. 29** – The Notice is attached to the Proposed Order as Exhibit 9-A, and the Proposed Order leaves a blank for the Court to write in the ROA affixed to the filing of this Declaration in paragraph one. I left this blank because I am not sure what ROA will be assigned to this Declaration when we file our papers, as it will depend on the order in which the Clerk enters them onto the Docket.

62. **Issue No. 30** – All references to “conditional” and/or “preliminary” disbursements are removed. Instead, the language was revised to hold the amounts were fair and reasonable preliminarily, subject to further determination at Final Approval. I believe asking for a \$10,000 incentive award, a one third attorney fee based on the common fund method, given that it will also be supported by our lodestar at final approval, and costs in an amount less than \$10,000, which will be itemized, is fair and reasonable and customary in wage and hour class action settlements in California state court.

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

64. **Issue No. 32** - Issue No. 32 identifies a typographical error referencing “Paragraph 22g” in Paragraph 10 of the Proposed Order. The Proposed Order has been revised.

Issues Nos. 33, 34 – Other Issues

65. **Issue No. 33** – The Court inquired as to whether there is an operative fee-split or referral agreement in this action. Plaintiff’s counsel will provide a co-counsel fee of 10% to “NM Law, APC.” My office hired NM Law, APC to assist Plaintiff and my office with the paperwork relating to probate, regarding the appointment of the current representative Plaintiff Fatima Almazan, following the tragic passing of the original representative Plaintiff, Anali Almazan. They were helpful in aiding my office in protecting the Class from a potential headless class action scenario and ensuring Class Members received benefits under this Settlement.

66. **Issue No. 34** – As of the filing of this declaration, Plaintiff is unaware of any pending cases which could be affected by the settlement of claims in this matter. No notice of

1 related cases have been served to my office. Further, I undertook a search in the LWDA site and
2 found no pending notices against Defendant regarding claims which could be affected by this
3 settlement. My office also inquired with Defendant relating to the existence of any such pending
4 cases, and Defendant's counsel confirmed that no such cases are pending at the moment.

5 I declare under penalty of perjury under the laws of California and the United States that
6 the foregoing is true and correct. Executed in Orange, California, on July 13, 2023.

7 

8 _____
Adrian R. Bacon

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

Todd M. Friedman (SBN 216752)
tfriedman@toddfllaw.com
Adrian R. Bacon (SBN 280332)
abacon@toddfllaw.com
Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. #340
Woodland Hills, CA 91364
Phone: (323) 306-4234
Fax: (866) 633-0228

Attorneys for Plaintiff
ANALI ALMAZAN

Mark D. Magarian (State Bar No. 164755)
Krista L. DiMercurio (State Bar No. 255774)
MAGARIAN & DIMERCURIO, A Professional Law Corporation
20 Corporate Park, Suite 255
Irvine, California 92606
Tel: 714-415-3412
Fax: 714-276-9944

Attorneys for Defendant BOTANX, LLC.

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

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

Plaintiff,
vs.

BOTANX, LLC and DOES 1 to 50,
inclusive,

Defendants.

**CASE NO.: 30-2020-01122459-CU-
OE-CXC**

*[Assigned for all purposes to the
Honorable Glenda Sanders]*

STIPULATED SETTLEMENT

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

1 This is a stipulated settlement of a class and representative action (the “Agreement”).
2 This Agreement is made by and between Plaintiff Anali Almazan, individually, the
3 “Settlement Class Members” (defined below), and all “Aggrieved Employees” (defined
4 below), on the one hand and Defendant Botanx, LLC, on the other.

5 **I. DEFINITIONS**

6 For ease of reference, this section defines some but not all terms used herein. Unless
7 otherwise defined, the following terms used in this Agreement shall have the meanings
8 ascribed to them as set forth below:

- 9 A. Action: *Anali Almazan v. Botanx, LLC et al.*, Case No. 30-2020-01122459-CU-OE-
10 CXC, originally filed January 8, 2020 in the Orange County County Superior
11 Court, later amended on March 24, 2021, and encompasses, but is not limited to,
12 all claims alleged in the Operative Complaint, *infra*.
- 13 B. Aggrieved Employees: all Class Members, *infra*, employed during the PAGA
14 Period, *infra*, and eligible to participate in a settlement of the claims brought under
15 the Private Attorneys General Act of 2004 (“PAGA”) in the Action.
- 16 C. Attorneys’ Fees: Eighty-Three Thousand Two Hundred Fifty Dollars (\$83,250.00),
17 or one-third (1/3) of the Settlement Fund, *infra*, plus Class Counsel’s expenses [an
18 amount to be determined by Class Counsel’s (defined below) billing statement],
19 which Defendant agrees not to oppose, subject to the Court’s approval.
- 20 D. Claims Administration Expenses: the Claims Administrator, *infra*, will send the
21 Class Notice, *infra*, and Class Member, *infra*, payments by first-class mail. The
22 postage and printing costs for the Notices, and the postage costs for mailing the
23 payments, shall be paid out of the Settlement Fund. Any other administrative costs
24 related to Class Administration also will be paid out of the Settlement Fund.
- 25 E. Claims Administrator or Settlement Administrator: Rust Consulting, who will be
26 responsible for the administration of all class claims, including mailing the Class
27 Notices, *infra*, receiving and administering any opt-outs, receiving any objections,
28 and printing and mailing the settlement checks.

- 1 F. Class Counsel: Todd M. Friedman, Thomas E. Wheeler, and Adrian R. Bacon,
2 Offices of Todd M. Friedman, P.C., 21031 Ventura Blvd., Suite 340, Woodland
3 Hills, CA 91364.
- 4 G. Class Members: all individuals who were employed by Defendant as a non-exempt
5 employee in California during the Class Period, *infra*.
- 6 H. Class Notice: the Notice of Class Action Settlement, mailed to all Class Members
7 as set forth herein. Notice will be mailed in Spanish where appropriate.
- 8 I. Class Period: January 8, 2016 through the September 21, 2022.
- 9 J. Court: Orange County Superior Court.
- 10 K. Defendant: Botanx, LLC, the named defendant in the Action.
- 11 L. Defense Counsel: Mark D. Magarian and Krista L. DiMercurio, Magarian &
12 DiMercurio, 20 Corporate Park, Suite 255, Irvine, CA 92606.
- 13 M. Effective Date: the date on which all time limitations for filing an appeal from the
14 Court's Judgment and a final order approving settlement of this Action have
15 expired without a notice of appeal having been timely filed.
- 16 N. Gross Settlement Amount: Two Hundred Fifty Thousand Dollars (\$250,000).
- 17 O. Individual Settlement Share: the individual shares of the Net Settlement Amount,
18 *infra*, inclusive of any taxes withheld, that shall be paid to each Participating Class
19 Member, *infra*, the calculation of which is provided herein (Sec.III.E.5).
- 20 P. Net Settlement Amount: the Gross Settlement Amount, less the Service Award
21 (defined below), Attorneys' Fees, Attorneys' Expenses, Claims Administration
22 Expenses, and the PAGA Allocation (defined below).
- 23 Q. Operative Complaint: the First Amended Complaint ("FAC") filed in the Action
24 on March 24, 2021.
- 25 R. Opt Out / Objection Period: Class Members shall have forty-five (45) days from
26 the date Class Notice is first mailed to object to or exclude themselves from the
27 Settlement. In the event of a remailing, the deadline shall be extended by an
28

additional 15 days. Neither party shall encourage any Class Member to object to or opt out of the Settlement.

S. PAGA Allocation: Ten Thousand Dollars (\$10,000) for all outstanding PAGA claims against Defendant, to be allocated as penalties under PAGA to Aggrieved Employees, of which 75% shall go to the LWDA, and 25% shall go to the Aggrieved Employees.

T. PAGA Period: January 8, 2019 through April 5, 2021.

U. Participating Class Members: all Class Members and Aggrieved Employees who do not timely opt-out of the Settlement.

V. Parties: Defendant, Plaintiff, and Participating Class Members.

W. Plaintiff: Anali Almazan¹, the named plaintiff and class representative in the Action.

X. Preliminary Approval: Class Counsel shall draft and file a motion for preliminary approval within ninety (90) days of execution of the Agreement.

Y. Qualifying Workweeks: the total number of workweeks within the Class Period that a Class Member worked for Defendant based on Defendant's records, excluding leaves of absence and vacation.

Z. Released Claims: all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that were asserted or could have been asserted at any time in the Action based on the facts, theories, and/or claims alleged in the Action; it includes and covers claims for violations of any state or federal statutes, rules or regulations, claims that were asserted or could have been asserted at any time in the Action based on the ~~subject facts or laws matter~~ alleged in the ~~Action Complaint. Specifically, this includes any claims that by any Class Member and/or~~

¹ On June 9, 2021, The Court approved Plaintiff's Daughter, Fatima Almazan to substitute in as Plaintiff after Mr. Anali Almazan passed away.

1 ~~Aggrieved Employee that,~~ during the Class Period and or PAGA Period, Defendant
2 at any time that: 1) failed to pay wages, including minimum wages; 2) failed to
3 pay overtime and/or double-time wages; 3) failed to provide timely, full, and
4 uninterrupted rest breaks or a penalty payment in lieu thereof; 4) failed to provide
5 timely, full, and uninterrupted meal periods or a penalty payment in lieu thereof;
6 5) failed to provide accurate itemized wage statements; 6) failed timely to pay
7 wages or pay all wages due upon termination of employment; 7) failed to provide
8 restitution for unpaid sums; 8) failed to maintain accurate records; 9) violated the
9 Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*; and 10) owed
10 penalties pursuant to PAGA, Labor Code § 2698, *et seq.*, including under Labor
11 Code § 558, predicated on any of the Labor Code sections identified below in §
12 5(B) of the Agreement. ~~This Settlement is conditioned upon the release by all~~
13 ~~Participating Class Members of any claim under Labor Code § 2698, et seq. and~~
14 ~~upon covenants by all members that they will not participate in any proceeding~~
15 ~~seeking penalties under Labor Code § 2698, et seq.~~ (collectively, the “Released
16 Claims”). Except as set forth above, Released Claims does not include any other
17 claims, including claims for vested benefits, wrongful termination, violation of the
18 Fair Employment and Housing Act, unemployment insurance, disability, social
19 security, workers’ compensation, or claims based on facts occurring outside the
20 Class Period. The period of the Released Claims shall cover the Class Period. The
21 Parties agree that the judgment, and release of claims provided herein, shall have
22 *res judicata* effect.

23 AA. Released Parties: Defendant and its past and present parent companies,
24 subsidiaries and affiliates, and their respective present and former officers,
25 directors, stockholders, agents, employees, insurers, co-insurers, reinsurers,
26 attorneys, accountants, auditors, advisors, registered representatives, consultants,
27 pension and welfare benefit plans, plan fiduciaries, administrators, trustees,
28

1 partners, predecessors, successors, assigns, and any other persons acting by,
2 through, under, or in concert with any of them.

3 BB. Service Award: Defendant shall not oppose a service award to Plaintiff in the
4 amount of Ten Thousand Dollars (\$10,000), to be paid out of the Gross Settlement
5 Amount. The award is in addition to the Plaintiff's Individual Settlement Share.

6 CC. Settlement: the disposition of the Action pursuant to this Agreement.

7 DD. Settlement Fund: if no objection to the Settlement is made, Defendant shall
8 provide the Gross Settlement Amount to the Claims Administrator within thirty
9 (30) days of Final Approval of the Settlement, assuming no appeal has been filed,
10 or the date the judgment is final and no longer subject to appeal. The payment of
11 all Individual Settlement Shares, Claims Administration Expenses, Attorneys'
12 Fees, Attorneys' Expenses, and Service Awards, shall be made by the Claims
13 Administrator to the Class, and Class Counsel within fifteen (15) days of the date
14 the Settlement was funded.

15 II. BACKGROUND

16 On January 8, 2020, Plaintiff filed a Class Action Complaint on behalf of himself and
17 a class of non-exempt current and former employees who were employed by Defendant in
18 California during the Class Period for, *inter alia*, Defendant's alleged failure to pay at least
19 minimum wages for all hours worked, failure to pay premium wages for missed, late, and/or
20 interrupted meal and rest periods, failure to pay premium wages for all overtime hours
21 worked, failure to provide accurate itemized wage statements, and failure to pay all wages
22 due upon termination. Plaintiff also alleged a cause of action under the Unfair Competition
23 Law ("UCL"), Bus. & Prof. Code § 17200, *et seq.*, arising from the alleged Labor Code
24 violations. On March 24, 2021, Plaintiff filed his FAC to add a cause of action under PAGA,
25 Labor Code § 2698, *et seq.*, on behalf of all aggrieved employees employed during the PAGA
26 Period.

27 The Parties agreed to attend private mediation. In advance of mediation, Defendant
28 provided Plaintiff's counsel with relevant information regarding the Class Members and the

1 Aggrieved Employees, including a twenty percent (20%) sample of the Class Members and
2 Aggrieved Employees' timekeeping and payroll records, and documents pertaining to
3 Defendant's uniform policies and procedures. Defendant also provided detailed financial
4 records substantiating their position that the company was impacted significantly and
5 negatively by COVID. On May 6, 2021, after extensive investigation and substantial
6 discovery by Plaintiff's counsel, the Parties participated in mediation with Gail Ander (Ret)
7 of JAMS., an experienced and respected mediator. After a full day of negotiation and
8 exchanges of information, the Parties were unable to settle the matter and were also unable
9 to do so after a second half day mediation on August 10, 2021. However, after further
10 extensive negotiations, the parties were finally able to resolve the matter on January 25, 2022.

11 Plaintiff and Class Counsel concluded, after taking into account the sharply disputed
12 factual and legal issues involved in this Action, the risks attendant to further prosecution, the
13 discovery conducted to date, the significant financial hurdles the Class Members faced with
14 respect to obtaining a judgment from Defendant due to limited funds, and the substantial
15 benefits to be received pursuant to the proposed terms, that settlement as set forth herein was
16 in the best interests of the Class Members.

17 Plaintiff and Class Counsel are cognizant of problems they face with respect to their
18 burden of proof, many of which were discussed during the mediation and about which Judge
19 Andler provided valuable insight. Plaintiff and Class Counsel believe that the Settlement is
20 fair and confers substantial benefits on the Class Members that include certain and meaningful
21 recovery in the near term. Defendant and Defense Counsel also concluded that there were
22 benefits associated with settling. Based on the sharply disputed factual and legal issues
23 involved in the Action, the risks attendant to further defense, the expense and burden of
24 protracted litigation, and Defendant's desire to put the controversy to rest, Defendant and
25 Defense Counsel believe that the Settlement on the terms hereinafter set forth is in
26 Defendant's best interest. With the mediator's assistance, therefore, the Parties determined
27 that the terms and conditions set forth in this Agreement are fair, adequate, and reasonable.
28

1 This Settlement contemplates the entry of a Final Order approving settlement of class
2 action and discharge of all Parties and their respective counsel from liability for the Released
3 Claims. The Judgment and Final order shall have a res judicata effect and bar Plaintiff and
4 each Participating Class Member from bringing any action asserting Released Claims.

5 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF**
6 **SETTLEMENT**

7 The Parties and their respective counsel shall take all steps that may be requested by
8 the Court relating to the approval and implementation of this Agreement and shall otherwise
9 use their respective best efforts to obtain Court approval and implement this Agreement. The
10 procedure for obtaining Court approval of and implementing this Agreement shall be as
11 follows:

12 **A. Preliminary Approval**

13 Class Counsel will submit this Agreement to the Court for preliminary approval. The
14 Court's preliminary approval of this Agreement shall be embodied in an Order Granting
15 Preliminary Approval of Class Action Settlement, which shall include the following:
16 Certification of the Settlement Class for settlement purposes only; appointing Class Counsel
17 for settlement purposes only; setting the Final Fairness and Approval Hearing; and approval
18 for the Notice of Class Action Settlement, *infra*.

19 **B. Notice of Settlement to Class Members**

20 The Claims Administrator shall disseminate to Class Members, by first-class United
21 States mail as described in this Section III(B), the Class Notice and the Opt-Out form, which
22 the Parties will ask the Court to approve in the forms attached hereto as Exhibit A, and Exhibit
23 B ("Opt-Out form").

24 1) Class Notice.

25 Notice shall be provided to Class Members in the following manner:

- 26 a. No later than twenty (20) days after the Court grants preliminary
27 approval of this settlement, Defendant will provide the Claims
28 Administrator with a list of all Class Members (the "Class List"). The

1 Class List shall state the social security numbers and the last known home
2 address for each such Class Member. The Class List shall also state the
3 dates of employment worked by each such Class Member during the
4 Class Period and/or PAGA Period as indicated in Defendant's respective
5 records.

6 b. Within ten (10) days of receipt of the Class List from Defendant, the
7 Claims Administrator shall mail the Notice of Class Settlement and the
8 Opt-Out form by First-Class United States mail, postage prepaid, to the
9 last known address of each Class Member, or, in the case of Class
10 Members known to be deceased, to the legal representative of the estate.

11 c. The Claims Administrator shall also mail, with the Notice of Class
12 Settlement, a Statement of Weeks Worked in the form attached hereto as
13 Exhibit C that will state the dates the recipient Class Member worked
14 during the Class and/or PAGA Period, as indicated in Defendant's
15 records, and the workweeks that each Class Member worked during the
16 Class and/or PAGA Period.

17 d. With respect to those Class Members whose Notice of Class Settlement
18 is returned as undeliverable, the Claims Administrator shall promptly
19 attempt to obtain a valid mailing address by use of the Equifax NCOA
20 ("National Change of Address") database search and skip trace. If
21 another address is identified, the Claims Administrator shall immediately
22 thereafter send the Class Notice and Opt-Out form by first class mail to
23 the new address.

24 e. All costs associated with paying, processing and administering this
25 Settlement, whether foreseen or not, shall be paid from the Gross
26 Settlement Amount.

27 2) Declaration of Compliance.
28

1 No later than thirty (30) days before the Final Fairness and Approval Hearing, the
2 Claims Administrator shall provide Defense Counsel and Class Counsel with a declaration
3 attesting to completion of the notice process (except for any ongoing attempt to obtain valid
4 mailing addresses for, and the re-sending of, any returned Class Notices), including the steps
5 set forth in Section III(B) (“Declaration of Compliance”), which shall be filed with the Court
6 by Class Counsel with the final approval motion.

7 Compliance with the procedures described in this Section shall constitute due and
8 sufficient notice to Class Members of this proposed Settlement and the Final Fairness and
9 Approval Hearing, shall not be subject to objection or collateral attack by any person or entity,
10 and shall satisfy the requirement of due process. Nothing else shall be required of, or done
11 by, the Parties, Class Counsel, Defense Counsel, or the Claims Administrator to provide
12 notice of the proposed Settlement and the Final Fairness and Approval Hearing.

13 **C. Responses to Notice**

14 This is an all-in, non-reversionary settlement, and each Class Member is entitled to
15 receive an Individual Settlement Share, subject to the terms of this Agreement, without
16 “opting in” to the settlement. Each Class Member has three (3) options: 1) do nothing, thereby
17 participating in the settlement and releasing Released Parties as set forth herein; 2) request to
18 be excluded; or 3) object to the settlement.

19 **1) Option 1: Do Nothing.**

20 By doing nothing, the Class Member becomes a Participating Class Member and will
21 be entitled to participate in the settlement and receive his or her Individual Settlement Share
22 and will be deemed to have released the Released Claims as to the Released Parties.

23 **2) Option 2: Request for Exclusion from Settlement.**

24 Any person who receives a Notice of Class Settlement may request to be excluded
25 from the Class by submitting the postage pre-paid Opt-Out form (Exhibit B). Any such
26 request must be made in accordance with the terms set forth in the Class Notice and will be
27 timely only if postmarked no later than ~~sixty (60) forty-five (45)~~ days after the date of mailing
28

1 of the Class Notice by the Claims Administrator (the “Response Deadline”). In the case of
2 re-mailing, the Response Deadline will be extended by an additional 15 days.

3 3) Option 3: Objections to Settlement.

4 Any Class Member wishing to object to the approval of this Settlement (“Objecting
5 Class Member”) shall inform the Claims Administrator in writing of his or her intent to object
6 (“Notice of Objection”) by following the procedure set forth in the Class Notice by the
7 Response Deadline, or such number of days as the Court shall specify, before the date of the
8 Final Fairness and Approval Hearing. ~~The date on the proof of service shall be deemed the~~
9 ~~exclusive means for determining that a Notice of Objection was served timely.~~ The Notice of
10 Objection must be signed by the Objecting Class Member and state: (1) the name and case
11 number of this matter; (2) the Objecting Class Member’s name, address, and telephone
12 number; (3) the basis for the objection, including all arguments, citations, and evidence
13 supporting the objection; and (4) whether the objector intends to appear at the Final Fairness
14 and Approval Hearing, ~~with or without counsel.~~ By submitting a Notice of Objection, the
15 Objecting Class Member will be deemed to have opted into the settlement and will be a
16 Participating Class Member. Class Members may appear and speak at the Final Fairness and
17 Approval Hearing regardless of whether they have submitted a written objection. At no time
18 shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement
19 Class Members to file or serve written objections to the Settlement or appeal from the Order
20 and Final Judgment. Settlement Class Members who opt-out are not entitled to object to the
21 Settlement. Any Objection must be submitted by the same timeline as set forth by the
22 Response Deadline – sixty (60) days after the date of mailing of the Class Notice by the
23 Claims Administrator, and in the case of re-mailing, the deadline will be extended by an
24 additional 15 days.

25 4) Responses to Objections.

26 Counsel for the Parties shall file any response to the any Notice of Objections
27 submitted by Objecting Class Members at least five (5) court days before the date of the Final
28

1 Fairness and Approval Hearing. In the event of a Notice of Objection, Class Counsel will
2 defend the Settlement in good faith, and Defendant may submit responses.

3 **D. Final Fairness and Approval Hearing**

4 On the date set forth in the Order Granting Preliminary Approval, which shall be
5 approximately seventy-five (75) days after the mailing of the Notice of Class Settlement, a
6 Final Fairness and Approval Hearing shall be held before the Court in order to review this
7 Agreement and to consider any timely objections made and all responses by the Parties to
8 such objections and determine whether the Court should give it final approval. At the Final
9 Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this
10 Agreement. If the Parties' request for final approval is granted, a Judgment and Final Order
11 Approving Settlement of Class Action substantially in the form attached hereto as Exhibit D
12 ("Judgment and Final Order") shall be entered in the Action. Class Counsel shall furnish a
13 copy of the Judgment and Final Order to the Claims Administrator within two (2) days of
14 receipt of the Judgment and Final Order.

15 **E. Settlement Calculations and Procedures**

16 1) Settlement Amount and Uses.

17 The Gross Settlement Amount is Two Hundred Fifty Thousand Dollars (\$250,000) and
18 shall include and cover all payments available under this Agreement to the Settlement Class
19 (inclusive of wages, penalties, and interest), Attorneys' Fees in the amount equal to one-third
20 (1/3) of the Gross Settlement Amount (\$83,333.33) plus expenses, Claims Administrator costs
21 anticipated not to exceed \$10,000, the PAGA Allocation in the amount of \$10,000 (with 75%
22 going to the LWDA, and 25% going to Aggrieved Employees), a Service Award to Plaintiff
23 in the amount of \$10,000.00, employee payroll taxes required by law, including FICA, FUTA,
24 and SDI, and the resolution of any appeals and objections. Employer-side payroll taxes shall
25 be paid by Defendant.

26 2) Claims Administration Costs.

27 All costs incurred by the Claims Administrator in connection with administering this
28 Settlement are to be paid from the Gross Settlement Amount. The costs of the Claims

1 Administrator are estimated to be Ten Thousand Dollars (\$10,000). This amount shall cover
2 all of the Claims Administrator's duties, which shall include disbursing the Net Settlement
3 Amount and the PAGA Allocation, calculating and forwarding all employee-side tax
4 obligations, and communicating with all Parties, performing custodial and accounting
5 functions, preparing, translating, tracking, issuing, and mailing (with the Parties' approval)
6 any and all notices or reminders to Class Members and/or Participating Class Members; all
7 costs and fees associated with computing, processing, reviewing, issuing, and paying the
8 Service Awards, the distribution of the Settlement Fund, payment interest, employee-side
9 taxes, and any other payments to be made from the Gross Settlement Amount; all costs and
10 fees associated with preparing any tax returns and any other filings required by any
11 governmental taxing authority or agency; all costs and fees associated with preparing any
12 other notices, reminders, reports, or filings to be prepared in the course of administering
13 disbursements of the Net Settlement Amount; and any other costs and fees incurred and/or
14 charged by the Claims Administrator in connection with the execution of its duties under this
15 Agreement.

16 3) Attorneys' Fees and Expenses.

17 Subject to Court approval, Class Counsel will be paid Attorneys' Fees in the amount
18 of \$83,333.33, plus up to \$10,000 for expenses. The Attorneys' Fees and expenses shall be
19 paid out of the Gross Settlement Amount. Class Counsel shall serve Defendant with copies
20 of all documents submitted in support of their fee allocation before they are filed with the
21 Court. Defendant agrees not to oppose Class Counsel's proposed fee allocation. Any amount
22 not approved by the Court will revert to the Settlement Fund to be split *pro rata* between the
23 Participating Class Members. The Court-ordered Attorneys' Fees and expenses shall be due
24 and payable no later than twenty (20) days after the Effective Date.

25 4) Service Award Payable to Plaintiff.

26 Subject to Court approval, Plaintiff shall receive a Service Award of Ten Thousand
27 Dollars (\$10,000). The Service Award shall be payable no later than twenty (20) days after
28

1 the Effective Date. The Claims Administrator will report the Service Award on a Form 1099,
2 which it will provide to Plaintiff and to the pertinent taxing authorities as required by law.

3 5) Individual Settlement Shares Payable to Participating Class Members.

4 The Claims Administrator shall distribute to each Participating Class Member his or
5 her Individual Settlement Share. A portion of each Individual Settlement Share shall represent
6 wages, a portion shall represent interest, and a portion shall represent penalties. Each
7 Individual Settlement Share shall be allocated as follows: thirty-three and one third percent
8 (33.33%) of each Individual Settlement Share shall represent wages; thirty-three and one third
9 percent (33.33%) shall represent interest; and thirty-three point thirty-four percent (33.34%)
10 shall represent penalties. That portion of each Individual Settlement Share representing wages
11 will be subject to normal employment tax withholdings relative to the Participating Class
12 Member's employment (e.g., withholdings for State and Federal income tax, employee FICA
13 tax, California SDI, etc.) with the Claims Administrator remitting all such employment tax
14 withholdings directly to the pertinent state and federal taxing authorities. Participating Class
15 Members will be subject to 28% Federal backup withholding rate unless they execute a Form
16 W 9 as part of their receipt of their Individual Settlement Share.

17 6) PAGA Allocation.

18 The Parties allocate Ten Thousand Dollars (\$10,000) to the LWDA for penalties under
19 PAGA ("PAGA Allocation"), which shall be distributed as follows: 25% (\$2,500) to
20 Aggrieved Employees on a pro rata basis, in addition to each Aggrieved Employee's
21 Individual Settlement Share; and 75% (\$7,500) to the LWDA as Penalties.

22 7) Individual Settlement Share.

23 Each Individual Settlement Share is calculated by dividing the number of the Class
24 Member's Qualifying Workweeks by the total number of Qualifying Workweeks for the Class
25 Period, multiplied by the Net Settlement Amount, as reflected in the following formula:

26 *Individual Participating Class Member's*
27 *Qualifying Workweeks*
28
$$\frac{\text{Individual Participating Class Member's Qualifying Workweeks}}{\text{Total Qualifying Workweeks for the Class Period}} \times \text{Net Settlement Amount}$$

1 *All Participating Class Members'*
2 *Qualifying Workweeks*

3 8) Re-Allocation.

4 Any funds that were allocated to Class Members who timely opt out of the settlement
5 will be re-allocated to Participating Class Members on a *pro rata* basis as set forth above.

6 9) Interest and Penalties Allocation.

7 The portion of each Individual Settlement Share constituting interest or penalties will
8 each be reported on a Form 1099 provided to each Participating Class Member, with the
9 required copies of the Form 1099's provided to the pertinent taxing authorities.

10 10) No Spillover of Residuals.

11 To the extent there are any payments made to Participating Class Members that remain
12 uncashed ~~ninety (90)~~ one hundred and eighty (180) days after mailing, the Parties agree that
13 these amounts shall be transmitted by the Class Administrator to the California Controller's
14 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
15 residue" subject to the requirements of California Code of Civil Procedure Section 384, subd.
16 (b).)-

17 11) No Additional Contribution by Defendant.

18 Defendant's monetary obligations under this Agreement are limited to the Gross
19 Settlement Amount. Defendant may not be called upon or required to contribute additional
20 monies above the Gross Settlement Amount under any circumstances ~~whatsoever, unless the~~
21 Escalation Clause in Section (III)(E)(17) is triggered. All costs and expenses arising out
22 of or in connection with the performance of this Agreement shall be paid from the Gross
23 Settlement Fund. Neither this Agreement nor payment and/or receipt of any Individual
24 Settlement Share shall trigger any other obligation, right, wage, bonus, or entitlement. The
25 amounts paid under this Agreement do not represent a modification of any previously-credited
26 hours of service under any employee benefit plan, policy, or bonus program sponsored by any
27 Defendant. Payment of the Individual Settlement Shares shall not form the basis for additional
28 contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-

1 insured or not) sponsored by Defendant. Any payments made under the terms of this
2 Agreement shall not be applied retroactively, currently, or on a going forward basis as salary,
3 earnings, wages, or any other form of compensation for the purposes of any of Defendant's
4 benefit plan, paid vacation policy, calculations, other policy, or bonus program. Defendant
5 retains the right to modify the language of its benefit plans, policies, and bonus programs to
6 effect this intent and to make clear that any amounts paid pursuant to this Agreement are not
7 for "hours worked," "hours paid," "hours of service," or any similar measuring term as
8 defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting,
9 benefit, accrual, or any other purpose, and that additional contributions or benefits are not
10 required by this Agreement.

11 12) Termination of the Agreement.

12 In the event that this Agreement is canceled, rescinded, terminated, voided, or
13 nullified, however that may occur, or the Settlement of the Action is barred by operation of
14 law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction,
15 Defendant will cease to have any obligation to fund any portion of the Gross Settlement
16 Amount.

17 13) Calculation of Qualifying Workweeks.

18 Defendant will calculate and provide the Qualifying Workweeks for each Class
19 Member based on dates of hire, and, if applicable, dates of termination.

20 14) Resolution of Disputes.

21 Any Class Member who disputes the Qualifying Workweeks shown on his or her Class
22 Notice regarding the total number of weeks he or she worked during the Class and/or PAGA
23 Period may indicate and explain such disagreement within ~~thirty (30)~~ sixty (60) days of the
24 mailing of the Notice of Class Settlement. In the case of remailing, the deadline to give notice
25 of any such disagreement will be extended by an additional 15 days. Any such Class Member
26 must submit any documentation relating to his or her dispute. The Claims Administrator shall
27 notify Defense Counsel and Class Counsel of any such dispute no later than two (2) business
28 days after receiving notice of the dispute. The Claims Administrator shall attempt to resolve

1 the disagreement and may request any information or assistance from Defense Counsel and/or
2 Class Counsel that the Claims Administrator, in its sole discretion, believes may assist it in
3 resolving the disagreement. However, Defendant's records will be used to make any final
4 determination and will be controlling. The Parties and their counsel shall use their best efforts
5 to ensure that any and all such disputes are resolved before the Effective Date.

6 15) Payment of Individual Payment Amounts.

7 Within ten (10) days after the Effective Date and Final Approval, whichever is later,
8 and any and all errors or disputes regarding the total Qualifying Workweeks by all Class
9 Members have been resolved, the Claims Administrator shall 1) calculate the final Individual
10 Settlement Share to be paid to each Participating Class Member and 2) prepare a Final
11 Statement of Individual Payment Amounts for each. The mailing shall be by first-class United
12 States mail to the last known mailing address of each Participating Class Member.

13 16) Extension of Time to Pay and/or Process Claims.

14 Should the Claims Administrator need more time than is provided under this
15 Agreement to complete any of its obligations as set forth in this Agreement, the Claims
16 Administrator may request such additional time in writing (including an explanation of the
17 need for additional time) from Defense Counsel and Class Counsel, which shall not be
18 unreasonably withheld. If Defense Counsel and Class Counsel do not agree in writing to the
19 Claims Administrator's request for additional time, the Claims Administrator may seek such
20 additional time from the Court.

21 17) Increase of Class Size.

22 This Settlement was reached with the understanding that Defendant would hire
23 additional employees who would be deemed Class Members under the terms of this
24 Agreement. Prior to the first mediation, and specifically on December 21, 2020, Defendant
25 indicated that there were 159 Class Members. The Parties accounted for a potential increase
26 in the size of the Class by 13% (21 employees). Defendant agrees that any increase in the size
27 of the Class by more than 21 employees (13%), as reflected in confirmatory discovery and/or
28 the Class List provided to the Administrator during Administration, will result in a

1 ~~proportionate If confirmatory discovery reveals that the number of Class Members increases~~
2 ~~by more than 13% (21), Defendant agrees to proportionate increase in the Net Settlement~~
3 ~~Amount for each additional Class Member. Specifically, for every additional Class Member~~
4 ~~above 180 employees who is determined to be a Class Member, Defendant agrees to increase~~
5 ~~the Gross Settlement by the following formula: 1/180 (the proportion of the increase) *~~
6 ~~\$250,000 (the Gross Settlement Amount), for a total of \$1,388.89 per additional employee~~
7 ~~Class Member above 180 ("Escalator Provision")~~

8 ~~Defendant has represented that as of May 24, 2023, there were 472169 Class Members,~~
9 ~~who worked —10,906 Qualifying Work Weeks during the Class Period. Defendant has~~
10 ~~represented that as of May 24, 2023, there were —72 Aggrieved Employees who worked~~
11 ~~——2,848 QualifyingPAGA Periods-Work Weeks during the Class Period. This figure~~
12 ~~does not trigger the Escalator Provision. If confirmatory discovery reveals that the number~~
13 ~~of Class Members [and/or Aggrieved Employees] increases by more than 13% (22),~~
14 ~~Defendant agrees to proportionate increase in the Net Settlement Amount for each additional~~
15 ~~Class Member.~~

16 **F. Public Statements**

17 Plaintiff and Class Counsel shall not hold any press conferences, issue any press releases,
18 seek any publicity, or publish any announcements on any website with respect to this matter
19 at any time. Until the Parties submit a request for preliminary approval from the Court,
20 Plaintiff and Class Counsel will keep the terms of this Agreement confidential. Prior to final
21 approval of this Settlement, Plaintiff and Class Counsel will not discuss this Action or
22 Settlement or otherwise disclose the terms of this Agreement with third parties other than
23 Class Members, except 1) as necessary to effectuate this Agreement and 2) to the Parties' tax
24 advisors. After final approval of this Settlement, the Parties and their counsel shall not issue
25 any public statements with respect to the Action or Settlement, except as required by law.
26 Upon such final approval, the Parties and their counsel may issue, if at all, only a mutually
27 agreeable joint press release, although neither party is required to agree to any press release
28 of any kind. Unless otherwise agreed by the Parties and their counsel, any oral or written

Commented [A1]: We're awaiting Krista's data on total class/PAGA employees—this first paragraph should be removed, but I wanted to keep it on in case you wanted to use the first sentence ("This Settlement...")

I also looked at the excel sheet for damages to determine the number of workweeks but that seemed to be based on a different time period than the class period.

disclosure of information related to the Settlement shall be restricted to the material discussed in this Stipulation and Agreement. The Parties and their counsel agree and acknowledge that the phrase “material discussed in this Stipulation and Agreement” shall be narrowly construed. Notwithstanding the specific limitations to public disclosure identified herein, Class Counsel shall not be precluded from disclosing the Parties to the lawsuit and the fact that the matter settled to a Court or other tribunal.

IV. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Neither the acceptance nor the performance by Defendant of the terms of this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed as, or deemed to be an admission by Defendant of the truth of any of the allegations in the Operative Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant in the Action.

B. Non-Evidentiary Use

Neither this Agreement nor any of its terms shall be admissible or useable in discovery in any adversary proceeding or any litigation whatsoever, provided, however, that nothing contained in this Section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement in the Action.

C. No Collateral Attack

This Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Notice of Class Settlement after the Judgment and Final Order described herein is entered. Such prohibited collateral attacks shall include but not be limited to claims that the Qualifying Workweeks attributed to the Class Member was erroneous or that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of his or her Individual Settlement Share.

D. Nullification

- 1 1) If (a) the Court should for any reason fail to certify a class for settlement; or
2 (b) the Court should for any reason fail to approve this Settlement in the form
3 agreed to by the Parties; or (c) the Court should for any reason fail to enter the
4 Judgment and Final Order; or (d) the Judgment and Final Order is reversed,
5 modified, or declared or rendered void, then (i) this Agreement shall be
6 considered null and void, (ii) neither this Agreement nor any of the related
7 negotiations or proceedings shall be of any force or effect, (iii) all Parties to
8 this Agreement shall stand in the same position, without prejudice, as if the
9 Agreement had been neither entered into nor filed with the Court, (iv) this
10 Agreement shall not be admissible or usable in discovery in any adversarial
11 proceeding or in any litigation whatsoever, including this Action, and (v) Class
12 Counsel shall make repayment of any disbursements it received from the
13 Settlement Fund.
- 14 2) Invalidation of any material term of this Agreement shall invalidate this
15 Agreement in its entirety unless the Parties shall subsequently agree in writing
16 that the remaining provisions shall remain in full force and effect.
- 17 3) In the event that for any reason unrelated to a Defendant's failure to pay Gross
18 Settlement Amount, the final distribution of the Settlement Fund does not occur
19 (for example, because this Agreement and/or the Judgment and Final Order is
20 modified or reversed on appeal), the entire Settlement Fund shall remain the
21 sole property of Defendant and any sums previously paid or distributed shall
22 be returned to Defendant (minus any administrative expense and fees incurred
23 by the Claims Administrator).
- 24 4) In the event of a timely appeal from the Judgment and Final Order, the Judgment
25 and Final Order shall be stayed, and the Net Settlement Amount shall not be
26 distributed to Class Members pending the completion of the appeal.

27 **V. RELEASES**

28 **A. Class Releases**

1 It is the desire of the Parties to fully, finally, and forever settle, compromise, and
2 discharge disputes and claims, including, but not limited to, claims that were asserted or could
3 have been asserted at any time in the Action based on the facts alleged in the Complaint,
4 ~~based on the subject matter alleged therein.~~ Except for Class Members who submit a timely
5 opt out from the settlement, upon entry of the Judgment and Final Order in the Action,
6 Plaintiff and every Participating Class Member shall be bound by this Agreement, and their
7 benefits, rights, and remedies are limited as provided herein. Plaintiff and each and every
8 Participating Class Member shall be deemed to have, and by operation of the Judgment and
9 Final Order, shall have, fully, finally, and forever released, relinquished, and discharged each
10 and all of the Released Parties from the Released Claims.

11 Every Class Member who does not submit a timely Request for Exclusion from the
12 Class shall be deemed to have acknowledged that this Agreement is intended to include in its
13 effect all Released Claims about which the Class does not know or suspect to exist in its favor
14 at the time of the final approval of this Agreement. For the avoidance of doubt, the Parties
15 agree that, except as provided herein with respect to the Individual Release, the Participating
16 Class Members' waiver of rights and benefits does not apply to claims not encompassed in
17 the Released Claims. Plaintiff, the Class, and every Participating Class Members shall be
18 deemed to have acknowledged and agreed that: 1) Class claims for overtime compensation,
19 minimum wages, wages for all hours worked, statutory and civil penalties, and any other
20 payments and/or penalties in the Action are disputed; and 2) the payments set forth above
21 constitute full payment of any amounts allegedly due. Plaintiff and the Participating Class
22 Members thus shall be deemed to have acknowledged and agreed that California Labor Code
23 § 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as
24 follows:

25 An employer shall not require the execution of any release of a claim or right on
26 account of wages due, or to become due, or made as an advance on wages to be earned, unless
27 payment of those wages has been made.

28 **B. PAGA Release**

Formatted: No bullets or numbering

The Labor Workforce Development Agency, State of California, in addition to all Aggrieved Employees, and Plaintiff Almazan as a proxy for the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Labor Code pursuant to PAGA during the PAGA Period, that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, and the PAGA Notice submitted by Plaintiff to the LWDA on or about January 8, 2020, in LWDA Case No. LWDA Case No. LWDA-CM-765471-20. The PAGA release shall be given full res judicata and collateral estoppel effect upon entry of the judgment in this Action so as to bar the LWDA and any other individual or entity from filing or pursuing the Released PAGA Claims against the Released Parties in any forum.

B.C. Individual Release

Plaintiff agrees that the consideration set forth in this Agreement, including the Service Award of Ten Thousand Dollars (\$10,000) set forth above, represents full settlement of all claims that were or could have been raised against the Released Parties. No other consideration has been provided to Plaintiff. Plaintiff, on behalf of himself and each of his heirs, representatives, successors, assigns, and attorneys, hereby compromises, releases, resolves, relinquishes, discharges and settles any and all claims of any nature whatsoever he has or may have against Released Parties for any acts occurring on or before the date of preliminary approval of the Settlement, ~~and he agrees that he will not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which he may have or claim to have in state or federal court, or with any state, federal or local government agency, except the EEOC or DFEH, or with any administrative or advisory body arising from or attributable to the Released Parties.~~

Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of California Civil Code § 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her

1 **favor at the time of executing the release and that, if known by**
2 **him or her would have materially affected his or her settlement**
3 **with the debtor or released party.**

4 Plaintiff, being aware of this section, hereby expressly waives and relinquishes all rights
5 and benefits he may have under this section as well as any other statutes or common law principles
6 of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those
7 which he now knows or believes to be true, but he stipulates and agrees that, upon the Effective
8 Date, Plaintiff shall and hereby does fully, finally and forever settle and release any and all claims
9 against Defendant, known or unknown, suspected or unsuspected, contingent or non-contingent,
10 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory
11 of law or equity and without regard to the subsequent discovery or existence of such different or
12 additional facts.

13 Plaintiff expressly acknowledges that this release applies to, without limitation:

- 14 a. any and all claims relating to or arising from his employment relationship
15 (including but not limited to claims for wages as that term is defined by California
16 Labor Code section 200) with the Released Parties and the termination of that
17 relationship;
- 18 b. any and all claims relating to, or arising from, his right to purchase, or actual
19 purchase of shares of stock of the Released Parties, including, without limitation,
20 any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty
21 under applicable state corporate law, and securities fraud under any state or federal
22 law;
- 23 c. any and all claims for wrongful discharge of employment; termination in violation
24 of public policy; discrimination; breach of contract, both express and implied;
25 breach of a covenant of good faith and fair dealing, both express and implied;
26 negligent or intentional infliction of emotional distress; negligent or intentional
27 misrepresentation; negligent or intentional interference with contract or prospec-
28 tive economic advantage; unfair business practices; defamation; libel; slander;

negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; and conversion;

- d. any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, Older Workers Benefit Protection Act; the California Fair Employment and Housing Act, the Private Attorney General Act, the Workers Compensation Act, and the California Labor Code;
- e. any and all claims for violation of the federal, or any state, constitution; and
- f. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination.

Older Workers Benefits Protection Act: It is intention of the Parties that the Plaintiff release will apply to all claims of any kind against the Released Parties. In order to comply with the Older Workers Benefits Protection Act [29 U.S.C. Section 626(f)] and effectuate the release by Plaintiff of any potential claims under the federal Age Discrimination in Employment Act, Plaintiff agrees as follows:

- a. He has carefully reviewed the foregoing Settlement, and understands the terms and conditions it contains;
- b. He has been advised of his right to consult any attorney to review this Settlement, and has had the benefit of an attorney throughout the settlement process and has had an attorney review this Settlement;
- c. He does not waive any rights or claims that may arise after the date this Settlement is executed;
- d. He is receiving consideration beyond anything of value to which he is already entitled;

- 1 e. By entering into this Settlement, he is giving up potential valuable legal
2 rights, and he intends to be bound by all the terms and conditions set forth
3 above;
- 4 f. He is entering into this Settlement freely, knowingly, and voluntarily;
- 5 g. He has been given twenty-one (21) days to consider whether to agree to the
6 terms and conditions set forth in this Settlement and expressly waives this
7 provision if he chooses to execute it prior to the expiration of twenty-one (21)
8 days.
- 9 h. For a seven (7) day period following his execution of this Settlement, he may
10 revoke this Settlement by delivering a written revocation to counsel for the
11 Released Parties, and this Settlement shall not become effective nor
12 enforceable until the revocation period has expired.

13 **VI. MISCELLANEOUS PROVISIONS**

14 **A. Amendments**

15 The terms and provisions of this Agreement may be amended only by a written
16 agreement, approved by this Court, that is signed by the Plaintiff, Class Counsel, and Defense
17 Counsel who executed this Agreement.

18 **B. Assignment**

19 None of the rights, commitments, or obligations recognized under this Agreement may
20 be assigned by any party, Class Member, Class Counsel, or Defense Counsel without the
21 express written consent of each party and their respective counsel. The representations,
22 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of
23 the Parties under this Agreement and shall not be construed to confer any right or to avail any
24 remedy to any other person.

25 **C. Governing Law**

26 This Agreement shall be governed, construed, and interpreted, and the rights of the
27 Parties shall be determined, in accordance with the laws of the State of California, irrespective
28 of the State of California's choice of law principles.

1 **D. Entire Agreement**

2 This Agreement, including the Exhibits referred to herein, which form an integral part
3 hereof, contains the entire understanding of the Parties with respect to the subject matter
4 contained herein. In case of any conflict between text contained in Articles I through VI of
5 this Agreement and text contained in Exhibits to this Agreement, the former shall be
6 controlling. There are no restrictions, promises, representations, warranties, covenants, or
7 undertakings governing the subject matter of this Agreement other than those expressly set
8 forth or referred to herein. This Agreement supersedes all prior agreements and
9 understandings among the Parties hereto with respect to the settlement of the Action.

10 **E. Waiver of Compliance**

11 Any failure of any party, Defense Counsel, and/or Class Counsel to comply with any
12 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to
13 the extent permitted under applicable law, by the party or parties and their respective counsel
14 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
15 failure to insist upon strict compliance with any representation, warranty, covenant,
16 agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any
17 subsequent or other failure.

18 **F. Counterparts**

19 This Agreement, and any amendments hereto, may be executed in any number of
20 counterparts and any party and/or their respective counsel may execute any such counterpart,
21 each of which when executed and delivered shall be deemed to be an original and all of which
22 counterparts taken together shall constitute but one and the same instrument. It shall not be
23 necessary in making proof of this Agreement or any counterpart hereof to produce or account
24 for any of the other counterparts.

25 **G. Attorneys' Fees and Costs**

26 Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the
27 Class, Class Members, or Plaintiff may recover or seek to recover any amounts for fees, costs,
28

1 or disbursements from the Released Parties or the Settlement Fund except as expressly
2 provided herein.

3 **H. Meet and Confer Regarding Disputes**

4 Should any dispute arise among the Parties or their respective counsel regarding the
5 implementation or interpretation of this Agreement, a representative from Class Counsel and
6 a representative from Defense Counsel shall meet and confer in an attempt to resolve such
7 disputes prior to submitting such disputes to the Court.

8 **I. Jurisdiction of the Court**

9 The Parties agree that this Settlement Agreement shall be enforceable by the Court
10 pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
11 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
12 of this Agreement and all orders and judgments entered in connection therewith, and the
13 Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting,
14 implementing, and enforcing the settlement embodied in this Agreement and all orders and
15 judgments entered in connection therewith.

16 **IT IS SO STIPULATED.**

17 Respectfully submitted,

18 Dated: ~~July 13, 2023~~~~July 11, 2023~~~~July 11, 2023~~~~July 4, 2023~~~~May 24, 2023~~~~May 24, 2023~~~~May 24,~~
19 ~~2023~~~~May 23, 2023~~ LAW OFFICES OF TODD M. FRIEDMAN, P.C.

20
21 By: _____
22 Todd M. Friedman
23 Adrian R. Bacon
24 Attorneys for Plaintiff
ANALI ALMAZAN

25 Dated: ~~July 13, 2023~~~~July 11, 2023~~~~July 11, 2023~~~~July 4, 2023~~~~May 24, 2023~~~~May 24, 2023~~~~May 24,~~
26 ~~2023~~~~May 23, 2023~~ MAGARIAN & DIMERCURIO

27 By: _____
28

Mark D. Magarian
Krista L. Dimercurio
Attorneys for Defendant
BOTANX, LLC INCORPORATED

Dated: ~~July 13, 2023~~~~July 11, 2023~~~~July 11, 2023~~~~July 4, 2023~~~~May 24, 2023~~~~May 24, 2023~~~~May 24,~~
~~2023~~~~May 23, 2023~~

By: _____

BOTANX, LLC

Dated: ~~July 13, 2023~~~~July 11, 2023~~~~July 11, 2023~~~~July 4, 2023~~~~May 24, 2023~~~~May 24, 2023~~~~May 24,~~
~~2023~~~~May 23, 2023~~

By: _____

FATIMA ALMAZAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Todd M. Friedman (SBN 216752)
tfriedman@toddfllaw.com
Adrian R. Bacon (SBN 280332)
abacon@toddfllaw.com
Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. #340
Woodland Hills, CA 91364
Phone: (323) 306-4234
Fax: (866) 633-0228

Attorneys for Plaintiff
ANALI ALMAZAN

Mark D. Magarian (State Bar No. 164755)
Krista L. DiMercurio (State Bar No. 255774)
MAGARIAN & DIMERCURIO, A Professional Law Corporation
20 Corporate Park, Suite 255
Irvine, California 92606
Tel: 714-415-3412
Fax: 714-276-9944

Attorneys for Defendant BOTANX, LLC.

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

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

Plaintiff,
vs.

BOTANX, LLC and DOES 1 to 50,
inclusive,

Defendants.

**CASE NO.: 30-2020-01122459-CU-
OE-CXC**

*[Assigned for all purposes to the
Honorable Glenda Sanders]*

STIPULATED SETTLEMENT

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

1 This is a stipulated settlement of a class and representative action (the “Agreement”).
2 This Agreement is made by and between Plaintiff Anali Almazan, individually, the
3 “Settlement Class Members” (defined below), and all “Aggrieved Employees” (defined
4 below), on the one hand and Defendant Botanx, LLC, on the other.

5 **I. DEFINITIONS**

6 For ease of reference, this section defines some but not all terms used herein. Unless
7 otherwise defined, the following terms used in this Agreement shall have the meanings
8 ascribed to them as set forth below:

- 9 A. Action: *Anali Almzan v. Botanx, LLC et al.*, Case No. 30-2020-01122459-CU-OE-
10 CXC, originally filed January 8, 2020 in the Orange County County Superior
11 Court, later amended on March 24, 2021, and encompasses, but is not limited to,
12 all claims alleged in the Operative Complaint, *infra*.
- 13 B. Aggrieved Employees: all Class Members, *infra*, employed during the PAGA
14 Period, *infra*, and eligible to participate in a settlement of the claims brought under
15 the Private Attorneys General Act of 2004 (“PAGA”) in the Action.
- 16 C. Attorneys’ Fees: Eighty-Three Thousand Two Hundred Fifty Dollars (\$83,250.00),
17 or one-third (1/3) of the Settlement Fund, *infra*, plus Class Counsel’s expenses [an
18 amount to be determined by Class Counsel’s (defined below) billing statement],
19 which Defendant agrees not to oppose, subject to the Court’s approval.
- 20 D. Claims Administration Expenses: the Claims Administrator, *infra*, will send the
21 Class Notice, *infra*, and Class Member, *infra*, payments by first-class mail. The
22 postage and printing costs for the Notices, and the postage costs for mailing the
23 payments, shall be paid out of the Settlement Fund. Any other administrative costs
24 related to Class Administration also will be paid out of the Settlement Fund.
- 25 E. Claims Administrator or Settlement Administrator: Rust Consulting, who will be
26 responsible for the administration of all class claims, including mailing the Class
27 Notices, *infra*, receiving and administering any opt-outs, receiving any objections,
28 and printing and mailing the settlement checks.

- 1 F. Class Counsel: Todd M. Friedman, Thomas E. Wheeler, and Adrian R. Bacon,
2 Offices of Todd M. Friedman, P.C., 21031 Ventura Blvd., Suite 340, Woodland
3 Hills, CA 91364.
- 4 G. Class Members: all individuals who were employed by Defendant as a non-exempt
5 employee in California during the Class Period, *infra*.
- 6 H. Class Notice: the Notice of Class Action Settlement, mailed to all Class Members
7 as set forth herein. Notice will be mailed in Spanish where appropriate.
- 8 I. Class Period: January 8, 2016 through the September 21, 2022.
- 9 J. Court: Orange County Superior Court.
- 10 K. Defendant: Botanx, LLC, the named defendant in the Action.
- 11 L. Defense Counsel: Mark D. Magarian and Krista L. DiMercurio, Magarian &
12 DiMercurio, 20 Corporate Park, Suite 255, Irvine, CA 92606.
- 13 M. Effective Date: the date on which all time limitations for filing an appeal from the
14 Court's Judgment and a final order approving settlement of this Action have
15 expired without a notice of appeal having been timely filed.
- 16 N. Gross Settlement Amount: Two Hundred Fifty Thousand Dollars (\$250,000).
- 17 O. Individual Settlement Share: the individual shares of the Net Settlement Amount,
18 *infra*, inclusive of any taxes withheld, that shall be paid to each Participating Class
19 Member, *infra*, the calculation of which is provided herein (Sec.III.E.5).
- 20 P. Net Settlement Amount: the Gross Settlement Amount, less the Service Award
21 (defined below), Attorneys' Fees, Attorneys' Expenses, Claims Administration
22 Expenses, and the PAGA Allocation (defined below).
- 23 Q. Operative Complaint: the First Amended Complaint ("FAC") filed in the Action
24 on March 24, 2021.
- 25 R. Opt Out / Objection Period: Class Members shall have forty-five (45) days from
26 the date Class Notice is first mailed to object to or exclude themselves from the
27 Settlement. In the event of a remailing, the deadline shall be extended by an
28

1 additional 15 days. Neither party shall encourage any Class Member to object to
2 or opt out of the Settlement.

3 S. PAGA Allocation: Ten Thousand Dollars (\$10,000) for all outstanding PAGA
4 claims against Defendant, to be allocated as penalties under PAGA to Aggrieved
5 Employees, of which 75% shall go to the LWDA, and 25% shall go to the
6 Aggrieved Employees.

7 T. PAGA Period: January 8, 2019 through April 5, 2021.

8 U. Participating Class Members: all Class Members and Aggrieved Employees who
9 do not timely opt-out of the Settlement.

10 V. Parties: Defendant, Plaintiff, and Participating Class Members.

11 W. Plaintiff: Anali Almazan¹, the named plaintiff and class representative in the
12 Action.

13 X. Preliminary Approval: Class Counsel shall draft and file a motion for preliminary
14 approval within ninety (90) days of execution of the Agreement.

15 Y. Qualifying Workweeks: the total number of workweeks within the Class Period
16 that a Class Member worked for Defendant based on Defendant's records,
17 excluding leaves of absence and vacation.

18 Z. Released Claims: all claims, demands, rights, liabilities, and/or causes of action of
19 any nature and description whatsoever, known or unknown, in law or in equity,
20 whether or not concealed or hidden, that were asserted or could have been asserted
21 at any time in the Action based on the facts, theories, and/or claims alleged in the
22 Action; it includes and covers claims for violations of any state or federal statutes,
23 rules or regulations, claims that were asserted or could have been asserted at any
24 time in the Action based on the facts or laws alleged in the Complaint.
25 Specifically, this includes any claims that during the Class Period and or PAGA
26

27 ¹ On June 9, 2021, The Court approved Plaintiff's Daughter, Fatima Almazan to substitute in
28 as Plaintiff after Mr. Anali Almazan passed away.

1 Period, Defendant at any time that: 1) failed to pay wages, including minimum
2 wages; 2) failed to pay overtime and/or double-time wages; 3) failed to provide
3 timely, full, and uninterrupted rest breaks or a penalty payment in lieu thereof; 4)
4 failed to provide timely, full, and uninterrupted meal periods or a penalty payment
5 in lieu thereof; 5) failed to provide accurate itemized wage statements; 6) failed
6 timely to pay wages or pay all wages due upon termination of employment; 7)
7 failed to provide restitution for unpaid sums; 8) failed to maintain accurate records;
8 9) violated the Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*; and
9 10) owed penalties pursuant to PAGA, Labor Code § 2698, *et seq.*, including under
10 Labor Code § 558, predicated on any of the Labor Code sections identified below
11 in § 5(B) of the Agreement.(collectively, the “Released Claims”). Except as set
12 forth above, Released Claims does not include any other claims, including claims
13 for vested benefits, wrongful termination, violation of the Fair Employment and
14 Housing Act, unemployment insurance, disability, social security, workers’
15 compensation, or claims based on facts occurring outside the Class Period. The
16 period of the Released Claims shall cover the Class Period. The Parties agree that
17 the judgment, and release of claims provided herein, shall have *res judicata* effect.

18 AA. Released Parties: Defendant and its past and present parent companies,
19 subsidiaries and affiliates, and their respective present and former officers,
20 directors, stockholders, agents, employees, insurers, co-insurers, reinsurers,
21 attorneys, accountants, auditors, advisors, registered representatives, consultants,
22 pension and welfare benefit plans, plan fiduciaries, administrators, trustees,
23 partners, predecessors, successors, assigns, and any other persons acting by,
24 through, under, or in concert with any of them.

25 BB. Service Award: Defendant shall not oppose a service award to Plaintiff in the
26 amount of Ten Thousand Dollars (\$10,000), to be paid out of the Gross Settlement
27 Amount. The award is in addition to the Plaintiff’s Individual Settlement Share.

28 CC. Settlement: the disposition of the Action pursuant to this Agreement.

1 DD. Settlement Fund: if no objection to the Settlement is made, Defendant shall
2 provide the Gross Settlement Amount to the Claims Administrator within thirty
3 (30) days of Final Approval of the Settlement, assuming no appeal has been filed,
4 or the date the judgment is final and no longer subject to appeal. The payment of
5 all Individual Settlement Shares, Claims Administration Expenses, Attorneys'
6 Fees, Attorneys' Expenses, and Service Awards, shall be made by the Claims
7 Administrator to the Class, and Class Counsel within fifteen (15) days of the date
8 the Settlement was funded.

9 **II. BACKGROUND**

10 On January 8, 2020, Plaintiff filed a Class Action Complaint on behalf of himself and
11 a class of non-exempt current and former employees who were employed by Defendant in
12 California during the Class Period for, *inter alia*, Defendant's alleged failure to pay at least
13 minimum wages for all hours worked, failure to pay premium wages for missed, late, and/or
14 interrupted meal and rest periods, failure to pay premium wages for all overtime hours
15 worked, failure to provide accurate itemized wage statements, and failure to pay all wages
16 due upon termination. Plaintiff also alleged a cause of action under the Unfair Competition
17 Law ("UCL"), Bus. & Prof. Code § 17200, *et seq.*, arising from the alleged Labor Code
18 violations. On March 24, 2021, Plaintiff filed his FAC to add a cause of action under PAGA,
19 Labor Code § 2698, *et seq.*, on behalf of all aggrieved employees employed during the PAGA
20 Period.

21 The Parties agreed to attend private mediation. In advance of mediation, Defendant
22 provided Plaintiff's counsel with relevant information regarding the Class Members and the
23 Aggrieved Employees, including a twenty percent (20%) sample of the Class Members and
24 Aggrieved Employees' timekeeping and payroll records, and documents pertaining to
25 Defendant's uniform policies and procedures. Defendant also provided detailed financial
26 records substantiating their position that the company was impacted significantly and
27 negatively by COVID. On May 6, 2021, after extensive investigation and substantial
28 discovery by Plaintiff's counsel, the Parties participated in mediation with Gail Ander (Ret)

of JAMS., an experienced and respected mediator. After a full day of negotiation and exchanges of information, the Parties were unable to settle the matter and were also unable to do so after a second half day mediation on August 10, 2021. However, after further extensive negotiations, the parties were finally able to resolve the matter on January 25, 2022.

Plaintiff and Class Counsel concluded, after taking into account the sharply disputed factual and legal issues involved in this Action, the risks attendant to further prosecution, the discovery conducted to date, the significant financial hurdles the Class Members faced with respect to obtaining a judgment from Defendant due to limited funds, and the substantial benefits to be received pursuant to the proposed terms, that settlement as set forth herein was in the best interests of the Class Members.

Plaintiff and Class Counsel are cognizant of problems they face with respect to their burden of proof, many of which were discussed during the mediation and about which Judge Andler provided valuable insight. Plaintiff and Class Counsel believe that the Settlement is fair and confers substantial benefits on the Class Members that include certain and meaningful recovery in the near term. Defendant and Defense Counsel also concluded that there were benefits associated with settling. Based on the sharply disputed factual and legal issues involved in the Action, the risks attendant to further defense, the expense and burden of protracted litigation, and Defendant's desire to put the controversy to rest, Defendant and Defense Counsel believe that the Settlement on the terms hereinafter set forth is in Defendant's best interest. With the mediator's assistance, therefore, the Parties determined that the terms and conditions set forth in this Agreement are fair, adequate, and reasonable.

This Settlement contemplates the entry of a Final Order approving settlement of class action and discharge of all Parties and their respective counsel from liability for the Released Claims. The Judgment and Final order shall have a res judicata effect and bar Plaintiff and each Participating Class Member from bringing any action asserting Released Claims.

III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

1 The Parties and their respective counsel shall take all steps that may be requested by
2 the Court relating to the approval and implementation of this Agreement and shall otherwise
3 use their respective best efforts to obtain Court approval and implement this Agreement. The
4 procedure for obtaining Court approval of and implementing this Agreement shall be as
5 follows:

6 **A. Preliminary Approval**

7 Class Counsel will submit this Agreement to the Court for preliminary approval. The
8 Court's preliminary approval of this Agreement shall be embodied in an Order Granting
9 Preliminary Approval of Class Action Settlement, which shall include the following:
10 Certification of the Settlement Class for settlement purposes only; appointing Class Counsel
11 for settlement purposes only; setting the Final Fairness and Approval Hearing; and approval
12 for the Notice of Class Action Settlement, *infra*.

13 **B. Notice of Settlement to Class Members**

14 The Claims Administrator shall disseminate to Class Members, by first-class United
15 States mail as described in this Section III(B), the Class Notice and the Opt-Out form, which
16 the Parties will ask the Court to approve in the forms attached hereto as Exhibit A, and Exhibit
17 B ("Opt-Out form").

18 1) Class Notice.

19 Notice shall be provided to Class Members in the following manner:

- 20 a. No later than twenty (20) days after the Court grants preliminary
21 approval of this settlement, Defendant will provide the Claims
22 Administrator with a list of all Class Members (the "Class List"). The
23 Class List shall state the social security numbers and the last known home
24 address for each such Class Member. The Class List shall also state the
25 dates of employment worked by each such Class Member during the
26 Class Period and/or PAGA Period as indicated in Defendant's respective
27 records.
28

- 1 b. Within ten (10) days of receipt of the Class List from Defendant, the
2 Claims Administrator shall mail the Notice of Class Settlement and the
3 Opt-Out form by First-Class United States mail, postage prepaid, to the
4 last known address of each Class Member, or, in the case of Class
5 Members known to be deceased, to the legal representative of the estate.
- 6 c. The Claims Administrator shall also mail, with the Notice of Class
7 Settlement, a Statement of Weeks Worked in the form attached hereto as
8 Exhibit C that will state the dates the recipient Class Member worked
9 during the Class and/or PAGA Period, as indicated in Defendant's
10 records, and the workweeks that each Class Member worked during the
11 Class and/or PAGA Period.
- 12 d. With respect to those Class Members whose Notice of Class Settlement
13 is returned as undeliverable, the Claims Administrator shall promptly
14 attempt to obtain a valid mailing address by use of the Equifax NCOA
15 ("National Change of Address") database search and skip trace. If
16 another address is identified, the Claims Administrator shall immediately
17 thereafter send the Class Notice and Opt-Out form by first class mail to
18 the new address.
- 19 e. All costs associated with paying, processing and administering this
20 Settlement, whether foreseen or not, shall be paid from the Gross
21 Settlement Amount.

22 2) Declaration of Compliance.

23 No later than thirty (30) days before the Final Fairness and Approval Hearing, the
24 Claims Administrator shall provide Defense Counsel and Class Counsel with a declaration
25 attesting to completion of the notice process (except for any ongoing attempt to obtain valid
26 mailing addresses for, and the re-sending of, any returned Class Notices), including the steps
27 set forth in Section III(B) ("Declaration of Compliance"), which shall be filed with the Court
28 by Class Counsel with the final approval motion.

1 Compliance with the procedures described in this Section shall constitute due and
2 sufficient notice to Class Members of this proposed Settlement and the Final Fairness and
3 Approval Hearing, shall not be subject to objection or collateral attack by any person or entity,
4 and shall satisfy the requirement of due process. Nothing else shall be required of, or done
5 by, the Parties, Class Counsel, Defense Counsel, or the Claims Administrator to provide
6 notice of the proposed Settlement and the Final Fairness and Approval Hearing.

7 **C. Responses to Notice**

8 This is an all-in, non-reversionary settlement, and each Class Member is entitled to
9 receive an Individual Settlement Share, subject to the terms of this Agreement, without
10 “opting in” to the settlement. Each Class Member has three (3) options: 1) do nothing, thereby
11 participating in the settlement and releasing Released Parties as set forth herein; 2) request to
12 be excluded; or 3) object to the settlement.

13 1) Option 1: Do Nothing.

14 By doing nothing, the Class Member becomes a Participating Class Member and will
15 be entitled to participate in the settlement and receive his or her Individual Settlement Share
16 and will be deemed to have released the Released Claims as to the Released Parties.

17 2) Option 2: Request for Exclusion from Settlement.

18 Any person who receives a Notice of Class Settlement may request to be excluded
19 from the Class by submitting the postage pre-paid Opt-Out form (Exhibit B). Any such
20 request must be made in accordance with the terms set forth in the Class Notice and will be
21 timely only if postmarked no later than sixty (60) days after the date of mailing of the Class
22 Notice by the Claims Administrator (the “Response Deadline”). In the case of remailing, the
23 Response Deadline will be extended by an additional 15 days.

24 3) Option 3: Objections to Settlement.

25 Any Class Member wishing to object to the approval of this Settlement (“Objecting
26 Class Member”) shall inform the Claims Administrator in writing of his or her intent to object
27 (“Notice of Objection”) by following the procedure set forth in the Class Notice by the
28 Response Deadline, or such number of days as the Court shall specify, before the date of the

Final Fairness and Approval Hearing. The Notice of Objection must be signed by the Objecting Class Member and state: (1) the name and case number of this matter; (2) the Objecting Class Member's name, address, and telephone number; (3) the basis for the objection, including all arguments, citations, and evidence supporting the objection; and (4) whether the objector intends to appear at the Final Fairness and Approval Hearing. By submitting a Notice of Objection, the Objecting Class Member will be deemed to have opted into the settlement and will be a Participating Class Member. Class Members may appear and speak at the Final Fairness and Approval Hearing regardless of whether they have submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Settlement Class Members who opt-out are not entitled to object to the Settlement. Any Objection must be submitted by the same timeline as set forth by the Response Deadline – sixty (60) days after the date of mailing of the Class Notice by the Claims Administrator, and in the case of remailing, the deadline will be extended by an additional 15 days.

4) Responses to Objections.

Counsel for the Parties shall file any response to the any Notice of Objections submitted by Objecting Class Members at least five (5) court days before the date of the Final Fairness and Approval Hearing. In the event of a Notice of Objection, Class Counsel will defend the Settlement in good faith, and Defendant may submit responses.

D. Final Fairness and Approval Hearing

On the date set forth in the Order Granting Preliminary Approval, which shall be approximately seventy-five (75) days after the mailing of the Notice of Class Settlement, a Final Fairness and Approval Hearing shall be held before the Court in order to review this Agreement and to consider any timely objections made and all responses by the Parties to such objections and determine whether the Court should give it final approval. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this Agreement. If the Parties' request for final approval is granted, a Judgment and Final Order

1 Approving Settlement of Class Action substantially in the form attached hereto as Exhibit D
2 ("Judgment and Final Order") shall be entered in the Action. Class Counsel shall furnish a
3 copy of the Judgment and Final Order to the Claims Administrator within two (2) days of
4 receipt of the Judgment and Final Order.

5 **E. Settlement Calculations and Procedures**

6 1) Settlement Amount and Uses.

7 The Gross Settlement Amount is Two Hundred Fifty Thousand Dollars (\$250,000) and
8 shall include and cover all payments available under this Agreement to the Settlement Class
9 (inclusive of wages, penalties, and interest), Attorneys' Fees in the amount equal to one-third
10 (1/3) of the Gross Settlement Amount (\$83,333.33) plus expenses, Claims Administrator costs
11 anticipated not to exceed \$10,000, the PAGA Allocation in the amount of \$10,000 (with 75%
12 going to the LWDA, and 25% going to Aggrieved Employees), a Service Award to Plaintiff
13 in the amount of \$10,000.00, employee payroll taxes required by law, including FICA, FUTA,
14 and SDI, and the resolution of any appeals and objections. Employer-side payroll taxes shall
15 be paid by Defendant.

16 2) Claims Administration Costs.

17 All costs incurred by the Claims Administrator in connection with administering this
18 Settlement are to be paid from the Gross Settlement Amount. The costs of the Claims
19 Administrator are estimated to be Ten Thousand Dollars (\$10,000). This amount shall cover
20 all of the Claims Administrator's duties, which shall include disbursing the Net Settlement
21 Amount and the PAGA Allocation, calculating and forwarding all employee-side tax
22 obligations, and communicating with all Parties, performing custodial and accounting
23 functions, preparing, translating, tracking, issuing, and mailing (with the Parties' approval)
24 any and all notices or reminders to Class Members and/or Participating Class Members; all
25 costs and fees associated with computing, processing, reviewing, issuing, and paying the
26 Service Awards, the distribution of the Settlement Fund, payment interest, employee-side
27 taxes, and any other payments to be made from the Gross Settlement Amount; all costs and
28 fees associated with preparing any tax returns and any other filings required by any

governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reminders, reports, or filings to be prepared in the course of administering disbursements of the Net Settlement Amount; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

3) Attorneys' Fees and Expenses.

Subject to Court approval, Class Counsel will be paid Attorneys' Fees in the amount of \$83,333.33, plus up to \$10,000 for expenses. The Attorneys' Fees and expenses shall be paid out of the Gross Settlement Amount. Class Counsel shall serve Defendant with copies of all documents submitted in support of their fee allocation before they are filed with the Court. Defendant agrees not to oppose Class Counsel's proposed fee allocation. Any amount not approved by the Court will revert to the Settlement Fund to be split *pro rata* between the Participating Class Members. The Court-ordered Attorneys' Fees and expenses shall be due and payable no later than twenty (20) days after the Effective Date.

4) Service Award Payable to Plaintiff.

Subject to Court approval, Plaintiff shall receive a Service Award of Ten Thousand Dollars (\$10,000). The Service Award shall be payable no later than twenty (20) days after the Effective Date. The Claims Administrator will report the Service Award on a Form 1099, which it will provide to Plaintiff and to the pertinent taxing authorities as required by law.

5) Individual Settlement Shares Payable to Participating Class Members.

The Claims Administrator shall distribute to each Participating Class Member his or her Individual Settlement Share. A portion of each Individual Settlement Share shall represent wages, a portion shall represent interest, and a portion shall represent penalties. Each Individual Settlement Share shall be allocated as follows: thirty-three and one third percent (33.33%) of each Individual Settlement Share shall represent wages; thirty-three and one third percent (33.33%) shall represent interest; and thirty-three point thirty-four percent (33.34%) shall represent penalties. That portion of each Individual Settlement Share representing wages will be subject to normal employment tax withholdings relative to the Participating Class

Member's employment (e.g., withholdings for State and Federal income tax, employee FICA tax, California SDI, etc.) with the Claims Administrator remitting all such employment tax withholdings directly to the pertinent state and federal taxing authorities. Participating Class Members will be subject to 28% Federal backup withholding rate unless they execute a Form W 9 as part of their receipt of their Individual Settlement Share.

6) PAGA Allocation.

The Parties allocate Ten Thousand Dollars (\$10,000) to the LWDA for penalties under PAGA ("PAGA Allocation"), which shall be distributed as follows: 25% (\$2,500) to Aggrieved Employees on a pro rata basis, in addition to each Aggrieved Employee's Individual Settlement Share; and 75% (\$7,500) to the LWDA as Penalties.

7) Individual Settlement Share.

Each Individual Settlement Share is calculated by dividing the number of the Class Member's Qualifying Workweeks by the total number of Qualifying Workweeks for the Class Period, multiplied by the Net Settlement Amount, as reflected in the following formula:

$$\frac{\text{Individual Participating Class Member's Qualifying Workweeks}}{\text{All Participating Class Members' Qualifying Workweeks}} \times \text{Net Settlement Amount}$$

8) Re-Allocation.

Any funds that were allocated to Class Members who timely opt out of the settlement will be re-allocated to Participating Class Members on a *pro rata* basis as set forth above.

9) Interest and Penalties Allocation.

The portion of each Individual Settlement Share constituting interest or penalties will each be reported on a Form 1099 provided to each Participating Class Member, with the required copies of the Form 1099's provided to the pertinent taxing authorities.

10) No Spillover of Residuals.

To the extent there are any payments made to Participating Class Members that remain uncashed one hundred and eighty (180) days after mailing, the Parties agree that these

amounts shall be transmitted by the Class Administrator to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).).

11) No Additional Contribution by Defendant.

Defendant's monetary obligations under this Agreement are limited to the Gross Settlement Amount. Defendant may not be called upon or required to contribute additional monies above the Gross Settlement Amount under any circumstances, unless the Escalation Clause in Section (III)(E)(17) is triggered. All costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Fund. Neither this Agreement nor payment and/or receipt of any Individual Settlement Share shall trigger any other obligation, right, wage, bonus, or entitlement. The amounts paid under this Agreement do not represent a modification of any previously-credited hours of service under any employee benefit plan, policy, or bonus program sponsored by any Defendant. Payment of the Individual Settlement Shares shall not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant. Any payments made under the terms of this Agreement shall not be applied retroactively, currently, or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plan, paid vacation policy, calculations, other policy, or bonus program. Defendant retains the right to modify the language of its benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit, accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement.

12) Termination of the Agreement.

1 In the event that this Agreement is canceled, rescinded, terminated, voided, or
2 nullified, however that may occur, or the Settlement of the Action is barred by operation of
3 law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction,
4 Defendant will cease to have any obligation to fund any portion of the Gross Settlement
5 Amount.

6 13) Calculation of Qualifying Workweeks.

7 Defendant will calculate and provide the Qualifying Workweeks for each Class
8 Member based on dates of hire, and, if applicable, dates of termination.

9 14) Resolution of Disputes.

10 Any Class Member who disputes the Qualifying Workweeks shown on his or her Class
11 Notice regarding the total number of weeks he or she worked during the Class and/or PAGA
12 Period may indicate and explain such disagreement within sixty (60) days of the mailing of
13 the Notice of Class Settlement. In the case of remailing, the deadline to give notice of any
14 such disagreement will be extended by an additional 15 days. Any such Class Member must
15 submit any documentation relating to his or her dispute. The Claims Administrator shall
16 notify Defense Counsel and Class Counsel of any such dispute no later than two (2) business
17 days after receiving notice of the dispute. The Claims Administrator shall attempt to resolve
18 the disagreement and may request any information or assistance from Defense Counsel and/or
19 Class Counsel that the Claims Administrator, in its sole discretion, believes may assist it in
20 resolving the disagreement. However, Defendant's records will be used to make any final
21 determination and will be controlling. The Parties and their counsel shall use their best efforts
22 to ensure that any and all such disputes are resolved before the Effective Date.

23 15) Payment of Individual Payment Amounts.

24 Within ten (10) days after the Effective Date and Final Approval, whichever is later,
25 and any and all errors or disputes regarding the total Qualifying Workweeks by all Class
26 Members have been resolved, the Claims Administrator shall 1) calculate the final Individual
27 Settlement Share to be paid to each Participating Class Member and 2) prepare a Final
28

Statement of Individual Payment Amounts for each. The mailing shall be by first-class United States mail to the last known mailing address of each Participating Class Member.

16) Extension of Time to Pay and/or Process Claims.

Should the Claims Administrator need more time than is provided under this Agreement to complete any of its obligations as set forth in this Agreement, the Claims Administrator may request such additional time in writing (including an explanation of the need for additional time) from Defense Counsel and Class Counsel, which shall not be unreasonably withheld. If Defense Counsel and Class Counsel do not agree in writing to the Claims Administrator's request for additional time, the Claims Administrator may seek such additional time from the Court.

17) Increase of Class Size.

This Settlement was reached with the understanding that Defendant would hire additional employees who would be deemed Class Members under the terms of this Agreement. Prior to the first mediation, and specifically on December 21, 2020, Defendant indicated that there were 159 Class Members. The Parties accounted for a potential increase in the size of the Class by 13% (21 employees). Defendant agrees that any increase in the size of the Class by more than 21 employees (13%), as reflected in confirmatory discovery and/or the Class List provided to the Administrator during Administration, will result in a proportionate increase in the Net Settlement Amount for each additional Class Member. Specifically, for every additional Class Member above 180 employees who is determined to be a Class Member, Defendant agrees to increase the Gross Settlement by the following formula: $1/180$ (the proportion of the increase) * \$250,000 (the Gross Settlement Amount), for a total of \$1,388.89 per additional employee Class Member above 180 ("Escalator Provision")

Defendant has represented that as of May 24, 2023, there were 169 Class Members, who worked 10,906 Qualifying Work Weeks during the Class Period. Defendant has represented that as of May 24, 2023, there were 72 Aggrieved Employees who worked 2,848 PAGA Periods during the Class Period. This figure does not trigger the Escalator Provision.

F. Public Statements

Plaintiff and Class Counsel shall not hold any press conferences, issue any press releases, seek any publicity, or publish any announcements on any website with respect to this matter at any time. Until the Parties submit a request for preliminary approval from the Court, Plaintiff and Class Counsel will keep the terms of this Agreement confidential. Prior to final approval of this Settlement, Plaintiff and Class Counsel will not discuss this Action or Settlement or otherwise disclose the terms of this Agreement with third parties other than Class Members, except 1) as necessary to effectuate this Agreement and 2) to the Parties' tax advisors. After final approval of this Settlement, the Parties and their counsel shall not issue any public statements with respect to the Action or Settlement, except as required by law. Upon such final approval, the Parties and their counsel may issue, if at all, only a mutually agreeable joint press release, although neither party is required to agree to any press release of any kind. Unless otherwise agreed by the Parties and their counsel, any oral or written disclosure of information related to the Settlement shall be restricted to the material discussed in this Stipulation and Agreement. The Parties and their counsel agree and acknowledge that the phrase "material discussed in this Stipulation and Agreement" shall be narrowly construed. Notwithstanding the specific limitations to public disclosure identified herein, Class Counsel shall not be precluded from disclosing the Parties to the lawsuit and the fact that the matter settled to a Court or other tribunal.

IV. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Neither the acceptance nor the performance by Defendant of the terms of this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed as, or deemed to be an admission by Defendant of the truth of any of the allegations in the Operative Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant in the Action.

B. Non-Evidentiary Use

Neither this Agreement nor any of its terms shall be admissible or useable in discovery in any adversary proceeding or any litigation whatsoever, provided, however, that nothing contained in this Section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement in the Action.

C. No Collateral Attack

This Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Notice of Class Settlement after the Judgment and Final Order described herein is entered. Such prohibited collateral attacks shall include but not be limited to claims that the Qualifying Workweeks attributed to the Class Member was erroneous or that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of his or her Individual Settlement Share.

D. Nullification

- 1) If (a) the Court should for any reason fail to certify a class for settlement; or (b) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties; or (c) the Court should for any reason fail to enter the Judgment and Final Order; or (d) the Judgment and Final Order is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void, (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court, (iv) this Agreement shall not be admissible or usable in discovery in any adversarial proceeding or in any litigation whatsoever, including this Action, and (v) Class Counsel shall make repayment of any disbursements it received from the Settlement Fund.
- 2) Invalidation of any material term of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

1 3) In the event that for any reason unrelated to a Defendant's failure to pay Gross
2 Settlement Amount, the final distribution of the Settlement Fund does not occur
3 (for example, because this Agreement and/or the Judgment and Final Order is
4 modified or reversed on appeal), the entire Settlement Fund shall remain the
5 sole property of Defendant and any sums previously paid or distributed shall
6 be returned to Defendant (minus any administrative expense and fees incurred
7 by the Claims Administrator).

8 4) In the event of a timely appeal from the Judgment and Final Order, the Judgment
9 and Final Order shall be stayed, and the Net Settlement Amount shall not be
10 distributed to Class Members pending the completion of the appeal.

11 **V. RELEASES**

12 **A. Class Releases**

13 It is the desire of the Parties to fully, finally, and forever settle, compromise, and
14 discharge disputes and claims, including, but not limited to, claims that were asserted or could
15 have been asserted at any time in the Action based on the facts alleged in the Complaint..
16 Except for Class Members who submit a timely opt out from the settlement, upon entry of the
17 Judgment and Final Order in the Action, Plaintiff and every Participating Class Member shall
18 be bound by this Agreement, and their benefits, rights, and remedies are limited as provided
19 herein. Plaintiff and each and every Participating Class Member shall be deemed to have,
20 and by operation of the Judgment and Final Order, shall have, fully, finally, and forever
21 released, relinquished, and discharged each and all of the Released Parties from the Released
22 Claims.

23 Every Class Member who does not submit a timely Request for Exclusion from the
24 Class shall be deemed to have acknowledged that this Agreement is intended to include in its
25 effect all Released Claims about which the Class does not know or suspect to exist in its favor
26 at the time of the final approval of this Agreement. For the avoidance of doubt, the Parties
27 agree that, except as provided herein with respect to the Individual Release, the Participating
28 Class Members' waiver of rights and benefits does not apply to claims not encompassed in

the Released Claims. Plaintiff, the Class, and every Participating Class Members shall be deemed to have acknowledged and agreed that: 1) Class claims for overtime compensation, minimum wages, wages for all hours worked, statutory and civil penalties, and any other payments and/or penalties in the Action are disputed; and 2) the payments set forth above constitute full payment of any amounts allegedly due. Plaintiff and the Participating Class Members thus shall be deemed to have acknowledged and agreed that California Labor Code § 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows:

An employer shall not require the execution of any release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

B. PAGA Release

The Labor Workforce Development Agency, State of California, in addition to all Aggrieved Employees, and Plaintiff Almazan as a proxy for the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Labor Code pursuant to PAGA during the PAGA Period, that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, and the PAGA Notice submitted by Plaintiff to the LWDA on or about January 8, 2020, in LWDA Case No. LWDA Case No. LWDA-CM-765471-20. The PAGA release shall be given full res judicata and collateral estoppel effect upon entry of the judgment in this Action so as to bar the LWDA and any other individual or entity from filing or pursuing the Released PAGA Claims against the Released Parties in any forum.

C. Individual Release

Plaintiff agrees that the consideration set forth in this Agreement, including the Service Award of Ten Thousand Dollars (\$10,000) set forth above, represents full settlement of all claims that were or could have been raised against the Released Parties. No other consideration has been provided to Plaintiff. Plaintiff, on behalf of himself and each of his heirs, representatives,

1 successors, assigns, and attorneys, hereby compromises, releases, resolves, relinquishes, discharges
2 and settles any and all claims of any nature whatsoever he has or may have against Released Parties
3 for any acts occurring on or before the date of preliminary approval of the Settlement. Plaintiff
4 specifically acknowledges that he is aware of and familiar with the provisions of California Civil
5 Code § 1542, which provides as follows:

6 **A general release does not extend to claims that the creditor or**
7 **releasing party does not know or suspect to exist in his or her**
8 **favor at the time of executing the release and that, if known by**
9 **him or her would have materially affected his or her settlement**
10 **with the debtor or released party.**

11 Plaintiff, being aware of this section, hereby expressly waives and relinquishes all rights
12 and benefits he may have under this section as well as any other statutes or common law principles
13 of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those
14 which he now knows or believes to be true, but he stipulates and agrees that, upon the Effective
15 Date, Plaintiff shall and hereby does fully, finally and forever settle and release any and all claims
16 against Defendant, known or unknown, suspected or unsuspected, contingent or non-contingent,
17 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory
18 of law or equity and without regard to the subsequent discovery or existence of such different or
19 additional facts.

20 Plaintiff expressly acknowledges that this release applies to, without limitation:

- 21 a. any and all claims relating to or arising from his employment relationship
22 (including but not limited to claims for wages as that term is defined by California
23 Labor Code section 200) with the Released Parties and the termination of that
24 relationship;
- 25 b. any and all claims relating to, or arising from, his right to purchase, or actual
26 purchase of shares of stock of the Released Parties, including, without limitation,
27 any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty
28

- 1 under applicable state corporate law, and securities fraud under any state or federal
2 law;
- 3 c. any and all claims for wrongful discharge of employment; termination in violation
4 of public policy; discrimination; breach of contract, both express and implied;
5 breach of a covenant of good faith and fair dealing, both express and implied;
6 negligent or intentional infliction of emotional distress; negligent or intentional
7 misrepresentation; negligent or intentional interference with contract or prospec-
8 tive economic advantage; unfair business practices; defamation; libel; slander;
9 negligence; personal injury; assault; battery; invasion of privacy; false
10 imprisonment; and conversion;
- 11 d. any and all claims for violation of any federal, state or municipal statute, including,
12 but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act
13 of 1991, the Age Discrimination in Employment Act of 1967, the Americans with
14 Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement
15 Income Security Act of 1974, The Worker Adjustment and Retraining Notification
16 Act, Older Workers Benefit Protection Act; the California Fair Employment and
17 Housing Act, the Private Attorney General Act, the Workers Compensation Act,
18 and the California Labor Code;
- 19 e. any and all claims for violation of the federal, or any state, constitution; and
20 f. any and all claims arising out of any other laws and regulations relating to
21 employment or employment discrimination.

22 Older Workers Benefits Protection Act: It is intention of the Parties that the Plaintiff
23 release will apply to all claims of any kind against the Released Parties. In order to comply
24 with the Older Workers Benefits Protection Act [29 U.S.C. Section 626(f)] and effectuate the
25 release by Plaintiff of any potential claims under the federal Age Discrimination in
26 Employment Act, Plaintiff agrees as follows:

- 27 a. He has carefully reviewed the foregoing Settlement, and understands the
28 terms and conditions it contains;

- b. He has been advised of his right to consult any attorney to review this Settlement, and has had the benefit of an attorney throughout the settlement process and has had an attorney review this Settlement;
- c. He does not waive any rights or claims that may arise after the date this Settlement is executed;
- d. He is receiving consideration beyond anything of value to which he is already entitled;
- e. By entering into this Settlement, he is giving up potential valuable legal rights, and he intends to be bound by all the terms and conditions set forth above;
- f. He is entering into this Settlement freely, knowingly, and voluntarily;
- g. He has been given twenty-one (21) days to consider whether to agree to the terms and conditions set forth in this Settlement and expressly waives this provision if he chooses to execute it prior to the expiration of twenty-one (21) days.
- h. For a seven (7) day period following his execution of this Settlement, he may revoke this Settlement by delivering a written revocation to counsel for the Released Parties, and this Settlement shall not become effective nor enforceable until the revocation period has expired.

VI. MISCELLANEOUS PROVISIONS

A. Amendments

The terms and provisions of this Agreement may be amended only by a written agreement, approved by this Court, that is signed by the Plaintiff, Class Counsel, and Defense Counsel who executed this Agreement.

B. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each party and their respective counsel. The representations,

warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

C. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

D. Entire Agreement

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in Exhibits to this Agreement, the former shall be controlling. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

E. Waiver of Compliance

Any failure of any party, Defense Counsel, and/or Class Counsel to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the party or parties and their respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

F. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any party and/or their respective counsel may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which

1 counterparts taken together shall constitute but one and the same instrument. It shall not be
2 necessary in making proof of this Agreement or any counterpart hereof to produce or account
3 for any of the other counterparts.

4 **G. Attorneys' Fees and Costs**

5 Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the
6 Class, Class Members, or Plaintiff may recover or seek to recover any amounts for fees, costs,
7 or disbursements from the Released Parties or the Settlement Fund except as expressly
8 provided herein.

9 **H. Meet and Confer Regarding Disputes**

10 Should any dispute arise among the Parties or their respective counsel regarding the
11 implementation or interpretation of this Agreement, a representative from Class Counsel and
12 a representative from Defense Counsel shall meet and confer in an attempt to resolve such
13 disputes prior to submitting such disputes to the Court.

14 **I. Jurisdiction of the Court**

15 The Parties agree that this Settlement Agreement shall be enforceable by the Court
16 pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
17 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
18 of this Agreement and all orders and judgments entered in connection therewith, and the
19 Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting,
20 implementing, and enforcing the settlement embodied in this Agreement and all orders and
21 judgments entered in connection therewith.

22 **IT IS SO STIPULATED.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 11, 2023

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

DocuSigned by:

By: _____
Todd M. Friedman
Adrian R. Bacon
Attorneys for Plaintiff
ANALI ALMAZAN

Dated: July 11, 2023

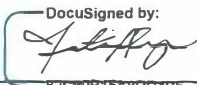
MAGARIAN & DIMERCURIO

By:  _____
Mark D. Magarian
Krista L. Dimercurio
Attorneys for Defendant
BOTANX, LLC

Dated: July 11, 2023

By:  _____
BOTANX, LLC

Dated: July 11, 2023

DocuSigned by:

By: _____
FATIMA ALMAZAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3

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

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

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

Plaintiff,

vs.

[Assigned for all purposes to the Hon. Lon F. Hurwitz ~~Glenda Sanders~~, Dept. CX1034]

BOTANX, LLC and DOES 1 to 50, inclusive,

Defendant..

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

I. WHY DID I GET THIS NOTICE?

You are receiving this notice because our records indicate that you are or were a non-exempt employee of BOTANX, LLC (“Defendant”) between January 8, 2016 and September 21, 2022. This Notice explains that the Orange County Superior Court has granted preliminary approval of a class action settlement that may affect you. You have legal rights and options that you may exercise at this time, so please read this Notice carefully.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Plaintiff Anali Almazan (“Plaintiff”) filed a lawsuit against Defendant in this Court, Case No. 30-2020-01122459-CU-OE-CXC, (the “Action”), alleging that he and other non-exempt employees were 1) not paid proper wages (including minimum wages, overtime, double-time, and wages due upon termination of employment) and 2) not provided proper meal and rest breaks. He also alleged that Defendant did not provide proper wage statements or maintain accurate employee records. By doing so, Plaintiff claimed that Defendant engaged in unfair competition and that Plaintiff and other similarly situated employees were entitled to recover penalties under California’s Private Attorneys General Act of 2004 (“PAGA”). Plaintiff alleged further that he, on behalf of all such employees, was entitled to damages, liquidated damages, penalties, and attorneys’ fees and costs, among other remedies.

Defendant has denied, and continues to deny, all allegations and contends that it has paid its employees fairly and in full compliance with all California labor laws.

The Court has not determined whether allegations against Defendant have merit. However, after good faith negotiations and for the purpose of avoiding the significant time and expense of further litigation, the outcome of which is uncertain, and providing a fair and reasonable resolution of this legal dispute, Plaintiff and Defendant have agreed to settle the lawsuit by paying a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000) to resolve the claims described above.

Nothing in the Settlement is intended, or should be construed, as an admission by Defendant that the Action has merit or that it has any liability to Plaintiff or other class members. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the class as a whole.

III. WHO IS INCLUDED IN THE CLASS ACTION?

You are included in the Settlement Class if you were employed by BOTANX, LLC as non-exempt employee in California between January 8, 2016 and September 21, 2022 (the “Class Period”).

IV. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

Defendant has agreed to pay a Gross Settlement Amount of \$250,000 (“Settlement Fund”). A Settlement Administrator has been appointed to administer the Settlement and facilitate all payments. The Settlement Administrator will pay sums from the Settlement Fund as follows: 1) the Class Representative Payment to Fatima¹ Almazan in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00); 2) Class Counsel’s attorneys’ fees in the amount of Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$83,333.33), or one-third (1/3) of the Settlement Fund, incurred or to be incurred in this Action, including any appeals; 3) costs and expenses associated with the lawsuit in an amount of up to Ten Thousand Dollars (\$10,000.00), incurred or to be incurred in this lawsuit, including any appeals; 4) the fees and expenses of the Claims Administrator, estimated at Ten Thousand Dollars and Zero Cents (\$10,000.00) and subject to reduction or increase to correspond with the actual fees and expenses incurred; 5) Ten Thousand Dollars and Zero Cents (\$10,000.00) in recognition of the release of claims pursuant to PAGA, 75% of which (\$7,500) designated to go to the California Labor and Workforce Development Agency, and 25% (\$2,500) to ~~Class-Aggravated Employees~~Members; and 6) the remainder of approximately One Hundred Thirty-Six Thousand Six Hundred and Sixty Six Dollars and Sixty Seven Cents (\$136,666.67), which is the estimated Maximum Settlement Distribution Amount to all Class Members, and from which the employee portion of all applicable tax withholdings including FICA, SDI, and other employment-related taxes and withholding of federal, state and local income taxes will be paid. Any unclaimed settlement payments will be paid ~~as a donation to Public Justice, a national nonprofit legal advocacy organization, to the California Controller’s Unclaimed Property Fund in the name of the Class Member.~~

1. **Settlement Payments:** Your individual share of the Settlement will be based on the number of workweeks you worked for Defendant during the Class Period (“Qualifying Workweeks”) relative to the total number of workweeks worked by Class Members. ~~However, if Defendant previously paid you an individual settlement amount in exchange for signing a Wage Release Agreement after the lawsuit was filed, your settlement share will be reduced by the amount you already received.~~

2. **Release of Claims:** If you do not exclude yourself from the Settlement (according to the procedures explained below), you, on behalf of yourself and your current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will fully and finally release Defendant, and its its past and present parent companies, subsidiaries and affiliates, and their respective present and former officers, directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, registered representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, partners, predecessors, successors, assigns, and any other persons acting by, through, under, or in concert

¹ On June 9, 2021, Anali’s daughter, Fatima Almazan, officially substituted in as lead Plaintiff.

~~with any of them parents, predecessors, successors, subsidiaries, affiliates, partners, assigns, and trusts, and all of their employees, officers, agents, attorneys, stockholders, fiduciaries, other service providers, and assigns (collectively hereinafter the “Releasees”), from any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that were asserted or could have been asserted at any time in the Action based on the facts, theories, and/or claims alleged in the Action; it includes and covers claims for violations of any state or federal statutes, rules or regulations, claims that were asserted or could have been asserted at any time in the Action based on the facts or laws alleged in the Complaint. demands, rights, liabilities, and causes of action of any kind whatsoever, whether known or unknown, that have been, or could have been, asserted against the Releasees arising out of or relating to the claims, causes of action, facts, or allegations set forth in the lawsuit during the Class Period (the “Released Claims”). The Released Claims expressly include, without limitation, all such claims for unpaid wages, including: overtime, off-the-clock claims; minimum wage claims; claims for failure to pay wages timely, both during employment and after termination; claims for failure to keep accurate and complete payroll records; claims for failure to provide accurate and complete wage statements; claims for missed meal periods; claims for missed rest breaks; claims for failing to pay wage premiums of any type; claims for statutory damages, penalties, and/or interest, including, but not limited to, recordkeeping penalties, wage statement penalties or damages, minimum-wage penalties, missed meal-period and rest-break penalties, waiting-time penalties, and PAGA penalties; premiums or costs and attorneys’ fees and expenses; and any claim arising from the claims described above under applicable federal, state or, local law. The Released Claims include all such claims arising under the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198); the wage orders of the California Industrial Welfare Commission; PAGA, California Labor Code sections 2698, et seq.; California Business & Professions Code sections 17200, et seq.; the California common law of contract; and federal common law.~~

Accordingly, if you participate in this Settlement, you cannot bring any claims against Defendant for wages or other payments described above for any work you performed for them during the Class Period. This release does not bar you from bringing a tort claim or claim relating to wrongful termination and/or employment discrimination.

Formatted: Indent: Left: 0.5", First line: 0"

V. WHAT ARE MY OPTIONS?

A. You May Accept Your Share of the Settlement

You will receive a Settlement Share and will be bound by the terms of the Settlement and any final Judgment that may be entered by the Court. You will be considered to have released the claims against Defendant and the other released parties described in the Settlement **unless you submit a timely request to be excluded as described below.**

If you wish to accept your Settlement Share but do not agree with the number of Qualifying Workweeks stated on the attached Information Sheet, or wish to correct any other information on the Information Sheet, you should provide the corrected information by completing and returning the attached Information Sheet. If you dispute the number of Qualifying Workweeks, write down the beginning and ending dates you worked for Defendant during the Class Period and return the Information Sheet, and any documents to support your position, by mail to the Settlement Administrator and addressed as follows:

Anali Almazan v. Botanx, LLC – Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

Settlement Administrator will read the documents provided by both you and Defendant and make the final determination of the amount of your Settlement Share.

Please note that you are responsible for keeping the Settlement Administrator informed of any changes in your mailing address until your Settlement Share is received, should final approval of the Settlement be granted. Changing your mailing address and failing to inform the Settlement Administrator of the change may prevent you from receiving your Settlement Share.

B. You May Exclude Yourself from the Settlement

If you do not wish to participate in the Settlement and wish instead to be excluded from the Settlement, including any final judgment that may be entered by the Court, **you must mail a letter to the attached “Opt-Out Form” to the Settlement Administrator postmarked on or before [REDACTED], 2023² to the following address:**

Anali Almazan v. Botanx, LLC – Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

~~Your letter must state that you request to exclude yourself from the Settlement and~~The Opt-Out Form **must** include your name, address, telephone number, and signature. Any Class Member who properly submits a valid and timely request to be excluded from the Settlement will 1) not receive any payment of any kind in connection with this Settlement ~~(with the exception of their PAGA portion)~~, 2) not be bound by or receive any benefit of this Settlement ~~(with the exception of their PAGA portion)~~, 3) have no right to object to the Settlement or be heard at any hearing scheduled for the Court’s consideration of the Settlement, and 4) may at his or her own expense pursue individually any claims he or she may have against Defendant ~~(with the exception of their PAGA portion)~~. Any request for

exclusion must be mailed by no later than _____, 2023 [sixty (60) days after Rust mails Class Notice, or seventy-five (75) days in the case of a remailed notice].

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Settlement remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA facts alleged in the Action.

C. You May Object to the Settlement

If you do not request to be excluded from the Settlement but believe that the Settlement is not fair, reasonable, and adequate, you may object to the terms of the Settlement before final Court approval by filing a written objection. If the Court rejects your objection, however, you will remain bound by the Settlement terms.

To object, you must send the objection to the Settlement Administrator, at the address listed below:

~~To Court~~

~~Clerk of Court
Orange County Superior Court
Re: *Anali Almazan v. Botanx, LLC*.
Case No. 30-2020-01122459-CU-OE-CXC.~~

To Settlement Administrator

Anali Almazan v. Botanx, LLC
Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE ZIP]

~~To Class Counsel:~~

~~Todd M. Friedman
Adrian Bacon
Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364~~

~~To Defense Counsel:~~

~~Mark D. Magarian
Kristina L. Dimercurio
MAGARIAN & DIMERCURIO,
20 Corporate Park, Ste. 255
Irvine, California 92606~~

Any written objection must state your full name, address, and the dates of your employment with Defendant. Your written objection must also state, in clear and concise terms, the basis for your objection(s) and any legal support. The written objection must also state whether you intend to appear and object at the Final Approval Hearing. To be valid and effective, the Administrator Court and Counsel must receive any written objection and notice of intent to appear at the Final Approval Hearing no later than _____, 2023³² [sixty (60) ~~thirty (30)~~ days after Rust mails Class Notice, or seventy-five (75) days in the case of a remailed notice]. If the Court denies your objection, you will be bound

by any Judgment with respect to the Settlement, and you will release the Defendant from legal claims as described above and in the Stipulation of Class Action Settlement on file with the Court.

D. You Can Do Nothing

If you do nothing in response to this Class Notice, you will receive your Settlement Share of the Settlement, and you will be bound by any Judgment entered with respect to the Settlement, including by releasing Defendant from legal claims as explained above and in the Stipulation for Class Action Settlement on file with the Court.

VI. FINAL SETTLEMENT APPROVAL HEARING

To determine whether the Settlement should be finally approved as fair, reasonable, and adequate, the Court will hold a Final Approval Hearing on **[date]**, ~~2022~~**2023**, at **[time]** in Dept. CX1034 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, CA 92701. The Court will also be asked to approve the requests for payment of the following: all Class Members' Individual Settlement Shares; the PAGA allocation to the California Labor and Workforce Development Agency; the Class Representative's service award; Class Counsel's Attorneys' Fees and Expenses Payment; and administrative costs to the Settlement Administrator.

The hearing may be continued without further notice to the Settlement Class. **It is not necessary for you to appear at this hearing, but you may appear and be heard at your option.**

VII. ADDITIONAL INFORMATION

This Notice contains a summary of the basic Settlement terms. For the precise terms and conditions of the Settlement, you should read the Stipulation of Class Action Settlement on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Stipulation, **may be examined during regular business hours at the Office of the Clerk of the Orange County Court**, [LOCATION]. Case documents are also available for review online using the Civil Case & Document Access service through the Court's website: <https://www.occourts.org>. After navigating to the Civil Case & Document portal, one can input the case number for this matter ("30-2020-01122459-CU-OE-CXC") to access case documents.

CLASS MEMBERS WILL BE ABLE TO ACCESS DOCUMENTS RELATING TO THIS SETTLEMENT, OR BE INFORMED ABOUT ANY CONTINUANCES OF THE HEARINGS OR OF THE FINAL JUDGMENT VIA THE ADMINISTRATOR'S WEBSITE, WHICH CAN BE ACCESSED AT [REDACTED].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR LISTED ABOVE.

APPROVED BY ORDER OF THE COURT

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Highlight

Formatted: Font: Bold

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 4

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

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

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

Plaintiff,

vs.

*[Assigned for all purposes to the Hon. Lon F.
Hurwitz, Dept. CX103]*

BOTANX, LLC and DOES 1 to 50, inclusive,

Defendant..

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

I. WHY DID I GET THIS NOTICE?

You are receiving this notice because our records indicate that you are or were a non-exempt employee of BOTANX, LLC (“Defendant”) between January 8, 2016 and September 21, 2022. This Notice explains that the Orange County Superior Court has granted preliminary approval of a class action settlement that may affect you. You have legal rights and options that you may exercise at this time, so please read this Notice carefully.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Plaintiff Anali Almazan (“Plaintiff”) filed a lawsuit against Defendant in this Court, Case No. 30-2020-01122459-CU-OE-CXC, (the “Action”), alleging that he and other non-exempt employees were 1) not paid proper wages (including minimum wages, overtime, double-time, and wages due upon termination of employment) and 2) not provided proper meal and rest breaks. He also alleged that Defendant did not provide proper wage statements or maintain accurate employee records. By doing so, Plaintiff claimed that Defendant engaged in unfair competition and that Plaintiff and other similarly situated employees were entitled to recover penalties under California’s Private Attorneys General Act of 2004 (“PAGA”). Plaintiff alleged further that he, on behalf of all such employees, was entitled to damages, liquidated damages, penalties, and attorneys’ fees and costs, among other remedies.

Defendant has denied, and continues to deny, all allegations and contends that it has paid its employees fairly and in full compliance with all California labor laws.

The Court has not determined whether allegations against Defendant have merit. However, after good faith negotiations and for the purpose of avoiding the significant time and expense of further litigation, the outcome of which is uncertain, and providing a fair and reasonable resolution of this legal dispute, Plaintiff and Defendant have agreed to settle the lawsuit by paying a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000) to resolve the claims described above.

Nothing in the Settlement is intended, or should be construed, as an admission by Defendant that the Action has merit or that it has any liability to Plaintiff or other class members. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the class as a whole.

III. WHO IS INCLUDED IN THE CLASS ACTION?

You are included in the Settlement Class if you were employed by BOTANX, LLC as non-exempt employee in California between January 8, 2016 and September 21, 2022 (the “Class Period”).

IV. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

Defendant has agreed to pay a Gross Settlement Amount of \$250,000 (“Settlement Fund”). A Settlement Administrator has been appointed to administer the Settlement and facilitate all payments. The Settlement Administrator will pay sums from the Settlement Fund as follows: 1) the Class Representative Payment to Fatima¹ Almazan in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00); 2) Class Counsel’s attorneys’ fees in the amount of Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$83,333.33), or one-third (1/3) of the Settlement Fund, incurred or to be incurred in this Action, including any appeals; 3) costs and expenses associated with the lawsuit in an amount of up to Ten Thousand Dollars (\$10,000.00), incurred or to be incurred in this lawsuit, including any appeals; 4) the fees and expenses of the Claims Administrator, estimated at Ten Thousand Dollars and Zero Cents (\$10,000.00) and subject to reduction or increase to correspond with the actual fees and expenses incurred; 5) Ten Thousand Dollars and Zero Cents (\$10,000.00) in recognition of the release of claims pursuant to PAGA, 75% of which (\$7,500) designated to go to the California Labor and Workforce Development Agency, and 25% (\$2,500) to Aggrieved Employees; and 6) the remainder of approximately One Hundred Thirty-Six Thousand Six Hundred and Sixty Six Dollars and Sixty Seven Cents (\$136,666.67), which is the estimated Maximum Settlement Distribution Amount to all Class Members, and from which the employee portion of all applicable tax withholdings including FICA, SDI, and other employment-related taxes and withholding of federal, state and local income taxes will be paid. Any unclaimed settlement payments will be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member.

1. **Settlement Payments:** Your individual share of the Settlement will be based on the number of workweeks you worked for Defendant during the Class Period (“Qualifying Workweeks”) relative to the total number of workweeks worked by Class Members.

Release of Claims: If you do not exclude yourself from the Settlement (according to the procedures explained below), you, on behalf of yourself and your current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will fully and finally release Defendant, and its its past and present parent companies, subsidiaries and affiliates, and their respective present and former officers, directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, registered representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, partners, predecessors, successors, assigns, and any other persons acting by, through, under, or in concert with any of them (collectively hereinafter the “Releasees”), from any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that were asserted or could have been asserted at any time in the Action based on the facts, theories, and/or claims alleged in

¹ On June 9, 2021, Anali’s daughter, Fatima Almazan, officially substituted in as lead Plaintiff.

the Action; it includes and covers claims for violations of any state or federal statutes, rules or regulations, claims that were asserted or could have been asserted at any time in the Action based on the facts or laws alleged in the Complaint. (the “Released Claims”). The Released Claims expressly include, without limitation, all such claims for unpaid wages, including: overtime, off-the-clock claims; minimum wage claims; claims for failure to pay wages timely, both during employment and after termination; claims for failure to keep accurate and complete payroll records; claims for failure to provide accurate and complete wage statements; claims for missed meal periods; claims for missed rest breaks; claims for failing to pay wage premiums of any type; claims for statutory damages, penalties, and/or interest, including, but not limited to, recordkeeping penalties, wage statement penalties or damages, minimum-wage penalties, missed meal-period and rest-break penalties, waiting-time penalties, and PAGA penalties; premiums or costs and attorneys’ fees and expenses; and any claim arising from the claims described above under applicable federal, state or, local law. Accordingly, if you participate in this Settlement, you cannot bring any claims against Defendant for wages or other payments described above for any work you performed for them during the Class Period. This release does not bar you from bringing a tort claim or claim relating to wrongful termination and/or employment discrimination.

V. WHAT ARE MY OPTIONS?

A. You May Accept Your Share of the Settlement

You will receive a Settlement Share and will be bound by the terms of the Settlement and any final Judgment that may be entered by the Court. You will be considered to have released the claims against Defendant and the other released parties described in the Settlement **unless you submit a timely request to be excluded as described below.**

If you wish to accept your Settlement Share but do not agree with the number of Qualifying Workweeks stated on the attached Information Sheet, or wish to correct any other information on the Information Sheet, you should provide the corrected information by completing and returning the attached Information Sheet. If you dispute the number of Qualifying Workweeks, write down the beginning and ending dates you worked for Defendant during the Class Period and return the Information Sheet, and any documents to support your position, by mail to the Settlement Administrator and addressed as follows:

Anali Almazan v. Botanx, LLC – Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

Settlement Administrator will read the documents provided by both you and Defendant and make the final determination of the amount of your Settlement Share.

Please note that you are responsible for keeping the Settlement Administrator informed of any changes in your mailing address until your Settlement Share is received, should final approval of the Settlement be granted. Changing your mailing address and failing to inform the Settlement Administrator of the change may prevent you from receiving your Settlement Share.

B. You May Exclude Yourself from the Settlement

If you do not wish to participate in the Settlement and wish instead to be excluded from the Settlement, including any final judgment that may be entered by the Court, **you must mail the attached “Opt-Out Form” to the Settlement Administrator postmarked on or before [REDACTED], 2023 to the following address:**

Anali Almazan v. Botanx, LLC – Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

The Opt-Out Form must include your name, address, telephone number, and signature. Any Class Member who properly submits a valid and timely request to be excluded from the Settlement will 1) not receive any payment of any kind in connection with this Settlement (with the exception of their PAGA portion), 2) not be bound by or receive any benefit of this Settlement (with the exception of their PAGA portion), 3) have no right to object to the Settlement or be heard at any hearing scheduled for the Court’s consideration of the Settlement, and 4) may at his or her own expense pursue individually any claims he or she may have against Defendant (with the exception of their PAGA portion). Any request for exclusion must be mailed by no later than [REDACTED], 2023 [sixty (60) days after Rust mails Class Notice, or seventy-five (75) days in the case of a remailed notice].

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Settlement remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA facts alleged in the Action.

C. You May Object to the Settlement

If you do not request to be excluded from the Settlement but believe that the Settlement is not fair, reasonable, and adequate, you may object to the terms of the Settlement before final Court approval by filing a written objection. If the Court rejects your objection, however, you will remain bound by the Settlement terms.

To object, you must send the objection to the Settlement Administrator, at the address listed below:

To Settlement Administrator

Anali Almazan v. Botanx, LLC
Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE ZIP]

Any written objection must state your full name, address, and the dates of your employment with Defendant. Your written objection must also state, in clear and concise terms, the basis for your objection(s) and any legal support. The written objection must also state whether you intend to appear and object at the Final Approval Hearing. To be valid and effective, the Administrator must receive any written objection and notice of intent to appear at the Final Approval Hearing no later than [REDACTED], 2023 [sixty (60) days after Rust mails Class Notice, or seventy-five (75) days in the case of a remailed notice]. If the Court denies your objection, you will be bound by any Judgment with respect to the Settlement, and you will release the Defendant from legal claims as described above and in the Stipulation of Class Action Settlement on file with the Court.

D. You Can Do Nothing

If you do nothing in response to this Class Notice, you will receive your Settlement Share of the Settlement, and you will be bound by any Judgment entered with respect to the Settlement, including by releasing Defendant from legal claims as explained above and in the Stipulation for Class Action Settlement on file with the Court.

VI. FINAL SETTLEMENT APPROVAL HEARING

To determine whether the Settlement should be finally approved as fair, reasonable, and adequate, the Court will hold a Final Approval Hearing on [date], 2023, at [time] in Dept. CX103 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, CA 92701. The Court will also be asked to approve the requests for payment of the following: all Class Members' Individual Settlement Shares; the PAGA allocation to the California Labor and Workforce Development Agency; the Class Representative's service award; Class Counsel's Attorneys' Fees and Expenses Payment; and administrative costs to the Settlement Administrator.

The hearing may be continued without further notice to the Settlement Class. **It is not necessary for you to appear at this hearing, but you may appear and be heard at your option.**

VII. ADDITIONAL INFORMATION

This Notice contains a summary of the basic Settlement terms. For the precise terms and conditions of the Settlement, you should read the Stipulation of Class Action Settlement on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Stipulation, may be examined during regular business hours at the Office of the Clerk of the Orange County Court, [LOCATION]. Case documents are also available for review online using the Civil Case & Document Access service through the Court's website: <https://www.occourts.org>. After navigating to the Civil Case & Document portal, one can input the case number for this matter ("30-2020-01122459-CU-OE-CXC") to access case documents.

CLASS MEMBERS WILL BE ABLE TO ACCESS DOCUMENTS RELATING TO THIS SETTLEMENT, OR BE INFORMED ABOUT ANY CONTINUANCES OF THE HEARINGS OR OF THE FINAL JUDGMENT VIA THE ADMINISTRATOR'S WEBSITE, WHICH CAN BE ACCESSED AT [REDACTED].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR LISTED ABOVE.

APPROVED BY ORDER OF THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 5

**SUPERIOR COURT FOR STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
Re: Anali Almazan v. Botanx, LLC.
Case No.: 30-2020-01122459-CU-OE-CXC**

OPT-OUT FORM

I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE CASE OF *ANALI ALMAZAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED*, V. *BOTANX, LLC*. I UNDERSTAND THAT BY REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS I WILL NOT RECEIVE ANY SHARE OF THE SETTLEMENT BENEFITS. I confirm that I have received written notice of the proposed settlement in this action. I have decided to exclude myself from the Settlement Class and not participate in any portion of the proposed settlement. I understand that I cannot opt-out of the PAGA portion of the Settlement, and that even if I exclude myself from the Settlement, I remain eligible for an individual PAGA Payment and am required to give up my right to assert PAGA claims against Defendant based on the PAGA claims alleged in the Action.

Formatted: Font: Times New Roman, 13 pt

Date: _____
Signature: _____
Printed Name: _____
Street Address: _____
City, State, Zip Code: _____

**THIS FORM MUST BE COMPLETED AND SENT VIA U.S. MAIL WITH A POSTMARK
DATED NO LATER THAN _____ TO:**

RUST CONSULTING
ADDRESS
CITY, STATE ZIP
TOLL FREE TELEPHONE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 6

**SUPERIOR COURT FOR STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
Re: Anali Almazan v. Botanx, LLC.
Case No.: 30-2020-01122459-CU-OE-CXC**

OPT-OUT FORM

I WISH TO BE EXCLUDED FROM THE SETTLEMENT IN THE CASE OF *ANALI ALMAZAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, V. BOTANX, LLC.* I UNDERSTAND THAT BY REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS I WILL NOT RECEIVE ANY SHARE OF THE SETTLEMENT BENEFITS. I confirm that I have received written notice of the proposed settlement in this action. I have decided to exclude myself from the Settlement Class and not participate in any portion of the proposed settlement. I understand that I cannot opt-out of the PAGA portion of the Settlement, and that even if I exclude myself from the Settlement, I remain eligible for an individual PAGA Payment and am required to give up my right to assert PAGA claims against Defendant based on the PAGA claims alleged in the Action.

Date: _____

Signature: _____

Printed Name: _____

Street Address: _____

City, State, Zip Code: _____

**THIS FORM MUST BE COMPLETED AND SENT VIA U.S. MAIL WITH A POSTMARK
DATED NO LATER THAN _____ TO:**

RUST CONSULTING
ADDRESS
CITY, STATE ZIP
TOLL FREE TELEPHONE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 7

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

Re: *Anali Almazan v. Botanx, LLC.*

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

CLASS MEMBER SETTLEMENT INFORMATION SHEET

TO ENSURE RECEIPT OF YOUR SHARE OF THE SETTLEMENT IN THE CLASS ACTION ENTITLED
Anali Almazan v. Botanx, LLC., PLEASE REVIEW THE INFORMATION BELOW.

IF THIS INFORMATION IS ACCURATE, DO NOT RETURN THIS SHEET.

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

IF THE INFORMATION BELOW IS NOT CORRECT, PROVIDE CORRECTED INFORMATION, DATE AND SIGN THIS SHEET AT THE BOTTOM OF THE NEXT PAGE, AND MAIL IT, POSTMARKED NOT LATER THAN [REDACTED], 2023, TO:

Anali Almazan v. Botanx, LLC.

P.O. Box XXX

[CITY], CA [ZIP]

Tel: XXX-XXX-XXXX

Fax: XXX-XXX-XXXX

Email: [REDACTED]@[REDACTED].com

PERSONNEL INFORMATION FOR CLASS MEMBER RECEIVING THIS NOTICE

Name: «FirstName» «LastName»

Mailing Address: «Address1» «Address2» «City» «Abbrev» «Zip»

Total Number of All Class Members' Workweeks: [REDACTED]

Total Number of Workweeks worked for Botanx, LLC. between January 8, 2016 and September 21, 2022 (excluding leaves of absence and vacation): «MERGED_WW_CALC»

Estimated Individual Settlement Share Based on Qualifying Workweeks: «MERGED_EstSettAmnt_CALC»

IF ANY OF THE INFORMATION SHOWN ABOVE IS NOT CORRECT, PLEASE DESCRIBE BELOW ON THE CORRECTED INFORMATION SHEET. IF YOU ARE DISPUTING YOUR NUMBER OF WORKWEEKS, STATE WHAT YOU BELIEVE TO BE THE CORRECT NUMBER OF WORKWEEKS AND ATTACH ANY SUPPORTING DOCUMENTATION.

Corrected Information	
Name	
Mailing Address:	
Number of Qualifying Workweeks Worked for Botanx, LLC. between January 8, 2016 and September 21, 2022 (excludes leaves of absence and vacation):	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on _____, 2023.

(Signature)

**YOU MUST INFORM THE SETTLEMENT ADMINISTRATOR OF ANY CHANGE TO YOUR MAILING ADDRESS.
FAILING TO UPDATE YOUR MAILING ADDRESS MAY PREVENT YOU FROM RECEIVING YOUR SETTLEMENT
SHARE.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 8

1 Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
2 Meghan E. George (SBN 274525)
~~Thomas E. Wheeler (SBN 308789)~~
3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364
4 Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com
5 abacon@toddfllaw.com
6 mgeorge@toddfllaw.com
7 ~~twheeler@toddfllaw.com~~

8 Attorneys for Plaintiff
9 FATIMA ALMAZAN on behalf of ANALI ALMAZAN

10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF ORANGE**

12 FATIMA ALMAZAN on behalf of decedent) Case No.: 30-2020-01122459-CU-OE-CXC
13 ANALI ALMAZAN, individually and on)
behalf of all others similarly situated,)
14 Plaintiff,) **[PROPOSED] ORDER GRANTING**
v.) **PLAINTIFF'S MOTION FOR**
15) **PRELIMINARY APPROVAL OF CLASS**
BOTANX, LLC, and DOES 1 to 50, inclusive,) **ACTION SETTLEMENT**
16) **Date: April-July 28, 2023**
Defendants.) **Time: 1:30 p.m.**
17) **Dept.: CX-103**
18) **RESERVATION #: 1000356420**
19)
20)
21)
22)

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

2 The Motion for Preliminary Approval of Class Action Settlement came before this
3 Court, on ~~July~~April 28, 2023 at 1:30 p.m.. The Court having considered the papers submitted in
4 support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. Capitalized terms shall have the definitions set forth in the Joint Stipulation and
6 Settlement Agreement (the “Settlement”) entered into between the Parties and attached to the
7 Declaration of Adrian R. Bacon filed July 14, 2023 at ROA.

8 2. The following Class is conditionally certified for purposes of settlement only:
9 “all individuals who were employed by Defendant as a non-exempt employee in California
10 during the Class Period.” The Class Period is defined as “January 8, 2016 through September
11 21, 2022.”

12 3. The Settlement Class shall consist of all Class Members who do not timely
13 exclude themselves (“opt out”) from the Settlement Class by mailing a timely Request for
14 Exclusion (or “Opt Out”) in accordance with the requirements set forth in the Class Notice and
15 Settlement.

16 4. The Court grants preliminary approval of the Settlement based upon the terms set
17 forth in the Settlement filed herewith, and finds that the Class and the Settlement Class meet the
18 requirements for conditional certification for settlement purposes only under California Code of
19 Civil Procedure section 382.

20 5. The Settlement appears to be fair, adequate and reasonable to the Class and the
21 Settlement Class. The Settlement falls within the range of reasonableness and appears to be
22 presumptively valid, subject only to any objections that may be raised in connection with the
23 Final Approval Hearing.

24 6. Plaintiff Fatima Almazan, on behalf of decedent Anali Almazan, is conditionally
25 approved as the class representative for the Settlement Class.

7. The Incentive Award of \$10,000.00 payable to Plaintiff for her services as the
class representative ~~is conditionally approved~~appears fair and reasonable at this time, subject to

1 a more thorough review at Final Approval.

2 8. Plaintiffs' Counsel Adrian R. Bacon, and Todd M. Friedman ~~, and Thomas E.~~
3 ~~Wheeler~~ of the Law Offices of Todd M. Friedman are conditionally approved as Class Counsel
4 for the Settlement Class.

5 9. The Fee and Expense Award of up to \$83,333.33 in attorneys' fees and up to
6 \$10,000.00 in actual litigation costs payable to Plaintiff's Counsel appears fair and reasonable at
7 this time, subject to a more thorough review of Class Counsel's lodestar and costs, as well as
8 the reaction of Class Members at Final Approval ~~is conditionally approved.~~

Formatted: Font: Times New Roman

Formatted: Font: Times New Roman

9 10. A Final Approval Hearing on the question of whether the Settlement, attorneys'
10 fees and costs to Class Counsel, and Incentive Awards to Plaintiff should be given Final
11 Approval as fair, reasonable and adequate as to Settlement Class Members is scheduled in
12 Department ~~C20-CX103~~ on the date and time set forth in Paragraph 22g below.

13 11. The Court hereby appoints Rust Consulting as the Settlement Administrator.

14 12. The estimated Administration Costs of up to \$10,000.00 to Rust for its services
15 as the Settlement Administrator appears fair and reasonable at this time, subject to a more
16 thorough review at Final Approval ~~are hereby conditionally approved.~~

17 13. The PAGA Award of \$10,000 (75% of \$7,500, with the remaining 25% allocated
18 to Class Members) is ~~conditionally approved,~~ subject to comment by the LWDA at Final
19 Approval.

20 14. The Court approves, as to form and content, the Class Notice in substantially the
21 form attached to the Declaration of Adrian Bacon submitted in conjunction with the Motion,
22 with modifications as set forth in the Court's tentative ruling. The Class Notice is attached
23 hereto as Exhibit A. The Court approves the procedures for Class Members to participate in, to
24 request exclusion from, and to object to the Settlement as set forth in the Class Notice.

25 15. The Court directs the mailing of the Class Notice by first class mail to all Class
Members in accordance with the Implementation Schedule set forth ~~in Paragraph 21~~ below.
The Court finds the dates selected for the mailing and distribution of the Class Notice, as set

1 forth in the Implementation Schedule, meet the requirements of due process and provide the
2 best notice practicable under the circumstances and shall constitute due and sufficient notice to
3 all persons entitled thereto.

4 16. Any Class Member may choose to opt-out of and be excluded from the Class, as
5 provided in the Notice, by following the instructions for requesting exclusion from the Class
6 that are set forth in the Notice. All requests for exclusion must be submitted as provided in the
7 Notice. Any such person who chooses to opt-out of and be excluded from the Class will not be
8 entitled to any recovery under the Settlement and will not be bound by the Settlement or have
9 any right to object, appeal, or comment thereon. Any written request to opt-out must be signed
10 by each such person opting out. Class Members who have not requested exclusion shall be
11 bound by all determinations of the Court, the Settlement, and Judgment.

12 17. Any Class Member may appear at the Final Approval Hearing and may object or
13 express the Class Member's views regarding the Settlement and may present evidence and file
14 briefs or other papers, that may be proper and relevant to the issues to be heard and determined
15 by the Court as provided in the Notice. Additionally, Class Members may submit a written
16 objection as set forth in the Notice.

17 18. The Settlement is not a concession or admission and shall not be used against
18 Defendant or any of the Released Parties as an admission or indication with respect to any claim
19 of any fault or omission by Defendant, or any of the Released Parties. Whether or not the
20 Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding,
21 or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be:

- 22 a. Construed as, offered or admitted in evidence as, received as or deemed to be
23 evidence for any purpose adverse to the Released Parties, including, but not
24 limited to, evidence of a presumption, concession, indication, or admission by
25 Defendant or any of the Released Parties of any liability, fault, wrongdoing,
omission, concession, or damage; or

b. Disclosed, referred to, or offered or received in evidence against any of the Released Parties in any further proceeding in the Action, or in any other civil, criminal, or administrative action or proceeding, except for purposes of settling the Action pursuant to the Settlement.

19. In the event the Settlement does not become effective in accordance with the terms of the Settlement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Stipulation.

20. The Court orders the following **Implementation Schedule** for further proceedings:

- a. Deadline for Defendant to submit Class Member Data to Settlement Administrator (within 20 days after the Court Granting Preliminary Approval): May-August 21, 18, 2023
- b. Deadline for Settlement Administrator to Mail the Class Notice to Class Members (within 10 days of receipt of the Class Information from Defendant): May-August 31 29, 2023
- c. Dispute Deadline (~~60~~45 days from the date the Class Notice is first mailed): July-October 31 16 13, 2023
- d. Objection/Exclusion Deadline (~~60~~45 days from the date the Class Notice if first mailed): July-October 31 16 13, 2023
- e. Objection/Exclusion/Dispute Deadline in event of remailing (15 additional days): November 15, 2023
- e. Deadline for Class Counsel to file

Motion for Final Approval of
Class Action Settlement: ~~July-November 18~~24, 2023

f. Deadline for Class Counsel to file
Motion for Attorneys' Fees, Costs
and Incentive Award: ~~September 22~~ne 30, 2023

g. Deadline for Settlement
Administrator to Submit
Declaration Detailing Claims/Opt
Outs/Objections (within 15 days ~~July-October~~November 16-31~~28~~
following the Opt-Out Period): 2023

h. Deadline to Submit Any
Responses to Objections and/or ~~July-November 30~~13~~28~~, 2023
Reply Brief:

g. Final Approval Hearing Date: ~~August-December 18~~41~~1~~, 2023 at
1:30 p.m.

IT IS SO ORDERED.

Dated: _____, 2023

BY _____
Honorable Lon Hurwitz
Judge of the Superior Court of the State of
California County of Orange

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 9-A
CLASS NOTICE FORM

- Formatted: Font: 20 pt
- Formatted: Centered
- Formatted: Font: 20 pt
- Formatted: Font: 20 pt, Bold

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 9

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364
Phone: 323-306-4234
Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com
mgeorge@toddfllaw.com

Attorneys for Plaintiff
FATIMA ALMAZAN on behalf of ANALI ALMAZAN

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

FATIMA ALMAZAN on behalf of decedent) Case No.: 30-2020-01122459-CU-OE-CXC
ANALI ALMAZAN, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

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

Defendants.)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 28, 2023

Time: 1:30 p.m.

Dept.: CX-103

RESERVATION #: 1000356420

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

1 The Motion for Preliminary Approval of Class Action Settlement came before this
2 Court, on July 28, 2023 at 1:30 p.m.. The Court having considered the papers submitted in
3 support of the Motion, HEREBY ORDERS THE FOLLOWING:

4 1. Capitalized terms shall have the definitions set forth in the Joint Stipulation and
5 Settlement Agreement (the “Settlement”) entered into between the Parties and attached to the
6 Declaration of Adrian R. Bacon filed July 14, 2023 at ROA ____.

7 2. The following Class is conditionally certified for purposes of settlement only:
8 “all individuals who were employed by Defendant as a non-exempt employee in California
9 during the Class Period.” The Class Period is defined as “January 8, 2016 through September
10 21, 2022.”

11 3. The Settlement Class shall consist of all Class Members who do not timely
12 exclude themselves (“opt out”) from the Settlement Class by mailing a timely Request for
13 Exclusion (or “Opt Out”) in accordance with the requirements set forth in the Class Notice and
14 Settlement.

15 4. The Court grants preliminary approval of the Settlement based upon the terms set
16 forth in the Settlement filed herewith, and finds that the Class and the Settlement Class meet the
17 requirements for conditional certification for settlement purposes only under California Code of
18 Civil Procedure section 382.

19 5. The Settlement appears to be fair, adequate and reasonable to the Class and the
20 Settlement Class. The Settlement falls within the range of reasonableness and appears to be
21 presumptively valid, subject only to any objections that may be raised in connection with the
22 Final Approval Hearing.

23 6. Plaintiff Fatima Almazan, on behalf of decedent Anali Almazan, is conditionally
24 approved as the class representative for the Settlement Class.

25 7. The Incentive Award of \$10,000.00 payable to Plaintiff for her services as the
class representative appears fair and reasonable at this time, subject to a more thorough review
at Final Approval.

1 8. Plaintiffs' Counsel Adrian R. Bacon, and Todd M. Friedman of the Law Offices
2 of Todd M. Friedman are conditionally approved as Class Counsel for the Settlement Class.

3 9. The Fee and Expense Award of up to \$83,333.33 in attorneys' fees and up to
4 \$10,000.00 in actual litigation costs payable to Plaintiff's Counsel appears fair and reasonable at
5 this time, subject to a more thorough review of Class Counsel's lodestar and costs, as well as
6 the reaction of Class Members at Final Approval.

7 10. A Final Approval Hearing on the question of whether the Settlement, attorneys'
8 fees and costs to Class Counsel, and Incentive Awards to Plaintiff should be given Final
9 Approval as fair, reasonable and adequate as to Settlement Class Members is scheduled in
10 Department CX103 on the date and time set forth in Paragraph 22g below.

11 11. The Court hereby appoints Rust Consulting as the Settlement Administrator.

12 12. The estimated Administration Costs of up to \$10,000.00 to Rust for its services
13 as the Settlement Administrator appears fair and reasonable at this time, subject to a more
14 thorough review at Final Approval.

15 13. The PAGA Award of \$10,000 (75% of \$7,500, with the remaining 25% allocated
16 to Class Members) is approved, subject to comment by the LWDA at Final Approval.

17 14. The Court approves, as to form and content, the Class Notice in substantially the
18 form attached to the Declaration of Adrian Bacon submitted in conjunction with the Motion,
19 with modifications as set forth in the Court's tentative ruling. The Class Notice is attached
20 hereto as Exhibit A. The Court approves the procedures for Class Members to participate in, to
21 request exclusion from, and to object to the Settlement as set forth in the Class Notice.

22 15. The Court directs the mailing of the Class Notice by first class mail to all Class
23 Members in accordance with the Implementation Schedule set forth below. The Court finds the
24 dates selected for the mailing and distribution of the Class Notice, as set forth in the
25 Implementation Schedule, meet the requirements of due process and provide the best notice
practicable under the circumstances and shall constitute due and sufficient notice to all persons
entitled thereto.

1 16. Any Class Member may choose to opt-out of and be excluded from the Class, as
2 provided in the Notice, by following the instructions for requesting exclusion from the Class
3 that are set forth in the Notice. All requests for exclusion must be submitted as provided in the
4 Notice. Any such person who chooses to opt-out of and be excluded from the Class will not be
5 entitled to any recovery under the Settlement and will not be bound by the Settlement or have
6 any right to object, appeal, or comment thereon. Any written request to opt-out must be signed
7 by each such person opting out. Class Members who have not requested exclusion shall be
8 bound by all determinations of the Court, the Settlement, and Judgment.

9 17. Any Class Member may appear at the Final Approval Hearing and may object or
10 express the Class Member's views regarding the Settlement and may present evidence and file
11 briefs or other papers, that may be proper and relevant to the issues to be heard and determined
12 by the Court as provided in the Notice. Additionally, Class Members may submit a written
13 objection as set forth in the Notice.

14 18. The Settlement is not a concession or admission and shall not be used against
15 Defendant or any of the Released Parties as an admission or indication with respect to any claim
16 of any fault or omission by Defendant, or any of the Released Parties. Whether or not the
17 Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding,
18 or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be:

- 19 a. Construed as, offered or admitted in evidence as, received as or deemed to be
20 evidence for any purpose adverse to the Released Parties, including, but not
21 limited to, evidence of a presumption, concession, indication, or admission by
22 Defendant or any of the Released Parties of any liability, fault, wrongdoing,
23 omission, concession, or damage; or
- 24 b. Disclosed, referred to, or offered or received in evidence against any of the
25 Released Parties in any further proceeding in the Action, or in any other civil,
criminal, or administrative action or proceeding, except for purposes of settling
the Action pursuant to the Settlement.

1 19. In the event the Settlement does not become effective in accordance with the
2 terms of the Settlement, or the Settlement is not finally approved, or is terminated, canceled or
3 fails to become effective for any reason, this Order shall be rendered null and void and shall be
4 vacated, and the Parties shall revert to their respective positions as of before entering into the
5 Stipulation.

6 20. The Court orders the following **Implementation Schedule** for further
7 proceedings:

- 8
- 9 a. Deadline for Defendant to submit
10 Class Member Data to Settlement
11 Administrator (within 20 days
after the Court Granting
Preliminary Approval): August 21, 2023
- 12 b. Deadline for Settlement
13 Administrator to Mail the Class
14 Notice to Class Members (within
10 days of receipt of the Class
Information from Defendant): August 31, 2023
- 15 c. Dispute Deadline (60 days from
16 the date the Class Notice is first
mailed): October 31, 2023
- 17 d. Objection/Exclusion Deadline (60
18 days from the date the Class
Notice if first mailed): October 31, 2023
- 19 e. Objection/Exclusion/Dispute
20 Deadline in event of remailing (15
21 additional days): November 15, 2023
- 22 e. Deadline for Class Counsel to file
23 Motion for Final Approval of
Class Action Settlement: November 18, 2023
- 24 f. Deadline for Class Counsel to file
25 Motion for Attorneys' Fees, Costs
and Incentive Award: September 22, 2023

- 1
- 2 g. Deadline for Settlement
- 3 Administrator to Submit
- 4 Declaration Detailing Claims/Opt
- 5 Outs/Objections (within 15 days November 16, 2023
- 6 following the Opt-Out Period):
- 7
- 8
- 9
- 10
- 11
- 12 h. Deadline to Submit Any
- 13 Responses to Objections and/or November 30, 2023
- 14 Reply Brief:
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- g. Final Approval Hearing Date: December 18, 2023 at 1:30 p.m.

IT IS SO ORDERED.

Dated: _____, 2023

BY _____
Honorable Lon Hurwitz
Judge of the Superior Court of the State of
California County of Orange

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBIT 9-A

CLASS NOTICE FORM

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

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

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

Plaintiff,

vs.

*[Assigned for all purposes to the Hon. Lon F.
Hurwitz, Dept. CX103]*

BOTANX, LLC and DOES 1 to 50, inclusive,

Defendant..

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

I. WHY DID I GET THIS NOTICE?

You are receiving this notice because our records indicate that you are or were a non-exempt employee of BOTANX, LLC (“Defendant”) between January 8, 2016 and September 21, 2022. This Notice explains that the Orange County Superior Court has granted preliminary approval of a class action settlement that may affect you. You have legal rights and options that you may exercise at this time, so please read this Notice carefully.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Plaintiff Anali Almazan (“Plaintiff”) filed a lawsuit against Defendant in this Court, Case No. 30-2020-01122459-CU-OE-CXC, (the “Action”), alleging that he and other non-exempt employees were 1) not paid proper wages (including minimum wages, overtime, double-time, and wages due upon termination of employment) and 2) not provided proper meal and rest breaks. He also alleged that Defendant did not provide proper wage statements or maintain accurate employee records. By doing so, Plaintiff claimed that Defendant engaged in unfair competition and that Plaintiff and other similarly situated employees were entitled to recover penalties under California’s Private Attorneys General Act of 2004 (“PAGA”). Plaintiff alleged further that he, on behalf of all such employees, was entitled to damages, liquidated damages, penalties, and attorneys’ fees and costs, among other remedies.

Defendant has denied, and continues to deny, all allegations and contends that it has paid its employees fairly and in full compliance with all California labor laws.

The Court has not determined whether allegations against Defendant have merit. However, after good faith negotiations and for the purpose of avoiding the significant time and expense of further litigation, the outcome of which is uncertain, and providing a fair and reasonable resolution of this legal dispute, Plaintiff and Defendant have agreed to settle the lawsuit by paying a Gross Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000) to resolve the claims described above.

Nothing in the Settlement is intended, or should be construed, as an admission by Defendant that the Action has merit or that it has any liability to Plaintiff or other class members. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the class as a whole.

III. WHO IS INCLUDED IN THE CLASS ACTION?

You are included in the Settlement Class if you were employed by BOTANX, LLC as non-exempt employee in California between January 8, 2016 and September 21, 2022 (the “Class Period”).

IV. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

Defendant has agreed to pay a Gross Settlement Amount of \$250,000 (“Settlement Fund”). A Settlement Administrator has been appointed to administer the Settlement and facilitate all payments. The Settlement Administrator will pay sums from the Settlement Fund as follows: 1) the Class Representative Payment to Fatima¹ Almazan in the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00); 2) Class Counsel’s attorneys’ fees in the amount of Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$83,333.33), or one-third (1/3) of the Settlement Fund, incurred or to be incurred in this Action, including any appeals; 3) costs and expenses associated with the lawsuit in an amount of up to Ten Thousand Dollars (\$10,000.00), incurred or to be incurred in this lawsuit, including any appeals; 4) the fees and expenses of the Claims Administrator, estimated at Ten Thousand Dollars and Zero Cents (\$10,000.00) and subject to reduction or increase to correspond with the actual fees and expenses incurred; 5) Ten Thousand Dollars and Zero Cents (\$10,000.00) in recognition of the release of claims pursuant to PAGA, 75% of which (\$7,500) designated to go to the California Labor and Workforce Development Agency, and 25% (\$2,500) to Aggrieved Employees; and 6) the remainder of approximately One Hundred Thirty-Six Thousand Six Hundred and Sixty Six Dollars and Sixty Seven Cents (\$136,666.67), which is the estimated Maximum Settlement Distribution Amount to all Class Members, and from which the employee portion of all applicable tax withholdings including FICA, SDI, and other employment-related taxes and withholding of federal, state and local income taxes will be paid. Any unclaimed settlement payments will be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member.

1. **Settlement Payments:** Your individual share of the Settlement will be based on the number of workweeks you worked for Defendant during the Class Period (“Qualifying Workweeks”) relative to the total number of workweeks worked by Class Members.

Release of Claims: If you do not exclude yourself from the Settlement (according to the procedures explained below), you, on behalf of yourself and your current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will fully and finally release Defendant, and its its past and present parent companies, subsidiaries and affiliates, and their respective present and former officers, directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, registered representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, partners, predecessors, successors, assigns, and any other persons acting by, through, under, or in concert with any of them (collectively hereinafter the “Releasees”), from any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that were asserted or could have been asserted at any time in the Action based on the facts, theories, and/or claims alleged in

¹ On June 9, 2021, Anali’s daughter, Fatima Almazan, officially substituted in as lead Plaintiff.

the Action; it includes and covers claims for violations of any state or federal statutes, rules or regulations, claims that were asserted or could have been asserted at any time in the Action based on the facts or laws alleged in the Complaint. (the “Released Claims”). The Released Claims expressly include, without limitation, all such claims for unpaid wages, including: overtime, off-the-clock claims; minimum wage claims; claims for failure to pay wages timely, both during employment and after termination; claims for failure to keep accurate and complete payroll records; claims for failure to provide accurate and complete wage statements; claims for missed meal periods; claims for missed rest breaks; claims for failing to pay wage premiums of any type; claims for statutory damages, penalties, and/or interest, including, but not limited to, recordkeeping penalties, wage statement penalties or damages, minimum-wage penalties, missed meal-period and rest-break penalties, waiting-time penalties, and PAGA penalties; premiums or costs and attorneys’ fees and expenses; and any claim arising from the claims described above under applicable federal, state or, local law. Accordingly, if you participate in this Settlement, you cannot bring any claims against Defendant for wages or other payments described above for any work you performed for them during the Class Period. This release does not bar you from bringing a tort claim or claim relating to wrongful termination and/or employment discrimination.

V. WHAT ARE MY OPTIONS?

A. You May Accept Your Share of the Settlement

You will receive a Settlement Share and will be bound by the terms of the Settlement and any final Judgment that may be entered by the Court. You will be considered to have released the claims against Defendant and the other released parties described in the Settlement **unless you submit a timely request to be excluded as described below.**

If you wish to accept your Settlement Share but do not agree with the number of Qualifying Workweeks stated on the attached Information Sheet, or wish to correct any other information on the Information Sheet, you should provide the corrected information by completing and returning the attached Information Sheet. If you dispute the number of Qualifying Workweeks, write down the beginning and ending dates you worked for Defendant during the Class Period and return the Information Sheet, and any documents to support your position, by mail to the Settlement Administrator and addressed as follows:

Anali Almazan v. Botanx, LLC – Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

Settlement Administrator will read the documents provided by both you and Defendant and make the final determination of the amount of your Settlement Share.

Please note that you are responsible for keeping the Settlement Administrator informed of any changes in your mailing address until your Settlement Share is received, should final approval of the Settlement be granted. Changing your mailing address and failing to inform the Settlement Administrator of the change may prevent you from receiving your Settlement Share.

B. You May Exclude Yourself from the Settlement

If you do not wish to participate in the Settlement and wish instead to be excluded from the Settlement, including any final judgment that may be entered by the Court, **you must mail the attached “Opt-Out Form” to the Settlement Administrator postmarked on or before [REDACTED], 2023 to the following address:**

Anali Almazan v. Botanx, LLC – Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE, ZIP]
1 (800) 000-0000

The Opt-Out Form must include your name, address, telephone number, and signature. Any Class Member who properly submits a valid and timely request to be excluded from the Settlement will 1) not receive any payment of any kind in connection with this Settlement (with the exception of their PAGA portion), 2) not be bound by or receive any benefit of this Settlement (with the exception of their PAGA portion), 3) have no right to object to the Settlement or be heard at any hearing scheduled for the Court’s consideration of the Settlement, and 4) may at his or her own expense pursue individually any claims he or she may have against Defendant (with the exception of their PAGA portion). Any request for exclusion must be mailed by no later than [REDACTED], 2023 [sixty (60) days after Rust mails Class Notice, or seventy-five (75) days in the case of a remailed notice].

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Settlement remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA facts alleged in the Action.

C. You May Object to the Settlement

If you do not request to be excluded from the Settlement but believe that the Settlement is not fair, reasonable, and adequate, you may object to the terms of the Settlement before final Court approval by filing a written objection. If the Court rejects your objection, however, you will remain bound by the Settlement terms.

To object, you must send the objection to the Settlement Administrator, at the address listed below:

To Settlement Administrator

Anali Almazan v. Botanx, LLC
Settlement Administrator
c/o Rust Consulting
[ADDRESS]
[CITY, STATE ZIP]

Any written objection must state your full name, address, and the dates of your employment with Defendant. Your written objection must also state, in clear and concise terms, the basis for your objection(s) and any legal support. The written objection must also state whether you intend to appear and object at the Final Approval Hearing. To be valid and effective, the Administrator must receive any written objection and notice of intent to appear at the Final Approval Hearing no later than [REDACTED], 2023 [sixty (60) days after Rust mails Class Notice, or seventy-five (75) days in the case of a remailed notice]. If the Court denies your objection, you will be bound by any Judgment with respect to the Settlement, and you will release the Defendant from legal claims as described above and in the Stipulation of Class Action Settlement on file with the Court.

D. You Can Do Nothing

If you do nothing in response to this Class Notice, you will receive your Settlement Share of the Settlement, and you will be bound by any Judgment entered with respect to the Settlement, including by releasing Defendant from legal claims as explained above and in the Stipulation for Class Action Settlement on file with the Court.

VI. FINAL SETTLEMENT APPROVAL HEARING

To determine whether the Settlement should be finally approved as fair, reasonable, and adequate, the Court will hold a Final Approval Hearing on [date], 2023, at [time] in Dept. CX103 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd, Santa Ana, CA 92701. The Court will also be asked to approve the requests for payment of the following: all Class Members' Individual Settlement Shares; the PAGA allocation to the California Labor and Workforce Development Agency; the Class Representative's service award; Class Counsel's Attorneys' Fees and Expenses Payment; and administrative costs to the Settlement Administrator.

The hearing may be continued without further notice to the Settlement Class. **It is not necessary for you to appear at this hearing, but you may appear and be heard at your option.**

VII. ADDITIONAL INFORMATION

This Notice contains a summary of the basic Settlement terms. For the precise terms and conditions of the Settlement, you should read the Stipulation of Class Action Settlement on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Stipulation, may be examined during regular business hours at the Office of the Clerk of the Orange County Court, [LOCATION]. Case documents are also available for review online using the Civil Case & Document Access service through the Court's website: <https://www.occourts.org>. After navigating to the Civil Case & Document portal, one can input the case number for this matter ("30-2020-01122459-CU-OE-CXC") to access case documents.

CLASS MEMBERS WILL BE ABLE TO ACCESS DOCUMENTS RELATING TO THIS SETTLEMENT, OR BE INFORMED ABOUT ANY CONTINUANCES OF THE HEARINGS OR OF THE FINAL JUDGMENT VIA THE ADMINISTRATOR'S WEBSITE, WHICH CAN BE ACCESSED AT [REDACTED].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR LISTED ABOVE.

APPROVED BY ORDER OF THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 10