

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

2 The Motion for Preliminary Approval of Class Action Settlement came before this
3 Court, on October 6, 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 September 22, 2023 at ROA 174.

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 appears fair and reasonable at this time, subject to a more thorough review

1 at Final Approval.

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

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

8 10. A Final Approval Hearing on the question of whether the Settlement, attorneys'
9 fees and costs to Class Counsel, and Incentive Awards to Plaintiff should be given Final
10 Approval as fair, reasonable and adequate as to Settlement Class Members is scheduled in
11 Department CX103 on the date and time set forth in Paragraph 20j below.

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

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

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

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

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

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

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

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

- a. Construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by 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,

1 criminal, or administrative action or proceeding, except for purposes of settling
2 the Action pursuant to the Settlement.

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

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

- 10
- 11 a. Deadline for Defendant to submit
12 Class Member Data to Settlement
13 Administrator (within 20 days
after the Court Granting
Preliminary Approval): October 26, 2023
- 14 b. Deadline for Settlement
15 Administrator to Mail the Class
16 Notice to Class Members (within
10 days of receipt of the Class
Information from Defendant): November 5, 2023
- 17 c. Dispute Deadline (60 days from
18 the date the Class Notice is first
mailed): January 4, 2024
- 19 d. Objection/Exclusion Deadline (60
20 days from the date the Class
Notice if first mailed): January 4, 2024
- 21 e. Objection/Exclusion/Dispute
22 Deadline in event of remailing (45
23 additional days): February 19, 2024
- 24 f. Deadline for Class Counsel to file
25 Motion for Final Approval of
Class Action Settlement: March 15, 2024

- 1 g. Deadline for Class Counsel to file
2 Motion for Attorneys' Fees, Costs
and Incentive Award: March 15, 2024
- 3 h. Deadline for Settlement
4 Administrator to Submit
5 Declaration Detailing Claims/Opt
6 Outs/Objections (within 15 days February 21, 2024
following the Opt-Out Period):
- 7 i. Deadline to Submit Any
8 Responses to Objections and/or March 22, 2024
Reply Brief:
- 9 j. Final Approval Hearing Date: August 23, 2024 at 1:30 p.m.

10 21. Pursuant to California Code of Civil Procedure section 664.6 and California
11 Rules of Court Rule 3.769(h), the Court shall retain jurisdiction with respect to the
12 interpretation, implementation, and enforcement of the terms of this Agreement and all orders
13 and judgments entered in connection therewith, and the Parties and their counsel hereto submit
14 to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the
15 settlement embodied in this Agreement and all orders and judgments entered in connection
16 therewith.

17
18 **IT IS SO ORDERED.**

19
20 Dated: _____, 2024

21 BY _____
22 Honorable Lon Hurwitz
23 Judge of the Superior Court of the State of
24 California County of Orange
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EXHIBIT 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
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.

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.

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”).

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

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

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. (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.

WHAT ARE MY OPTIONS?

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.

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 one hundred and five (105) 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.

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 one hundred and five (105) 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.

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.

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 March 29, 2023, at 1:30PM 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.**

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