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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

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

Date: February 17, 2023

Time: 1:30 p.m.

Dept.: C20

RESERVATION #: 1000354628

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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 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. A true and correct copy of the fully executed Class Action Settlement Agreement (the "Settlement") is attached as **Exhibit A**.

3. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit B**.

4. A true and correct copy of the proposed Opt Out Form is attached hereto as **Exhibit**

C.

5. A true and correct copy of the proposed Information Sheet is attached hereto as

Exhibit D.

6. A true and correct copy of the proposed Preliminary Approval Order is attached hereto as **Exhibit E**.

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7. Defendant is a research, science and technology-based manufacturing company that formulates, develops, manufactures and packages personal care products.

8. Anali Almazan was employed by Defendant at its Anaheim, California, location as an hourly-paid non-exempt employee from at least January 2016 through February 5, 2019.

9. On January 8, 2020, Plaintiff filed a complaint in the Orange County Superior Court on behalf of himself and a class of similarly situated non-exempt employed by Defendant in California since January 8, 2016 for, *inter alia*, Defendant's alleged failure to pay at least

1 minimum wages for all hours worked, failure to pay premium wages for missed, late, and/or
2 interrupted meal and rest periods, failure to pay premium wages for all overtime hours worked,
3 failure to provide accurate itemized wage statements, and failure to pay all wages due upon
4 termination. Plaintiff also alleged a cause of action under the Unfair Competition Law (“UCL”),
5 Bus. & Prof. Code § 17200, *et seq.*, arising from the alleged Labor Code violations.

6 10. On February 14, 2020, Defendant filed an Answer.

7 11. On March 24, 2021, Plaintiff filed his FAC to add a cause of action under PAGA,
8 Labor Code § 2698, *et seq.*, on behalf of all aggrieved employees employed during the PAGA
9 Period. On December 30, 2020, Plaintiff passed away in Placentia, California. On May 13, 2021,
10 Fatima Almazan because the personal representative for the decedent by appointment as
11 administrator of Plaintiff’s estate by order of the Orange County Superior Court. On June 8, 2021,
12 Plaintiff moved to substitute Fatima Almazan as plaintiff in this action. On June 9, 2021, the
13 Court granted Plaintiff’s *ex parte* and substituted in Fatima Almazan.

14 12. Thereafter, the Parties agreed to private mediation with the Honorable Gail Andler
15 (ret.) who is a retired judge experienced in wage and hour class actions. In advance of mediation,
16 Defendant with relevant information regarding the Class Members and the Aggrieved Employees,
17 including a twenty percent (20%) sample of the Class Members and Aggrieved Employees’
18 timekeeping and payroll records, and documents pertaining to Defendant’s uniform policies and
19 procedures. Defendant also provided detailed financial records substantiating their position that
20 the company was impacted significantly and negatively by COVID.

21 13. On May 6, 2021, after extensive investigation and substantial discovery by
22 Plaintiff’s counsel, the Parties participated in mediation with Gail Ander (Ret) of JAMS, an
23 experienced and respected mediator and former complex department judge who oversaw many
24 complex class action settlements on the bench. After a full day of negotiation and exchanges of
25 information, the Parties were unable to settle the matter and were also unable to do so after a
26 second half day mediation on August 10, 2021. However, after further extensive negotiations, the
27 parties were finally able to resolve the matter on January 25, 2022, with the framework for
28 negotiations and guidance provided by Judge Andler.

14. 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.

15. Throughout the discussions, Plaintiff performed an assessment of Defendant's exposure and potential liability, to which Defendant responded, and based on those negotiations, the Parties reached an agreement in principle for the class-wide resolution of Plaintiff's claims. The Settlement has been finalized and fully executed by the parties.

The Settlement

16. The Settlement provides for a non-reversionary Settlement Fund for the benefit of all Class Members and Aggrieved Employees. *See* Ex. A (Settlement, Sec. IV)

17. The Settlement Fund is defined as the Gross Settlement Amount of Two Hundred Fifty Thousand Dollars (\$250,000). (Settlement, Sec. I(N)).

18. “Class Members” means “all individuals who were employed by Defendant as a non-exempt employee in California during the Class Period” (Settlement, Sec. I(G)).

19. The Class Period is January 8, 2016 through September 21, 2022. (Settlement, Sec. I(I)). The PAGA Period is January 8, 2019 through April 5, 2021. (Settlement, Sec. I(T)).

20. “Aggrieved Employees” means all Class Members “employed during the PAGA Period” who are “eligible to participate in a settlement of the claims brought in the Action pursuant to [PAGA].” (Settlement, Sec. I(B).)

21. “Participating Class Members” includes all Class Members and Aggrieved Employees who do not timely exclude themselves from the Settlement. (Settlement, Sec. I(U).)

22. Each Participating Class Member is entitled to an Individual Settlement Share of the Net Settlement Amount (Settlement, Sec. I(Q)), which is defined as the Gross

Settlement Amount, less

- a. the Service Award of \$10,000 to Plaintiff for her service to the Class as Class Representative (Settlement, Sec. I(BB));
- b. Attorneys' Fees in the amount of \$83,333.33 or one-third (1/3) of the Settlement Fund, plus Class Counsel's expenses of up to \$10,000 (Settlement, Sec. I(C);
- c. Claims Administration Expenses, which include the postage and printing costs for the Class Notices and the postage costs for mailing the payments, anticipated not to exceed \$10,000 (Settlement, Sec. I(D) & VI(A)), and
- d. the PAGA Allocation of Ten Thousand Dollars (\$10,000), 75% of which shall go to the Labor and Workforce Administration ("LWDA") and 25% of which shall go to Aggrieved Employees (Settlement, Sec. I(S)).

23. The Net Settlement Amount will be paid as individual shares to Participating Class Members. (Settlement, Sec. VI(E))

24. The Individual Settlement Shares will be allocated with 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.

25. The 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. (Settlement, Sec. VI.E.)

26. The Settlement releases from Defendant and 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 (“Released Parties”). (Settlement, Sec. I(AA).)

27. Every Class Member who does not request exclusion from, or “opt-out” of, the Class, including Plaintiff, will release 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 matter alleged in the Action by any Class Member and/or Aggrieved Employee that, during the Class Period and or PAGA Period, Defendant at any time that: 1) failed to pay wages, including minimum wages; 2) failed to pay overtime and/or double-time wages; 3) failed to provide timely, full, and uninterrupted rest breaks or a penalty payment in lieu thereof; 4) failed to provide timely, full, and uninterrupted meal periods or a penalty payment in lieu thereof; 5) failed to provide accurate itemized wage statements; 6) failed timely to pay wages or pay all wages due upon termination of employment; 7) failed to provide restitution for unpaid sums; 8) failed to maintain accurate records; 9) violated the Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*; and 10) owed penalties pursuant to PAGA, Labor Code § 2698, *et seq.*, including under Labor Code § 558. This Settlement is conditioned upon the release by all Participating Class Members of any claim under Labor Code § 2698, *et seq.* and upon covenants by all members that they will not participate in any proceeding seeking penalties under Labor Code § 2698, *et seq.* (collectively, the “Released Claims”). Except as set forth above, Released Claims does not include any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. The period of the Released Claims shall cover the Class Period.

28. Within twenty (20) days of the entry of the Preliminary Approval Order, Defendant will provide the Claims Administrator with a list of all Class Members, including the name and social security number, most current mailing address, and dates of employment during the Class Period ("Class List"). (Settlement, Sec. III(B)(1)(a).)

29. Within ten (10) days of receipt from Defendant of the Class List, the Claims Administrator will mail the Notice of Class Settlement and the Opt-Out form by First-Class US Mail, postage prepaid, in addition to a Statement of Weeks Worked. (Settlement, Sec. III(B)(1)(b), (c).)

30. Class Members will have forty-five (45) days after the date of mailing to submit disputes, requests for exclusion, and/or objections. (Settlement, Sec. III(B & C).)

31. Within ten (10) days after the Effective Date and Final Approval, whichever is later, the Claims Administrator will make all required disbursements from the Settlement Fund. (Settlement, Sec. III(E)(15)).

32. No funds will revert to Defendant, and any payments made to Participating Class Members that remain uncashed ninety (90) days after mailing 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). (Settlement, Sec. III(E)(10)).

Certification

33. The general provisions governing class action litigation and management in California are found in Code of Civil Procedure section 382, as well as in case law that has examined the application of the class action statute. As this Court is well aware, the decision on class certification does not consider the underlying merits of the case but is confined to an examination to determine whether the proposed class satisfies the requirements for certification.

34. The putative Class is objectively ascertainable because its members may be identified by reference to Defendant's records. (Settlement, Sec. III(B)(1).)

35. This Class is sufficiently numerous because would be impractical and economically inefficient to require approximately 159 Class Members each to maintain an individual action or

1 be joined as a named plaintiff in this action.

2 36. There is a well-defined community of interest in the common questions of law and
3 fact that exist as to all Class Members and predominate over any questions affecting each
4 individually. Based on the data they obtained from Defendant and from their own investigation,
5 Plaintiff's counsel determined that, for purposes of these claims, Defendant's policies and
6 practices are either identical or sufficiently similar to raise the same questions of law and fact with
7 respect to Defendant's liability as to all Class Members. Among the questions relevant to the
8 adjudication of Class Members' claims are the following:

- 9 a. Whether Defendant's uniform policies and timekeeping practices resulted in the
10 failure to capture all hours worked by Plaintiff and Class Members pursuant to
11 Labor Code section 1174;
- 12 b. Whether Defendant unlawfully and/or willfully failed to pay Plaintiff and Class
13 Members for all hours worked, in violation of the applicable Industrial Welfare
14 Commission ("IWC") Order and Labor Code sections 200, 226, 1197, 1194 and
15 1198;
- 16 c. Whether Defendant had a uniform policy and/or practice of denying Plaintiff and
17 Class Members meal and rest periods as mandated by California law;
- 18 d. Whether Defendant had a uniform policy and/or practice of failing to compensate
19 Plaintiff and Class Members for missed or non-compliant meal periods;
- 20 e. Whether Defendant's pattern and practice of failing to pay Plaintiff and Class
21 Members all compensation owed, is an unlawful, unfair, or fraudulent business act
22 or practice in violation of the UCL, Bus. & Prof. Code § 17200;
- 23 f. Whether Defendant failed to provide Plaintiff and Class Members with accurate,
24 itemized wage statements, in violation of Labor Code section 226, the applicable
25 IWC Order(s), and/or other applicable state regulations;
- 26 g. Whether Defendant unlawfully and/or willfully failed to pay promptly all
27 compensation owed to Class Members on termination of their employment with
28 Defendant, in violation of Labor Code sections 201-203; and

1 h. Whether Plaintiff and Class Members sustained damages, and, if so, the proper
2 measure of such damages, as well as interest, penalties, costs, attorneys' fees, and
3 equitable relief.

4 37. Plaintiff's claims are typical of the Class. Like Class Members, Plaintiff worked as
5 a non-exempt employee in a for Defendant in California during the Class Period and was subject
6 to the same general policies and practices with respect to timekeeping, payroll, and breaks.

7 38. Because common questions predominate and because the potential legal remedies
8 available to Class Members are identical, the resolution of all Class claims in a single action
9 through the Settlement is the more cost effective and efficient means. Class Members would
10 otherwise each have to prove the same issues to prevail in an individual action, and settlement on
11 a class-wide basis is superior to any other method of resolution.

12 39. In addition, Defendant would likely assert the same defenses to each Class
13 Member's claims as to Plaintiff's, including that Defendant paid each non-exempt employee for
14 all hours worked, that each was provided with compliant meal and rest periods, and that any pay
15 stub violations and/or incomplete final wage payments, if they occurred at all, resulted from good
16 faith mistakes.

17 40. Plaintiff is adequate to represent the Class. Plaintiff is represented by counsel
18 experienced in complex litigation, including wage and hour class actions, and Plaintiff and Class
19 Members' interests in this litigation are co-extensive because all Class Members, including
20 Plaintiff, worked for Defendant during the relevant time period and suffered the same alleged
21 injuries from the same alleged course of conduct. Fatima Almazan may act as a representative for
22 her deceased father Anali Almazan for the reasons discussed in Plaintiff's *ex parte* for such
23 substitution as granted by the Court and has acted as an exemplary plaintiff in her handling of this
24 matter. In addition, there is no evidence of, and Defendant does not assert, any conflict of interest
25 between Plaintiff and the Class.

26 41. This Court should approve the proposed Service Award of \$10,00.00 to Plaintiff,
27 who, in combination with her decedent father Anali Almazan, advanced the interests of the Class
28 by, among other things, speaking extensively with counsel throughout the litigation and settlement

1 discussions to identify and develop the claims at issue, providing pertinent documents,
2 participating in settlement discussions, and carefully reviewing the Settlement and related
3 documents. Plaintiff also risked being required to pay Defendant's costs if this action had been
4 unsuccessful. Finally, Plaintiff agrees to a much broader release of claims than other Class
5 Members.

6 **Adequacy of Representation by Class Counsel**

7 42. The Law Offices of Todd M. Friedman, P.C. seeks appointment as Class Counsel
8 in this Action. I am informed and believe that Class Counsel are qualified and able to conduct this
9 litigation as a class action.

10 43. As one of the main plaintiff litigators of consumer rights cases in Southern
11 California, Mr. Friedman has been requested to and has made regular presentations to community
12 organizations regarding debt collection laws and consumer rights.

13 44. The Law Offices of Todd M. Friedman, P.C. has litigated over 1000 individual
14 based consumer and employment cases and litigated over 200 consumer and employment class
15 actions. These class actions were litigated in federal courts in California, as well as California
16 State Courts. Approximately 100% percent of my practice concerns consumer litigation in general,
17 with approximately 20% of the firm's class action experience involving employment and wage
18 and hour matters, principally under the California Labor Code and PAGA.

19 45. The Law Offices of Todd M. Friedman, P.C. has repeatedly been approved by
20 courts as adequate class counsel and is highly experienced in litigating class actions, including
21 wage and hour class actions. Therefore, my experience in litigating class actions and my years in
22 practice allow me to provide outstanding representation to the Class. I will continue to strive to
23 represent the Class Members in this action fairly, responsibly, vigorously, and adequately.

24 46. The Law Offices of Todd M. Friedman has served as plaintiffs' counsel in at least
25 the following class actions involving various wage and hour and consumer rights claims where a
26 settlement was reached on a class-wide basis and has achieved more than \$300,000,000 in class-
27 wide relief:
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- a. *Dancer v. L.A. Times*, BC472154 (L.A. Superior Court) (common fund class-wide settlement of \$3 million to \$4 million; final approval granted);
- b. *Couser v. Comenity Bank*, 3:12-cv-02484-MMA-BGS (S.D. Cal.) (\$8.475 million class-wide settlement achieved; final approval granted);
- c. *Stemple v. QC Financial Services Group of California, Inc.*, 3:12-cv-01997-CAB-WVG (S.D. Cal.) (certified class achieved by motion, and subsequent class-wide settlement of \$1.5 million achieved; final approval granted);
- d. *Couser v. Apria Healthcare, Inc.* 8:13-cv-00035-JVS-RNB (C.D. Cal.) (common fund class-wide settlement of \$400,000 to \$750,000; final approval granted);
- e. *Abdeljalil v. General Electric Capital Corporation*, 12-CV-02078-IEG-RBB (S.D. Cal.) (class-wide settlement with common fund of \$6.125 million achieved; final approval granted);
- f. *Fox v. Asset Acceptance*, 3:13-CV-00922-DMS-BGS (S.D. Cal.) (common fund of \$1 million in class-wide relief achieved; final approval granted);
- g. *Friedman v. LAC Basketball Club, Inc.*, 2:13-cv-00818-CBM-AN (C.D. Cal.) (class-wide settlement achieved; final approval granted);
- h. *Gerich et al. v. Chase Bank USA et al.* Case No 1:12-cv-5510 (N.D. Ill.) (class-wide settlement of \$34 million; final approval granted);
- i. *Than Zaw v Nelnet, Inc.*, Penal Code § 632 class – (Achieved class-wide settlement of \$1,188,110; final approval granted);
- j. *Medeiros v HSBC*, (common fund settlement of \$4.5 million - \$6.5 million achieved; final approval granted);
- k. *Ann Fox v. Spectrum Club Holding Company et al.*, Case No. 2:14-CV-06766-PSG-FFMx (class-wide settlement; final approval granted);
- l. *Sayan Aboudi v. T-Mobile USA, Inc.*, Case No. 3:12-cv-02169-BTM-NLS (class-wide settlement in TCPA case, with common fund of \$2.5 million to \$5 million and average per class member payment of \$500; final approval granted);
- m. *Andrew Roseman v. BGASC, LLC, et al.*, Case No. EDCV 15-1100-VAP (SPx) (C.D. Cal.) (class-wide relief achieved; final approval granted);
- n. *Everado Gonzalez v The Scotts Company*, Case No. BC577875, Consolidated with Case No: BC570350 (LASC) (class-wide settlement of \$925,000 in wage and hour

- 1 class action on behalf of approximately 603 employees achieved; final approval
2 granted);
- 3 o. *Payton v Luxe Valet*, Case No. BC588462 (LASC) (\$2.4 million class-wide
4 settlement on behalf of 1,800 employees misclassified as independent contractor;
5 final approval granted);
- 6 p. *Shelby v Two Jinn, Inc.*, Case No. 2:15-cv-03794-AB-GJS (C.D. Cal.) (EFTA
7 class action involving no cognizable actual damages, with company net worth of
8 \$25 million, settled for non-reversionary common fund of \$457,000, despite
9 liability under 15 U.S. Code § 1693m(a) likely being only \$250,000; zero
10 objections; final approval granted);
- 11 q. *Couser v Dish One Satellite*, Case No. 5:15-cv-02218-CBM-DTB (C.D. Cal.)
12 (TCPA class action; final approval granted);
- 13 r. *Couser v Dish One Satellite*, Case No. RIC 1603185 (Riverside S.C.) (Penal Code
14 632 class action; final approval granted);
- 15 s. *De La Paz v Accurate Courier NCA LLC*, Case No. 16CV00555 (Santa Cruz
16 County Superior Court) (PAGA and Labor Code class action; final approval
17 granted);
- 18 t. *Ross v Zurixx LLC*, Case No. 34-2016-00190874 (Sacramento SC) (UCL, FAL
19 and CLRA class action alleging false advertising for real estate educational
20 courses, non-reversionary common fund settlement for over \$600 per class
21 member; final approval granted);
- 22 u. *Eubank v Terminix International, Inc.*, Case No. 3:15-cv-00145-WQH-JMA
23 (PAGA settlement reached in wage and hour action on behalf of pest control
24 technicians; final approval granted);
- 25 v. *Holland v Tenet Healthcare Corporation*, Case No. 15CVP0226 (Superior Court
26 of San Luis Obispo County) (PAGA settlement reached in wage and hour action
27 on behalf of nurses; final approval granted);
- 28 w. *Jonathan Weisberg, v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO (MRWx)
(class-wide settlement in TCPA class action, settled for \$1.225 million; final
approval granted);
- x. *Miler v Pacific Auto Wash Partners*, Case No. 30-2015-00813013-CU-OE-CXC
(wage and hour class action; final approval granted);

- 1 y. *Sonia Barrientos v Law Office of Jeffrey H. Jordan*, Case No. 2:15-cv-06282-JAK-
2 GJS (FDCPA/RFDCPA letter class action, settled on class wide basis; final
3 approval granted);
- 4 z. *Tahmasian v Midway Rent A Car*, Case No. 30-2015-00813013-CU-OE-CXC
5 (LASC) (PAGA and Labor Code class action; final approval granted);
- 6 aa. *Craig Cunningham v Lexington Law Firm*, Case No. 1:17-cv-00087-EJF (N.D.
7 UT) (TCPA class action MDL involving solicitation prerecorded voice calls made
8 by a third party, vicarious liability alleged; final approval granted).
- 9 bb. *Sheena Raffin v Medcredit, Inc.*, et al., Case No. 2:15-cv-04912-MWF-PJW (C.D.
10 Cal.) (Cal. Penal Code § 632.7 class action certified by Hon. George H. King Ret
11 under Rule 23(b)(2) and (b)(3) by contested motion on behalf of 11,000 class
12 members whose calls were recorded without knowledge or consent, settled for \$5
13 million; final approval granted);
- 14 cc. *Fernandez v Reliance Home Services, Inc.* Case No. BC607572 Los Angeles
15 Superior Court (wage and hour plus PAGA class action; final approval granted);
- 16 dd. *Anne Wolf v Hewlett Packard Company*, Case No. 5:15-cv-01221-TJH-GJS (C.D.
17 Cal.) (CLRA class action certified by contested motion on behalf of tens of
18 thousands of consumers who purchased printer that was falsely advertised to
19 include Smart Install feature, settled on a wider multi-state, multi-product basis;
20 final approval granted);
- 21 ee. *Jaylinda Girardot et al v. Bail Hotline Bail Bonds, Inc.*, Case No. BC700131 Los
22 Angeles County Superior Court (wage and hour plus PAGA class action; final
23 approval granted);
- 24 ff. *Ryoo Dental, Inc. v OCO Biomedical, Inc.*, Case No. 8:16-cv-01626-DOC-KES
25 (TCPA fax blast class action, settled on class-wide basis; final approval granted);
- 26 gg. *Wondra Curtis v The Anthem Companies, Inc.*, Case No. 8:16-cv-01654-DOC-
27 JCG (wage and hour class action for off the clock work, settled on class-wide
28 basis; final approval granted);
- hh. *Weinberg v Clarient, Inc.* Case No. 56-2017-00494914-CU-NP-VTA Ventura
County Superior Court (Rosenthal Fair Debt Collection Practices Act class action
settled on behalf of 1,830 class members for privacy infringements through clear
envelope debt collection letters; final approval granted);

- 1 ii. *Aliav v Sunset Eats, LLC*, Case No. BC655401 Los Angeles Superior Court (false
2 advertising class action on behalf of approximately 10,000 consumers, settled on
3 class-wide basis; final approval granted);
- 4 jj. *Alfred Zaklit, et al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-02190-CAS-
5 KK (C.D. Cal.) (Cal. Penal Code § 632.7 class action certified by contested motion
6 under Rule 23(b)(2) and (b)(3) on behalf of over 40,000 class members whose
7 calls were recorded without knowledge or consent; final approval granted);
- 8 kk. *Mark Silva v. Olson and Co. Steel*, Case No. 17CV001045 (Contra Costa County
9 Superior Court) (wage and hour class action settled on behalf of 563 class
10 members, final approval granted);
- 11 ll. *Cohen v. Coca-Cola Refreshments, USA, Inc.*, Case No. 2:19-cv-04083-JAK
12 (PLAx) (C.D. Cal.) (wage and hour class action settlement on behalf of trucking
13 employees; preliminary approval granted);
- 14 mm. *Manopla v. Home Depot USA, Inc.* Case No. 15-1120 (D. N.J.) (TCPA class
15 action; final approval granted);
- 16 nn. *Cawthorne v Rush Truck Centers of California, Inc.* Case No. 5:17-cv-01541-
17 JGB-SP (wage and hour class action on behalf of 560 employees; final approval
18 granted);
- 19 oo. *Lizama v Medical Data Systems, Inc.* Case No. 34-2017-00210986-CU-NP-GDS
20 (Sacramento County Superior Court) (Penal Code 632.7 class action alleging
21 illegal call recording, settled for \$2.2 million on behalf of over 30,000 consumers,
22 final approval granted);
- 23 pp. *Romano v SCI, Inc.* Case No. 2:17-cv-03537-ODW-JEM (wage and hour class
24 action for independent contractor misclassification, settled for \$2.5 million on
25 behalf of 230 employees, final approval granted);
- 26 qq. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-E (C.D.
27 Cal.) (TCPA class action certified on behalf of approximately 2,000,000 class
28 members under Rule 23(b)(2) and 23(b)(3), subsequently settled on a Rule
23(b)(2) and 23(b)(3) basis, final approval granted);
- rr. *Walsh v Fry's Electronics, Inc.* Case No. MSC18-01681 (Contra Costa County
Superior Court) (Gift Card Act, CLRA, UCL, FAL class action settled for class-
wide public injunctive relief; final approval granted);

- 1 ss. *In RE HP Firmware Update Litigation*, Case No. 5:16-cv-05820-EJD (N.D. Cal.)
2 (co-lead class counsel in consolidated Unfair Competition class action alleging HP
3 pushed a firmware update on consumers' printers that blocked their ability to use
4 third party ink cartridges, preliminary approval granted; final approval granted);
- 5 tt. *Nishimoto v T&S Business Corporation*, Case No. 34-2017-00211426
6 (Sacramento County Superior Court) (wage and hour and PAGA class action on
7 behalf of janitorial workers; final approval granted);
- 8 uu. *Rodriguez v. Experian Information Solutions, Inc. et. al.* Case No. 2:15-cv-01224-
9 RAJ (W.D. Wash.) (FCRA class action for improper credit pulls; certified under
10 Rule 23 by contested motion, and settled on class-wide basis, final approval
11 granted);
- 12 vv. *Ahmed v HSBC Bank USA*, Case No. 5:15-cv-02057-FMO (SPx) (C.D. Cal.)
13 (TCPA class; final approval granted);
- 14 ww. *Garcia et. al. v. HMS Host, Inc.*, Case Jo. 17-cv-03069-RS (N.D. Cal.) (wage and
15 hour class action, final approval granted);
- 16 xx. *Aiken v. Malcolm Cisneros, A Law Corporation*, Case No. 5:17-cv-02462-JLS-SP
17 (C.D. Cal.) (Fair Debt Collection Practices Act class action, settled on class wide
18 basis, preliminary approval granted);
- 19 yy. *Bonilla, et al. v. Windsor Fashion, LLC*, Case No. CIVDS1723088 (wage and hour
20 class action settled on behalf of over 5,000 employees, final approval granted);
- 21 zz. *Medina v. Enhanced Recovery Company, LLC*, Case No. 2:15-cv-14342-
22 JEM/MAYNARD (S.D. Fla.) (TCPA class settlement common fund of \$1.45M,
23 final approval granted);
- 24 aaa. *Pena v. John C Heath Attorney at Law, PLLC*, Case No. 1:18-cv-24407-UU (S.D.
25 FL.) (consolidated TCPA class action, final approval granted);
- 26 bbb. *Kim v. Tinder, Inc.*, Case No. 2:18-cv-03093-JFW-AS (C.D. Cal.) (Unruh Act
27 class settlement on behalf of 240,000 consumers; granted final approval, case on
28 appeal);
- ccc. *Griffey v. TA Operating, LLC*, Case No. CIVDS1907259 (San Bernardino County
Superior Court) (PAGA settlement \$390,000; final approval granted);
- ddd. *D'Angelo Santana v. Rady Children's Hospital*, Case No. 37-2014-00022411-CU-
MT-CTL (San Diego County Superior Court) (Confidentiality of Medical

Information Act, Cal. Civ. Code § 56, *et seq.* class settlement; final approval granted);

eee. *Chavis v. Three Group, Inc.*, Case No. 18STCV08737 (Los Angeles County Superior Court) (wage and hour PAGA settlement on behalf of dancers alleging contractor misclassification; final approval granted);

fff. *Fabricant v. AmeriSave Mortgage Corporation*, Case No. 2:19-cv-04659-AB-AS (C.D. Cal.) (\$6.25 million common fund TCPA class action settlement, final approval granted);

ggg. *El Nasleh v. California Spaghetti Restaurants, Inc.*, Case No. CIVDS1812587 (San Bernardino County Superior Court) (consolidated wage and hour class action settlement on behalf of restaurant employees settled for \$1.5M, preliminary approval pending);

hhh. *Fisher v Osmose Utilities Services, Inc.*, Case No. 1:18-cv-01704-NONE-EPG (E.D. Cal.) (wage and hour class action settlement on behalf of electrical utilities employees, preliminary approval pending);

iii. *Nizam v Phiadon International USA, Inc.*, Case No. CGC-20-582322 (San Francisco Superior Court) (wage and hour misclassification class action settlement, preliminary approval pending);

jjj. *Western Dental Wage and Hour Cases*, JCCP No. 5079 (County of Sacramento) (consolidated JCCP wage and hour class action settlement, LOTMF acted as lead liaison counsel on behalf of dental employees, preliminary approval pending);

kkk. *Barron v Paragon Building Maintenance, Inc.*, Case No. BC713754 (Los Angeles Superior Court) (wage and hour class action settlement on behalf of janitorial employees, final approval granted);

lll. *Randolph v. Amazon.com LLC et. al*, Case No. 37-2017-00011078-CU-OE-CTL (San Diego County Superior Court) (wage and hour class action settlement on behalf of delivery drivers, preliminary approval granted final approval granted);

mmm. *Barnett v Trigram Education Partners, LLC*, Case No. ESX-L-006106-20 (N.J. Superior Court county of Essex) (wage and hour class action settlement on behalf of university employees, preliminary approval pending);

nnn. *Dilworth v Hong Holdings, LLC* Case No. 19STCV24101 (Los Angeles Superior Court) (consolidated wage and hour class action settlement on behalf of gas station employees, preliminary approval pending);

ooo. *Winters v Two Towns Ciderhouse, Inc.* Case No. 20-cv-00468-BAS-BGS (S.D. Cal.) (nationwide false advertising class action settlement on behalf of consumers who purchased mislabeled products, preliminary approval granted, final approval granted);

ppp. *Vaccaro v Super Care, Inc.*, Case No. 20STCV03833 (Los Angeles Superior Court) (CIPA class action settlement on behalf of over 50,000 consumers, preliminary approval pending);

qqq. *Mansour v. Bumble, Inc.*, Case No. RIC1810011 (Riverside Superior Court) (Largest Unruh Act class settlement in the history of statute, \$70M in classwide benefits on behalf of 2 million consumers; preliminary approval granted);

rrr. *Caldera v. American Medical Collection Association*, (C.D. Cal.) Case No. 2:16-cv-00381-CBM-AJW (TCPA class action certified by contested motion, settled on classwide basis out of bankruptcy proceeding, preliminary approval granted);

sss. *Hale v. Mana Pro Products, LLC*, Case No. 2:18-cv-00209-KJM-DB (E.D. Cal.) (false advertising class action, final approval granted);

ttt. *Vaccaro v Super Care, Inc.*, Case No. 20STCV03833 (Los Angeles Superior Court) (CIPA class action settlement on behalf of over 50,000 consumers, preliminary approval pending);

uuu. *Vaccaro v Delta Drugs II, Inc.*, Case No. 20STCV28871 (Los Angeles Superior Court) (CIPA class action settlement on behalf of consumers, preliminary approval pending);

vvv. *Marko, et al. v. Doordash, Inc.*, Case No. BC659841 (Los Angeles County Superior Court) (First-filed and co-lead counsel in consolidated gig economy misclassification class action on behalf of delivery drivers, secured \$100 million common fund settlement, largest gig economy class settlement to date; preliminary approval granted); and

www. *Aleksanian, et al. v. Enrich Financial, Inc.*, Case No. BC698829 (Los Angeles County Superior Court) (certified class by contested motion under Credit Repair

Organization Act, California Credit Services Act and Federal Credit Repair Organization Act, preliminary approval pending).

47. My office has extensive class action experience, including in wage and hour class actions such as this. We have been lead counsel, or co-lead counsel in five eight figure class action settlements, as well as on *Marko v DoorDash*, the largest gig economy employment class action settlement to date. We have certified roughly a dozen class actions by contested motion. We have been appointed interim lead class counsel in a number of consolidated class actions that are currently pending. We have litigated and prevailed in a number of appellate decisions in the California Court of Appeal, Eleventh Circuit, Second Circuit, and Ninth Circuit in cases involving class claims, as well as assisting with briefing in two class actions before the United States Supreme Court. In January, I argued an important class action before the California Supreme Court concerning the California Invasion of Privacy Act in *Smith v. LoanMe, Inc.*, 2021 WL 1217873 (Cal. S. Ct. April 1, 2021). Prior to the appeal, we successfully petitioned for review, despite there being no split in appellate authority at the time. The unanimous decision of the Supreme Court fully and overwhelmingly sided with our position.

48. We have been appointed class counsel in dozens of wage and hour class actions, including acting as lead counsel in several consolidated cases and JCCP cases. *See Payton v Luxe Valet*, Case No. BC588462 (LASC); *Romano v. SCI, Inc.* Case No. 2:17-cv-03537-ODW-JEM; *Chavis v. Three Group, Inc.*, Case No. 18STCV08737. *Payton* involved gig economy misclassification claims, pre-*Dynamex*, and we were able to resolve the case on favorable terms for the class and approved as class counsel. *Chavis* involved misclassification on behalf of dancers and was resolved as a PAGA claim, with approval granted. *Romano* was heavily litigated, through multiple motions to dismiss and a summary judgment motion, and involved three class certification motions (one of which post-dated *Dynamex*), as well as a second action filed by my office on behalf of another class representative, which was thereafter consolidated, before it was finally settled on a class-wide basis. The case involved the misclassification of outside salespersons and involved both class and PAGA claims. The settlement was approved over objections. We are also co-lead counsel on a \$100 million mega settlement recently approved by Judge Hogue in the

1 *Marko v Doordash* independent contractor misclassification case, in which we were first-filed.

2 49. My firm also certified the following cases as class actions by contested motion and
3 was appointed class counsel. I wrote the certification briefs for the majority of these cases:

- 4 a. *Anne Wolf v. Hewlett Packard Company*, Case No. 5:15-cv-01221-TJH-GJS (C.D.
5 Cal.) (class action certified by contested motion on behalf of tens of thousands of class
6 members who purchased printer that was falsely advertised to include Smart Install
7 feature);
- 8 b. *Caldera v. American Medical Collection Association*, Case No. 2:16-cv-00381-CBM-
9 AJW (C.D. Cal.) (TCPA class action certified by contested motion);
- 10 c. *Alfred Zaklit, et al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-02190-CAS-KK
11 (C.D. Cal.) Cal. Penal Code § 632.7 class action certified under Rule 23(b)(2) and
12 (b)(3) on behalf of class members whose calls were recorded without knowledge or
13 consent);
- 14 d. *D'Angelo Santana v. Rady Children's Hospital*, Case No. 37-2014-00022411-CU-MT-
15 CTL (San Diego County Superior Court) (Confidentiality of Medical Information Act,
16 Cal. Civ. Code § 56, *et seq.*);
- 17 e. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-E (C.D. Cal.)
18 (TCPA class action certified on behalf of approximately 2,000,000 class members
19 under Rule 23(b)(2) and 23(b)(3));
- 20 f. *Rodriguez v. Experian Information Solutions, Inc., et al.*, Case No. 2:15-cv-01224-
21 RAJ (W.D. Wash.) (FCRA class action for improper credit pulls; certified under Rule
22 23);
- 23 g. *Sheena Raffin v. Mediacredit, Inc., et al.*, Case No. 2:15-cv-04912-MWF-PJW (C.D.
24 Cal.) (Cal. Penal Code § 632.7 class action certified by Hon. George H. King Ret.
25 under Rule 23(b)(2) and (b)(3) on behalf of class members whose calls were recorded
26 without knowledge or consent);
- 27 h. *Stemple v. QC Financial Services Group of California, Inc.*, Case No. 3:12-cv-01997-
28 CAB-WVG (S.D. Cal.) (certified class achieved by motion, and subsequent class-wide
settlement);

- i. *Abdeljalil v. General Electric Capital Corporation*, Case No. 12-CV-02078-IEG-RBB (S.D. Cal.) (certified class achieved by motion, and subsequent class-wide settlement);
- j. *Aleksanian, et al. v. Enrich Financial, Inc.*, Case No. BC698829 (Los Angeles County Superior Court) (certified class under Credit Repair Organization Act, California Credit Services Act and Federal Credit Repair Organization Act).

Damages' Analysis

50. The Settlement provides meaningful relief to absent Class Members. The Claims Administrator will send checks to each Participating Class Member for the amount of his or her Individual Settlement Share. Assuming 100% participation and with an average pre-tax estimated payment, those Participating Class Member will receive on average \$812.36. This average payment was calculated by taking the current estimate of the Net Settlement Amount (\$129,166.67), inclusive, and dividing it equally between 159 Class Members ($\$129,166.67/159 = \812.36). I believe it is fair and reasonable as the claims for Class Members are substantively similar, despite the rate of pay differences, and given that this is reflective of the damages each individual would be entitled to at trial on average as a result therefrom.

51. I stand fully behind the damages analysis that my office conducted which formed the basis for the parties' negotiated settlement.

52. In conducting settlement discussions, for the Class and PAGA periods, Defendant provided the total number of Class Members, Aggrieved Employees, and Terminated Class Members, workweeks at issue, and average rates of pay. Defendant also produced employee handbooks and policies. Defendant also provided information pertaining to the arbitration agreements Defendant contends were signed by every Class Member. Defendant also provided a 20% data sample of the Class Members and Aggrieved Employees' timekeeping and payroll records.

53. It is my experience that mediation is most likely to be productive when experienced counsel are transparent, and I spoke with counsel for Defendant several times in the course of settlement discussions to discuss the data and our findings and clarify the parties' respective understanding of the facts of the case and the extent of Defendant's exposure. In order to maximize

1 relief to absent Class Members, my goal as their fiduciary was a comprehensive understanding of
2 Defendant's legal and factual contentions in order to assess meaningfully the risks of continued
3 litigation and the likelihood of success on certification and at trial.

4 54. My office is petitioning for \$83,333.33 in attorneys' fees, plus reasonably incurred
5 costs, to be capped at \$10,000. We will present our lodestar analysis to the court for final approval,
6 but, at this time, I believe our hours reasonably spent and hourly rate, as approved by numerous
7 courts, will far exceed the request. My experience in numerous wage and hour class actions has
8 been that fee awards of one-third (1/3) of the maximum Settlement Fund have been consistently
9 approved as reasonable, which I will describe in greater detail at the Final Approval stage, should
10 the Honorable Court grant Preliminary Approval.

11 55. This Court should preliminarily approve the proposed Service Award of \$10,000
12 to Plaintiff, and her decedent father Anali Almazan, who advanced the interests of absent Class
13 Members by, among other things, speaking extensively with counsel during the course of litigation
14 to identify and develop the claims in this case, providing pertinent documents, participating in the
15 settlement discussions, and carefully reviewing the Settlement and related documents. Plaintiff
16 also risked being required to pay Defendant's costs if this action had been unsuccessful. Further,
17 Plaintiff took the personal risks of facing intrusive discovery. Finally, Plaintiff agrees to a much
18 broader release of claims than other Class Members.

19 56. I hold a master certification in Microsoft Excel, which I acquired while studying
20 economics and accounting at the Eller School of Management at the University of Arizona. I
21 received a B.S. in Economics during my undergraduate studies.

22 57. In advance of the mediation, I personally conducted a damages analysis for the
23 Class. I prepared this damages' analysis by reviewing all data provided by Defendant.

24 58. Defendant provided numbers regarding the number of Class Members, the number
25 of workweeks at issue, the time period, and the average rate of pay for Class Members. Defendant
26 also produced a data sample for the timekeeping and payroll records which I analyzed these
27 numbers and used Excel formulas in combination with Plaintiff's testimony to extrapolate the meal
28 and rest break violations and derivative violations. The calculations provide a ceiling on damages

1 for the class for the claims.

2 59. In response to this, Defendant provided its employee policies and procedures,
3 which provided for Class Members to take an off-duty meal break every day. Defendant
4 additionally provided information regarding how Class Members were to track hours worked and
5 not worked and thus argued that the failure to properly record time was the Class Members fault.

6 60. Given Defendant's arguments and based on my discussions with Plaintiff, I
7 determined from this review of the data that the potential frequency with which Defendant failed
8 to provide Class Members the opportunity for a compliant meal period was, at best, approximately
9 an average occurrence per employee of approximately three-and-a-half times per week. As an
10 interesting note, prior to the lawsuit being filed, Defendant had a meal and rest break violation rate
11 of 90%. After the filing of the lawsuit, this rate dropped to 10%. My conclusions were consistent
12 with those represented to me by Defense counsel for purposes of settlement discussions. Based
13 on these calculations, I determined that meal period damages for the Class would be capped at
14 approximately \$408,354.26. Defendant could argue plausibly that the inability to prove or
15 corroborate alleged meal period violation not memorialized by records precludes liability for a
16 significant portion of the damages alleged. Ultimately this uncertainty was a risk that could impact
17 both certification and damages issues in litigation.

18 61. Using this same data, I also calculated a ceiling on rest break damages. In *Augustus*
19 *v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257 (2016), *as modified on denial of reh'g* (Mar. 15, 2017) the
20 California Supreme Court held that employers must "relinquish any control over how employees
21 spend their break time, and relieve their employees of all duties—including the obligation that an
22 employee remain on call." *Id.* at 273. Defendant's written policies provided for rest breaks, but
23 required employees to "clock out" to leave the building, thus meaning that control was not actually
24 relinquished over them in the absence of such clocking out. Based on the same analyses as the
25 meal break data, I determined that meal period damages for the Class would be capped at
26 approximately \$408,354.26. Defendant contends that any failure to take a duty-free was voluntary,
27 as Class Members worked independently and were free to take breaks when appropriate.
28 Accordingly, Plaintiff's theory is likely sufficient for purposes of certification but presents

1 significant risks on the merits with respect to Plaintiff's burden of proof.

2 62. Additionally, there were claims for off the clock wages due and owing from the
3 argument that Class Members were not paid for time outside of their normal hours worked, such
4 as visiting the site during the night to turn off the mixer. Defendant provided information and
5 Plaintiff confirmed that there was no effective way to calculate or estimate this off-the-clock time
6 on a class wide basis as it arose out of individual circumstances. Thus, I did not include these
7 claims in our damages calculation for mediation.

8 63. I was also able to determine damages under §§ 203 and 226 and pursuant to PAGA,
9 in addition to applicable penalties. My office calculated § 226 penalties at \$190,886.6, § 203
10 penalties at approximately \$390,000, and no PAGA penalties due to recent case law which bars
11 double recovery, *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175. In my experience, § 226 and
12 § 203 penalties are rarely assessed by courts in wage and hour matters, due to the heightened
13 requirements of knowledge and intent. Moreover, the claims at issue here are challenging because
14 Defendant has a potentially compliant written policy. Moreover, because PAGA is designed to
15 deter employers' knowing and intentional misconduct, Defendant contends that any penalties
16 awarded would certainly be reduced to reflect the absence of bad faith. Moreover, because the
17 majority of penalties available are pursuant to PAGA, 75% of which are allocated to the State, the
18 amount that Class Members would ultimately receive if Plaintiff were to prevail on the merits
19 would be negligible. For these reasons, while the potential for penalties exists, the focus of my
20 damages analysis for purposes of mediation was the recovery of an amount consistent with unpaid
21 break premiums.

22 64. Estimated class damages would be capped at approximately \$1.4 million soaking
23 wet, assuming no reduction, assuming certification of the broadest class and a total victory on all
24 issues with no reduction accounted for as a result of defenses or otherwise. As described
25 hereinafter, a heavy reduction in this figure was warranted.

26 **Risks of Litigation**

27 65. The Settlement is a fair, adequate, and reasonable compromise of the claims at
28 issue, the maximum conceivable liability for Defendant notwithstanding. The risks with respect to

1 class certification and success on the merits are significant and support settlement. For example,
2 in *Duran v. U.S. Bank National Association*, 59 Cal.4th 1 (2014), the California Supreme Court
3 placed a heightened emphasis on the manageability of class actions, even where common questions
4 predominate as to liability. *Id.* at 28-29. Under *Duran* and *Brinker Restaurant Corp. v. Superior*
5 *Court*, 53 Cal.4th 1004 (2012), certification of class-wide claims for unpaid break premiums is
6 uncertain based on manageability concerns.

7 66. In this case, among other things, Defendant's written policies are potentially
8 compliant with *Brinker*. Accordingly, because Class Members were instructed to take meal and
9 rest breaks and were afforded time to do so, a showing of uniform violations would likely require
10 individual inquiry. If the case were to proceed to trial, Defendant would likely argue that the need
11 for such individual inquiry presents manageability issues sufficient to preclude certification, which
12 in turn precludes a finding in Plaintiff's favor on the merits. While Plaintiff contends that the
13 burden of a lack of proof is on Defendant, the existence of some common proof does not obviate
14 the argument regarding manageability. These risks strongly support the fairness of the Settlement
15 because there can be no finding as to Defendant's liability if the underlying meal and rest period
16 claims are not certified, and Defendant's potential exposure is moot.

17 67. The risks specifically with respect to the merits of the claims asserted are thus
18 significant and favor settlement. For example, Plaintiff contends that Defendant's pattern and
19 practice generally with respect to meal period was not compliant and that Defendant failed to pay
20 premiums for meal and rest period violations, as evidenced by the timekeeping and payroll records.
21 Defendant contends that its written policies and procedures are compliant on their face, even under
22 *Brinker*, and that, despite its uniform failure to provide meal period waivers, any Class Member's
23 failure to take a compliant meal period was voluntary. Plaintiff believes these challenges can be
24 overcome but acknowledge the merits of Defendant's position. With respect to rest breaks,
25 Plaintiff's primary arguments were that Defendant's pattern and practice did not comply with
26 *Augustus* and that Defendant had no policy to pay premiums for violations, as evidence by
27 Defendant's own records. Defendant contends that its written rest period policies are compliant,
28 even under *Augustus*, and that Plaintiff is reading the decision too literally regarding what

1 constitutes “duty-free.”

2 68. With respect to Defendant’s liability under Labor Code §§ 203 and 226(e) on a
3 derivative basis based on their alleged failures to pay Class Members for all break premiums owed,
4 as discussed above, there is a risk that such claims would fail for the same reasons as the underlying
5 break claims or that Defendant could establish a good faith defense to preclude the imposition of
6 penalties. As to the claim under Labor Code § 226(e) based on the format of Defendant’s wage
7 statements, there is also a risk that Plaintiff might not be able to prove that Defendant knowingly
8 and intentionally omitted required information and that any penalties under PAGA could be
9 drastically reduced at the Court’s discretion under Labor Code § 2699(e)(1).

10 69. Defendant also provided detailed financial records substantiating their position that
11 the company was impacted significantly and negatively by COVID which effected their ability to
12 pay a classwide judgment.

13 70. The parties considered each of these factors during negotiations. In view of the
14 significant risks, the Settlement reflects a fair, adequate, and reasonable compromise amount for
15 the claims at issue and warrants preliminary approval. Further, California’s policy in favor of
16 settlement in class actions and other complex cases applies with particular force in this case, and
17 the certainty of recovery by the equitable and timely consummated Settlement should carry
18 considerable weight. The expense of protracted litigation in these cases is formidable, and tensions
19 in the employment relationship that result from litigation are alleviated by settlement as opposed
20 to a trial. As a result, all parties are in a better position to participate in the State’s economy. Thus,
21 while they are far from exhaustive, the risks listed herein show that the Settlement is fair, adequate,
22 and reasonable given the likelihood of success of merits.

23 71. The Settlement is fair, adequate, and reasonable. After the proposed fees, costs,
24 and service award, the Class is projected to recover approximately \$129,166. I believe that as a
25 result of the challenges as set forth above, there would be serious class certification challenges in
26 this case but for Defendant’s agreement to waive the argument for purposes of settlement. I also
27 believe that the damages analysis we conducted warrants heavy reduction under the circumstances,
28 especially since most of the damages stem from penalties that are unlikely to be awarded in any

1 case. This was an employer that, if PAGA damages were awarded, would be likely to receive
2 heavy reductions in such penalties. Willfulness penalties seemed unlikely as well. It is also fair
3 and reasonable to allocate the Net Settlement Amount to Class Members based on their respective
4 workweeks. Class Members who worked longer for Defendant are more likely to have been
5 underpaid and to have been issued a greater number of allegedly defective wage statements. I was
6 also adamant during negotiations that the settlement would be non-reversionary and that settlement
7 benefits would be paid automatically to all Participating Class Members without their having to
8 submit a claim form.

9 72. The proposed awards of attorneys' fees of \$83,333.33 (one-third of the maximum
10 Settlement Fund) and costs of up to \$10,000.00 are well within the range of reasonableness and
11 warrant this Court's preliminary approval. This is especially so in view of the effort made and risks
12 taken by Plaintiff's counsel in pursuing this case, in addition to the results achieved (i.e., obtaining
13 a favorable class-wide resolution in the face of a highly uncertain, and ever-evolving, legal
14 landscape as to core issues in this case). Fee awards of one-third of the maximum Settlement Fund
15 have been consistently approved as reasonable based on my experience in numerous wage and
16 hour class action matters, which I will describe in greater detail at the Final Approval stage, should
17 the Honorable Court grant Preliminary Approval.

18 73. The difficulties inherent in certifying the class and then prevailing on the merits to
19 recover these damages for Class Members, in addition to the years of litigation both would require
20 and the only-marginally-better results projected, clearly favor settlement over continuing to
21 litigate.

22 I declare under penalty of perjury under the laws of California and the United States that
23 the foregoing is true and correct. Executed in Orange, California, on November 16, 2022.

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25 Adrian R. Bacon
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EXHIBIT A

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**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.
- 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. Neither party shall encourage any Class Member to object to or opt out
28 of the Settlement.

- 1 S. PAGA Allocation: Ten Thousand Dollars (\$10,000) for all outstanding PAGA
2 claims against Defendant, to be allocated as penalties under PAGA to Aggrieved
3 Employees, of which 75% shall go to the LWDA, and 25% shall go to the
4 Aggrieved Employees.
- 5 T. PAGA Period: January 8, 2019 through April 5, 2021.
- 6 U. Participating Class Members: all Class Members and Aggrieved Employees who
7 do not timely opt-out of the Settlement.
- 8 V. Parties: Defendant, Plaintiff, and Participating Class Members.
- 9 W. Plaintiff: Anali Almazan¹, the named plaintiff and class representative in the
10 Action.
- 11 X. Preliminary Approval: Class Counsel shall draft and file a motion for preliminary
12 approval within ninety (90) days of execution of the Agreement.
- 13 Y. Qualifying Workweeks: the total number of workweeks within the Class Period
14 that a Class Member worked for Defendant based on Defendant's records,
15 excluding leaves of absence and vacation.
- 16 Z. Released Claims: all claims, demands, rights, liabilities, and/or causes of action of
17 any nature and description whatsoever, known or unknown, in law or in equity,
18 whether or not concealed or hidden, that were asserted or could have been asserted
19 at any time in the Action based on the facts, theories, and/or claims alleged in the
20 Action; it includes and covers claims for violations of any state or federal statutes,
21 rules or regulations, claims that were asserted or could have been asserted at any
22 time in the Action based on the subject matter alleged in the Action by any Class
23 Member and/or Aggrieved Employee that, during the Class Period and or PAGA
24 Period, Defendant at any time that: 1) failed to pay wages, including minimum
25 wages; 2) failed to pay overtime and/or double-time wages; 3) failed to provide
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 timely, full, and uninterrupted rest breaks or a penalty payment in lieu thereof; 4)
2 failed to provide timely, full, and uninterrupted meal periods or a penalty payment
3 in lieu thereof; 5) failed to provide accurate itemized wage statements; 6) failed
4 timely to pay wages or pay all wages due upon termination of employment; 7)
5 failed to provide restitution for unpaid sums; 8) failed to maintain accurate records;
6 9) violated the Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*; and
7 10) owed penalties pursuant to PAGA, Labor Code § 2698, *et seq.*, including under
8 Labor Code § 558. This Settlement is conditioned upon the release by all
9 Participating Class Members of any claim under Labor Code § 2698, *et seq.* and
10 upon covenants by all members that they will not participate in any proceeding
11 seeking penalties under Labor Code § 2698, *et seq.* (collectively, the “Released
12 Claims”). Except as set forth above, Released Claims does not include any other
13 claims, including claims for vested benefits, wrongful termination, violation of the
14 Fair Employment and Housing Act, unemployment insurance, disability, social
15 security, workers’ compensation, or claims based on facts occurring outside the
16 Class Period. The period of the Released Claims shall cover the Class Period. The
17 Parties agree that the judgment, and release of claims provided herein, shall have
18 *res judicata* effect.

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

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

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

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

10 II. BACKGROUND

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

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

1 discovery by Plaintiff's counsel, the Parties participated in mediation with Gail Ander (Ret)
2 of JAMS., an experienced and respected mediator. After a full day of negotiation and
3 exchanges of information, the Parties were unable to settle the matter and were also unable
4 to do so after a second half day mediation on August 10, 2021. However, after further
5 extensive negotiations, the parties were finally able to resolve the matter on January 25, 2022.

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

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

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

27 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF**
28 **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.

- 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 forty-five (45) days after the date of mailing of the
22 Class Notice by the Claims Administrator (the “Response Deadline”).

23 3) Option 3: Objections to Settlement.

24 Any Class Member wishing to object to the approval of this Settlement (“Objecting
25 Class Member”) shall inform the Claims Administrator in writing of his or her intent to object
26 (“Notice of Objection”) by following the procedure set forth in the Class Notice by the
27 Response Deadline, or such number of days as the Court shall specify, before the date of the
28 Final Fairness and Approval Hearing. The date on the proof of service shall be deemed the

1 exclusive means for determining that a Notice of Objection was served timely. The Notice of
2 Objection must be signed by the Objecting Class Member and state: (1) the name and case
3 number of this matter; (2) the Objecting Class Member's name, address, and telephone
4 number; (3) the basis for the objection, including all arguments, citations, and evidence
5 supporting the objection; and (4) whether the objector intends to appear at the Final Fairness
6 and Approval Hearing, with or without counsel. By submitting a Notice of Objection, the
7 Objecting Class Member will be deemed to have opted into the settlement and will be a
8 Participating Class Member. Class Members may appear and speak at the Final Fairness and
9 Approval Hearing regardless of whether they have submitted a written objection. At no time
10 shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement
11 Class Members to file or serve written objections to the Settlement or appeal from the Order
12 and Final Judgment. Settlement Class Members who opt-out are not entitled to object to the
13 Settlement.

14 4) Responses to Objections.

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

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

20 On the date set forth in the Order Granting Preliminary Approval, which shall be
21 approximately seventy-five (75) days after the mailing of the Notice of Class Settlement, a
22 Final Fairness and Approval Hearing shall be held before the Court in order to review this
23 Agreement and to consider any timely objections made and all responses by the Parties to
24 such objections and determine whether the Court should give it final approval. At the Final
25 Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this
26 Agreement. If the Parties' request for final approval is granted, a Judgment and Final Order
27 Approving Settlement of Class Action substantially in the form attached hereto as Exhibit D
28 ("Judgment and Final Order") shall be entered in the Action. Class Counsel shall furnish a

1 copy of the Judgment and Final Order to the Claims Administrator within two (2) days of
2 receipt of the Judgment and Final Order.

3 **E. Settlement Calculations and Procedures**

4 1) Settlement Amount and Uses.

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

13 2) Claims Administration Costs.

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

1 charged by the Claims Administrator in connection with the execution of its duties under this
2 Agreement.

3 3) Attorneys' Fees and Expenses.

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

12 4) Service Award Payable to Plaintiff.

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

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

18 The Claims Administrator shall distribute to each Participating Class Member his or
19 her Individual Settlement Share. A portion of each Individual Settlement Share shall represent
20 wages, a portion shall represent interest, and a portion shall represent penalties. Each
21 Individual Settlement Share shall be allocated as follows: thirty-three and one third percent
22 (33.33%) of each Individual Settlement Share shall represent wages; thirty-three and one third
23 percent (33.33%) shall represent interest; and thirty-three point thirty-four percent (33.34%)
24 shall represent penalties. That portion of each Individual Settlement Share representing wages
25 will be subject to normal employment tax withholdings relative to the Participating Class
26 Member's employment (e.g., withholdings for State and Federal income tax, employee FICA
27 tax, California SDI, etc.) with the Claims Administrator remitting all such employment tax
28 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 ninety (90) 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 whatsoever. 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.

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

13) Calculation of Qualifying Workweeks.

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

3 14) Resolution of Disputes.

4 Any Class Member who disputes the Qualifying Workweeks shown on his or her Class
5 Notice regarding the total number of weeks he or she worked during the Class and/or PAGA
6 Period may indicate and explain such disagreement within thirty (30) days of the mailing of
7 the Notice of Class Settlement. Any such Class Member must submit any documentation
8 relating to his or her dispute. The Claims Administrator shall notify Defense Counsel and
9 Class Counsel of any such dispute no later than two (2) business days after receiving notice
10 of the dispute. The Claims Administrator shall attempt to resolve the disagreement and may
11 request any information or assistance from Defense Counsel and/or Class Counsel that the
12 Claims Administrator, in its sole discretion, believes may assist it in resolving the
13 disagreement. However, Defendant's records will be used to make any final determination
14 and will be controlling. The Parties and their counsel shall use their best efforts to ensure
15 that any and all such disputes are resolved before the Effective Date.

16 15) Payment of Individual Payment Amounts.

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

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

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

1 Claims Administrator's request for additional time, the Claims Administrator may seek such
2 additional time from the Court.

3 17) Increase of Class Size.

4 This Settlement was reached with the understanding that Defendant would hire
5 additional employees who would be deemed Class Members under the terms of this
6 Agreement. Prior to the first mediation, and specifically on December 21, 2020, Defendant
7 indicated that there were 159 Class Members. If confirmatory discovery reveals that the
8 number of Class Members increases by more than 13% (21), Defendant agrees to
9 proportionate increase in the Net Settlement Amount for each additional Class Member.

10 **F. Public Statements**

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

1 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT**

2 **A. No Admission**

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

9 **B. Non-Evidentiary Use**

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

14 **C. No Collateral Attack**

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

21 **D. Nullification**

- 22 1) If (a) the Court should for any reason fail to certify a class for settlement; or
23 (b) the Court should for any reason fail to approve this Settlement in the form
24 agreed to by the Parties; or (c) the Court should for any reason fail to enter the
25 Judgment and Final Order; or (d) the Judgment and Final Order is reversed,
26 modified, or declared or rendered void, then (i) this Agreement shall be
27 considered null and void, (ii) neither this Agreement nor any of the related
28 negotiations or proceedings shall be of any force or effect, (iii) all Parties to

1 this Agreement shall stand in the same position, without prejudice, as if the
2 Agreement had been neither entered into nor filed with the Court, (iv) this
3 Agreement shall not be admissible or usable in discovery in any adversarial
4 proceeding or in any litigation whatsoever, including this Action, and (v) Class
5 Counsel shall make repayment of any disbursements it received from the
6 Settlement Fund.

7 2) Invalidation of any material term of this Agreement shall invalidate this
8 Agreement in its entirety unless the Parties shall subsequently agree in writing
9 that the remaining provisions shall remain in full force and effect.

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

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

20 **V. RELEASES**

21 22 **A. Class Releases**

23 It is the desire of the Parties to fully, finally, and forever settle, compromise, and
24 discharge disputes and claims, including, but not limited to, claims that were asserted or could
25 have been asserted at any time in the Action based on the subject matter alleged therein.
26 Except for Class Members who submit a timely opt out from the settlement, upon entry of the
27 Judgment and Final Order in the Action, Plaintiff and every Participating Class Member shall
28 be bound by this Agreement, and their benefits, rights, and remedies are limited as provided

1 herein. Plaintiff and each and every Participating Class Member shall be deemed to have,
2 and by operation of the Judgment and Final Order, shall have, fully, finally, and forever
3 released, relinquished, and discharged each and all of the Released Parties from the Released
4 Claims.

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

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

22 **B. Individual Release**

23 Plaintiff agrees that the consideration set forth in this Agreement, including the Service
24 Award set forth above, represents full settlement of all claims that were or could have been raised
25 against the Released Parties. Plaintiff, on behalf of himself and each of his heirs, representatives,
26 successors, assigns, and attorneys, hereby compromises, releases, resolves, relinquishes, discharges
27 and settles any and all claims of any nature whatsoever he has or may have against Released Parties
28 for any acts occurring on or before the date of preliminary approval of the Settlement, and he agrees

1 that he will not institute any action or cause of action (in law, in equity or administratively), suits,
2 debts, liens, or claims, known or unknown, fixed or contingent, which he may have or claim to
3 have in state or federal court, or with any state, federal or local government agency, except the
4 EEOC or DFEH, or with any administrative or advisory body arising from or attributable to the
5 Released Parties.

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

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

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

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

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

1 any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty
2 under applicable state corporate law, and securities fraud under any state or federal
3 law;

4 c. any and all claims for wrongful discharge of employment; termination in violation
5 of public policy; discrimination; breach of contract, both express and implied;
6 breach of a covenant of good faith and fair dealing, both express and implied;
7 negligent or intentional infliction of emotional distress; negligent or intentional
8 misrepresentation; negligent or intentional interference with contract or prospec-
9 tive economic advantage; unfair business practices; defamation; libel; slander;
10 negligence; personal injury; assault; battery; invasion of privacy; false
11 imprisonment; and conversion;

12 d. any and all claims for violation of any federal, state or municipal statute, including,
13 but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act
14 of 1991, the Age Discrimination in Employment Act of 1967, the Americans with
15 Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement
16 Income Security Act of 1974, The Worker Adjustment and Retraining Notification
17 Act, Older Workers Benefit Protection Act; the California Fair Employment and
18 Housing Act, the Private Attorney General Act, the Workers Compensation Act,
19 and the California Labor Code;

20 e. any and all claims for violation of the federal, or any state, constitution; and

21 f. any and all claims arising out of any other laws and regulations relating to
22 employment or employment discrimination.

23 Older Workers Benefits Protection Act: It is intention of the Parties that the Plaintiff
24 release will apply to all claims of any kind against the Released Parties. In order to comply
25 with the Older Workers Benefits Protection Act [29 U.S.C. Section 626(f)] and effectuate the
26 release by Plaintiff of any potential claims under the federal Age Discrimination in
27 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;
- 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 that is signed by the Plaintiff, Class Counsel, and Defense Counsel who executed this Agreement.

B. Assignment

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

7 **C. Governing Law**

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

11 **D. Entire Agreement**

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

20 **E. Waiver of Compliance**

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

28 **F. Counterparts**

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

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

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

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

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

17 **I. Jurisdiction of the Court**

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

25 **IT IS SO STIPULATED.**

26 Respectfully submitted,

27 Dated: September 21, 2022

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

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By: 

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

Dated: September 21, 2022

MAGARIAN & DIMERCURIO

By: 

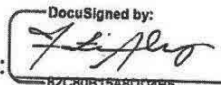
Mark D. Magarian
Krista L. Dimercurio
Attorneys for Defendant
BOTANX, LLC INCORPORATED

Dated: September 21, 2022

By: 

BOTANX, LLC

Dated: September 21, 2022

By: 

FATIMA ALMAZAN

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EXHIBIT A

**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. Glenda
Sanders, Dept. CX101]*

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-CXC₂ (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 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.

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 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 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

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

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.

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 Settlement Administrator postmarked on or before [_____, 2022] 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 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, 2) not be bound by or receive any benefit of this Settlement, 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.

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 file a written objection with the Court, send the objection to all counsel at the addresses listed below, and send the objection to the Settlement Administrator:

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 Court and Counsel must receive any written objection and notice of intent to appear at the Final Approval Hearing no later than [REDACTED], 2022 **[thirty (30) days after Rust mails Class 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, at **[time]** in Dept. CX101 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].

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

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EXHIBIT B

**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.

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

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EXHIBIT C

**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], 2022, 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 _____, 2022.

(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.**

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EXHIBIT D

Todd M. Friedman (SBN 216752)
tfriedman@toddfllaw.com
Adrian R. Bacon (SBN 280332)
abacon@toddfllaw.com
Law Offices of Todd M. Friedman, P.C.
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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]*

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT OF
CLASS ACTION SETTLEMENT**

This matter is before the Court on the motion for final approval of a class action settlement (“Settlement”) between individual and representative Plaintiff Anali Almazan (“Plaintiff”) and Defendant Botanx, LLC (“Defendant”) (collectively the “Parties”), as set

1 forth in the Settlement Agreement, attached as Exhibit 1, and a good faith determination
2 pursuant to California Code of Civil Procedure section 877.6.

3 By the Order Granting Plaintiff's Motion for Preliminary Approval of Class Action
4 Settlement, Approving Form and Manner of Notice, and Scheduling Final Approval Hearing
5 ("Preliminary Approval Order"), the Court: 1) granted preliminary approval of the Settlement; 2)
6 ordered that notice of the Settlement be disseminated to Class Members, as directed therein; and 3)
7 scheduled a final approval and fairness hearing ("Fairness Hearing") for [DATE].

8 On [DATE], the Parties appeared before the Court for the Fairness Hearing, and an
9 opportunity to be heard was given to all persons requesting to be heard. The Court has
10 reviewed and considered all the pleadings filed in connection with the instant matter and all
11 of the arguments and evidence presented concerning the Settlement.

12 The entire matter of the proposed Settlement having been duly noticed, and having
13 been fully considered by the Court, **IT IS HEREBY ADJUDGED, ORDERED, AND**
14 **DECREED:**

15 **A. Plaintiff's Motion for Final Approval of the Class Action Settlement is**
16 **Granted**

17 1. This Court has jurisdiction over the above-captioned action, Plaintiff, Class
18 Members, Defendant, and any party to any agreement that is part of or related to the
19 Settlement Agreement.

20 2. Capitalized terms used in this Order have the meanings and/or definitions
21 ascribed to them in the Settlement Agreement.

22 3. The Court finds that the applicable requirements of the California Code of Civil
23 Procedure section 382 and California Rules of Court, rules 3.769 and 3.7709 have been
24 satisfied with respect to Class members and the Settlement.

25 4. The certified Class is defined as follows in the Court's [DATE] Order Granting
26 Certification of the Settlement Class.

1 5. The Court finds and determines that, for settlement purposes, the Class Period
2 encompasses the period between January 8, 2016, and September 21, 2022, as specified in
3 the Court-approved Notice of Class Action Settlement and agreed upon by the Parties.

4 6. The notice mechanisms implemented pursuant to the Settlement Agreement and
5 as approved by the Court in the Preliminary Approval Order, were reasonably calculated
6 under the circumstances to apprise Class Members of the pendency of the Action and all
7 material elements of the proposed Settlement, as well as their opportunity to object to or
8 comment on the Settlement and to appear at the Fairness Hearing. The notice was reasonable:
9 it provided due, adequate, and sufficient notice to all Class Members and complied fully with
10 the laws of the State of California, the Code of Civil Procedure, the California Rules of Court,
11 due process, and any other applicable statutes or rules. A full and fair opportunity has been
12 afforded to the members of the Class to participate in the Fairness Hearing, and all Class
13 Members and other persons wishing to be heard have been heard. The Court finds that the
14 objections concerning [OBJECTIONS] are meritless. [OBJECTIONS] The objections are
15 overruled.

16 7. Accordingly, the Court determines that all members of the Class are bound by
17 this Judgment, Final Order, and Decree. The persons and entities identified in Exhibit 2
18 attached hereto, however, timely requested exclusion from the Class. Each of these persons
19 or entities is excluded from the Class, meaning they shall not be bound by the terms of the
20 present Settlement Agreement or by entry of this Judgment.

21 8. [No.] Class Members asserted Objections to the Settlement.

22 9. The Court hereby grants final approval to the Settlement and finds that it is fair,
23 reasonable, and adequate, and in the best interests of the Class.

24 10. The Settlement is entitled to a presumption of reasonableness, as it was
25 negotiated at arms' length by experienced and well-prepared Class Counsel. *7-Eleven Owners*
26 *for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2001).

27 11. Even apart from this presumption, the Court has determined that the Settlement
28 is fair, reasonable, and adequate as measured by the relevant criteria. *See Dunk v. Ford Motor*

1 Co., 48 Cal. App. 4th 1794, 1801 (1996) (listing and applying factors). Prior to entering into
2 the proposed Settlement, Class Counsel, who have extensive experience in class action and
3 wage and hour litigation, were well-informed about the potential risks and rewards of
4 continued litigation, having conducted reasonable discovery and investigation and assessed
5 Defendant's potential liability and Class Members' damages, including at private mediation
6 with an experienced and well-respected mediator.

7 12. The case is not yet set for trial, and continued litigation, including any
8 necessary post-trial appeal, presents significant risks for Class Members.

9 13. The Court finds that Two Hundred Fifty Thousand Dollars (\$250,000) in cash
10 is fair, reasonable, and adequate given the claims and defenses, the relatively small class size,
11 and the substantial litigations risks.

12 14. In addition, the reaction of Class Members strongly favors approval of the
13 Settlement. The Class consists of 171 current and former non-exempt employees who worked
14 for Defendant in California during the Class Period. Only [No.] Class Members objected to
15 the Settlement.

16 15. The plan for administration of the Settlement, as approved in the Preliminary
17 Approval Order and described in the Class Notice disseminated to all Class Members, is
18 hereby approved as fair, reasonable, and adequate. Pursuant to the Settlement and Class
19 Notice, funds are to be disbursed from the Settlement Fund as follows:

20 **i. Terms**

21 16. Based on the foregoing findings, the Settlement Agreement is finally approved
22 and made a part of this Judgment as if fully set forth herein and shall have the full force and
23 effect of an order of this Court. The Parties shall communicate the Settlement Agreement
24 according to its terms.

25 17. Accordingly, the Court hereby orders and declares: (i) the Settlement
26 Agreement is binding upon all Parties and Class Members; (ii) the Settlement Agreement
27 shall be preclusive in all pending and future lawsuits or other proceedings against Defendant
28 arising from the facts alleged in these Actions; and (iii) the Settlement Agreement and this

1 Order shall have *res judicata* and preclusive effect in all pending and future lawsuits or other
2 proceedings maintained against Defendant by or on behalf of Plaintiff or any other Class
3 Member, as well as each of their heirs, executors, administrators, successors and assigns.
4 Upon the Effective Date, the Settlement Agreement shall be the exclusive remedy against
5 Defendant for satisfaction of any and all Released Claims of Class Members who did not
6 properly and timely exclude themselves from the Class.

7 18. The Court hereby incorporates the release in the Settlement Agreement. Thus,
8 the Released Parties are and shall be released and forever discharged from all manner of all
9 claims, demands, rights, liabilities, and/or causes of action of any nature and description
10 whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that
11 were asserted or could have been asserted at any time in the Action based on the facts,
12 theories, and/or claims alleged in the Action; it includes and covers claims for violations of
13 any state or federal statutes, rules or regulations, claims that were asserted or could have been
14 asserted at any time in the Action based on the subject matter alleged in the Action by any
15 Class Member and/or Aggrieved Employee that, during the Class Period and or PAGA Period,
16 Defendant at any time that: 1) failed to pay wages, including minimum wages; 2) failed to
17 pay overtime and/or double-time wages; 3) failed to provide timely, full, and uninterrupted
18 rest breaks or a penalty payment in lieu thereof; 4) failed to provide timely, full, and
19 uninterrupted meal periods or a penalty payment in lieu thereof; 5) failed to provide accurate
20 itemized wage statements; 6) failed timely to pay wages or pay all wages due upon
21 termination of employment; 7) failed to provide restitution for unpaid sums; 8) failed to
22 maintain accurate records; 9) violated the Unfair Competition Law, Bus. & Prof. Code §
23 17200, *et seq.*; and 10) owed penalties pursuant to PAGA, Labor Code § 2698, *et seq.*,
24 including under Labor Code § 558. This Settlement is conditioned upon the release by all
25 Participating Class Members of any claim under Labor Code § 2698, *et seq.* and upon
26 covenants by all members that they will not participate in any proceeding seeking penalties
27 under Labor Code § 2698, *et seq.* (collectively, the “Released Claims”). Except as set forth
28 above, Released Claims does not include any other claims, including claims for vested

benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (the "Released Claims"). The period of the Released Claims shall cover the Class Period. The Parties agree that the judgment, and release of claims provided herein, shall have *res judicata* effect.

Without in any way limiting the definition of Released Parties, the following specific entity is a Released Party: Botanx, LLC.

19. In addition, Plaintiff hereby expressly waives and releases, upon this Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by section 1542 of the Civil Code, and any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the Civil Code. Civil Code section 1542 provides:

General Release – Claims Extinguished.

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

Plaintiff may hereafter discover facts other than or different from those which they know or believe to be true with respect to the Released Claims. Nevertheless, Plaintiff hereby expressly waives and fully, finally, and forever settles and releases, upon this Settlement Agreement becoming final, the Released Claims, whether any Released Claim is known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

20. Nothing in this order shall be construed to expand Defendant's obligations under the Settlement Agreement or to impose obligations on Defendant other than those contained in the Settlement Agreement.

B. Reservation of Jurisdiction

21. Without affecting the finality of this Judgment and Final Order, the Parties have submitted to the exclusive and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing jurisdiction over the Settlement, including administration, consummation, and interpretation of the Settlement Agreement. Pursuant to California Rules of Court, rule 3.769(h), the Court retains exclusive and continuing jurisdiction over the Parties to enforce the terms of this judgment.

C. Entry of Final Judgment

22. Pursuant to Code of Civil Procedure sections 578, 579, and 664.6, the Court, in the interests of justice, there being no just reason for delay, directs the Clerk of the Court to enter this Final Approval Order and Judgment, and hereby decrees that upon entry it shall be deemed a Final Judgment with respect to all claims asserted by Class Members against Defendant.

23. The Court directs that the Actions be dismissed with prejudice as against Defendant and, except as provided for in the Settlement Agreement, without costs to the Parties, and that an order and final judgment of dismissal be entered as between Plaintiff and Defendant.

IT IS HEREBY ORDERED.

Dated: September 21, 2022

HON. GLENDA SANDERS
JUDGE OF THE SUPERIOR COURT

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EXHIBIT B

**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. Glenda
Sanders, Dept. CX101]*

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-CXC₂ (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 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.

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 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 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

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

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.

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 Settlement Administrator postmarked on or before [_____, 2022] 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 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, 2) not be bound by or receive any benefit of this Settlement, 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.

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 file a written objection with the Court, send the objection to all counsel at the addresses listed below, and send the objection to the Settlement Administrator:

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 Court and Counsel must receive any written objection and notice of intent to appear at the Final Approval Hearing no later than [REDACTED], 2022 **[thirty (30) days after Rust mails Class 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, at **[time]** in Dept. CX101 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].

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

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EXHIBIT C

**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.

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

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EXHIBIT D

**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], 2022, 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 _____, 2022.

(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.**

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EXHIBIT E

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
Thomas E. Wheeler (SBN 308789)
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
twheeler@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

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

**Date: February 17, 2023
Time: 1:30 p.m.
Dept.: C20**

RESERVATION #: 1000354628

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

2 The Motion for Preliminary Approval of Class Action Settlement came before this
3 Court, on December 14, 2022 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.

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 is conditionally approved.

8. Plaintiffs’ Counsel Adrian R. Bacon, Todd M. Friedman, and Thomas E.

1 Wheeler of the Law Offices of Todd M. Friedman are conditionally approved as Class Counsel
2 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 is conditionally approved.

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

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

10 12. The estimated Administration Costs of up to \$10,000.00 to Rust for its services
11 as the Settlement Administrator are hereby conditionally approved.

12 13. The PAGA Award of \$10,000 (75% of \$7,500, with the remaining 25% allocated
13 to Class Members) is conditionally approved.

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

19 15. The Court directs the mailing of the Class Notice by first class mail to all Class
20 Members in accordance with the Implementation Schedule set forth in Paragraph 21 below.
21 The Court finds the dates selected for the mailing and distribution of the Class Notice, as set
22 forth in the Implementation Schedule, meet the requirements of due process and provide the
23 best notice practicable under the circumstances and shall constitute due and sufficient notice to
24 all persons entitled thereto.

25 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

1 Notice. Any such person who chooses to opt-out of and be excluded from the Class will not be
2 entitled to any recovery under the Settlement and will not be bound by the Settlement or have
3 any right to object, appeal, or comment thereon. Any written request to opt-out must be signed
4 by each such person opting out. Class Members who have not requested exclusion shall be
5 bound by all determinations of the Court, the Settlement, and Judgment.

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

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

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

25 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

1 vacated, and the Parties shall revert to their respective positions as of before entering into the
2 Stipulation.

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

- 5 a. Deadline for Defendant to submit
6 Class Member Data to Settlement
7 Administrator (within 20 days
8 after the Court Granting
Preliminary Approval): March 9, 2023
- 9 b. Deadline for Settlement
10 Administrator to Mail the Class
11 Notice to Class Members (within
10 days of receipt of the Class
Information from Defendant): March 20, 2023
- 12 c. Dispute Deadline (45 days from
13 the date the Class Notice is first
mailed): May 4, 2023
- 14 d. Objection/Exclusion Deadline (45
15 days from the date the Class
Notice if first mailed): May 4, 2023
- 16 e. Deadline for Class Counsel to file
17 Motion for Final Approval of
18 Class Action Settlement: May 12, 2023
- 19 f. Deadline for Class Counsel to file
20 Motion for Attorneys' Fees, Costs
and Incentive Award: April 21, 2023
- 21 g. Deadline for Settlement
22 Administrator to Submit
23 Declaration Detailing Claims/Opt
24 Outs/Objections (within 15 days
following the Opt-Out Period): May 19, 2023
- 25 h. Deadline to Submit Any
Responses to Objections and/or May 19, 2023
Reply Brief:

g. Final Approval Hearing Date: June 2, 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