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VENTURA SUPERIOR COURT

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VENTURA
SUPERIOR COURT
FILED

SEP 20 2022

BRENDAN L. MCCORMICK
Executive Officer and Clerk
By: *[Signature]* Deputy
ELIZABETH MULLER

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

FRANCISCO AGAPITO and AMBROCIO
LEZAMA, on behalf of themselves and all
other similarly situated,

Plaintiffs,

v.

LA VERNE NURSERY, INC., a California
Corporation, and DOES 1 through 100,

Defendants.

Case No. 56-2019-00527470-CU-OE-VTA

*[Assigned for all purposes to the
Hon. Henry J. Walsh, Dept. 42]*

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

Date: August 22, 2022

Time: 9:30 a.m.

Dept: 42

Complaint Filed: April 18, 2019

Trial Date: None set.

1 The Motion of Plaintiffs Francisco Agapito and Ambrocio Lezama ("Plaintiffs") for Final
 2 Approval of Class Action Settlement, Class Representative Service Awards, and Attorneys' Fees
 3 and Costs ("Final Approval Motion") came on regularly for hearing before this Court on August 22,
 4 2022 at 9:30 a.m., pursuant to California Rule of Court 3.769 and this Court's earlier Order granting
 5 preliminary approval. Having considered the Parties' Stipulation of Settlement ("Settlement
 6 Agreement"), and the documents and evidence presented in support thereof, and recognizing the
 7 sharply disputed factual and legal issues involved in this case, the risks of further prosecution, and
 8 the substantial benefits to be received by the Settlement Class pursuant to the Settlement, the Court
 9 hereby makes a final ruling that the Settlement is fair, reasonable, and adequate, and is the product
 10 of good faith, arm's-length negotiations between the Parties. Good cause appearing therefor, the
 11 Court hereby GRANTS Plaintiffs' Final Approval Motion and hereby ORDERS the following:

12 1. Final judgment is hereby entered in conformity with the Settlement Agreement and
 13 this Final Approval Order.

14 2. The conditional class certification contained in the Preliminary Approval Order is
 15 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
 16 Class consisting of:

17 All current and former non-exempt employees of La Verne Nursery, Inc.
 18 ("LVN") who worked for LVN in California at any time from April 18,
 2015 to February 28, 2022 ("Class Period").

19 3. Plaintiffs Francisco Agapito and Ambrocio Lezama are hereby confirmed as the
 20 Class Representatives, and Paul K. Haines and Neil M. Larsen of Haines Law Group, APC are
 21 confirmed as Class Counsel.

22 4. Notice was provided to the Settlement Class as set forth in the Settlement, which
 23 was preliminarily approved by the Court on February 28, 2022, and the notice process has been
 24 completed in conformity with the Court's Orders. The Court finds that said notice was the best
 25 notice practicable under the circumstances. The Class Notice provided due and adequate notice of
 26 the proceedings and matters set forth therein, informed Class Settlement members of their rights,
 27 and fully satisfied the requirements of California Code of Civil Procedure § 1781(e), California
 28 Rule of Court 3.769, and due process.

1 5. The Court finds that no Settlement Class member objected to the Settlement, no
2 Settlement Class Member has elected to opt-out of the Settlement, and that the 100% participation
3 rate in the Settlement supports final approval.

4 6. The Court hereby approves the Settlement as set forth in the Stipulation of
5 Settlement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement
6 Agreement according to its terms.

7 7. For purposes of settlement only, the Court finds that (a) the members of the
8 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
9 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
10 community of interest among members of the Settlement Class with respect to the subject matter
11 of the litigation; (c) the claims of the Class Representatives are typical of the claims of the members
12 of the Settlement Class; (d) the Class Representatives have fairly and adequately protected the
13 interests of the Settlement Class members; (e) a class action is superior to other available methods
14 for an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as
15 counsel for the Class Representatives and the Settlement Class.

16 8. The Court finds that given the absence of objections to the Settlement, and
17 objections being a prerequisite to appeal, that this Order shall be considered final, and the "Final
18 Effective Date" as defined in the Settlement shall have occurred, as of the date of entry of this
19 Judgment and Order.

20 9. The Court orders Defendant La Verne Nursery, Inc. ("LVN") to deposit the Gross
21 Settlement Amount in three (3) installments, as follows: (i) one-third of the Gross Settlement
22 Amount shall be paid by LVN within 14 Court days after the Court grants final approval of the
23 Settlement; (ii) one-third of the Gross Settlement Amount shall be paid within 3 months of the date
24 the Court grants final approval; and (iii) the remaining one-third shall be paid no later than six
25 months after the date the Court grants final approval, or by December 31, 2022, whichever comes
26 earlier.

27 10. The Court orders that funds from any Settlement Awards that remain uncashed more
28 than 180 days after issuance shall be distributed to *cy pres* recipient, Western Center on Law &

Poverty, in accordance with Section 384 of the California code of Civil Procedure.

11. The Court finds that the Settlement Awards, as provided for in the Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to distribute the individual Settlement Awards in conformity with the terms of the Settlement.

12. The Court finds that Class Representative Service Awards in the amount of \$5,000.00 to each Plaintiff, for a total of \$10,000.00, are appropriate for the risks undertaken and their service to the Settlement Class. The Court finds that the service awards are fair, reasonable, and adequate, and orders that the Settlement Administrator make these payments in conformity with the terms of the Settlement.

13. The Court finds that the attorneys' fees in the amount of \$133,333.33, and litigation costs of \$16,436.25 for Class Counsel, are fair, reasonable, and adequate, and orders the Settlement Administrator to distribute these payments to Class Counsel in conformity with the terms of the Settlement.

14. The Court finds that a payment to the Labor & Workforce Development Agency ("LWDA") in the amount of \$37,500.00 for the LWDA's share of civil penalties under the Labor Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the Settlement Administrator make this payment in conformity with the terms of the Settlement.

15. The Court orders that the Settlement Administrator shall be paid \$9,950.00 from the Gross Settlement Amount for all of its work done and to be done until the completion of this matter, and finds that sum appropriate.

16. The Settlement is not an admission by Defendant, nor is this Judgment and Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Judgment and Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendant.

17. As of the date that (i) the Final Effective Date (as defined below) occurs and (ii) the settlement is fully funded, Plaintiffs and every member of the Settlement Class will fully release and discharge Defendant and any of Defendant's officers, directors, employees, agents, principals,

1 representatives, attorneys, accountants, partners, investors, shareholders, administrators, insurers
2 and reinsurers, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
3 assigns, and/or any party that was named as defendants in the Action (collectively, the "Released
4 Parties"), from any and all causes of action, claims, rights, or statutory damages, penalties,
5 liabilities, expenses, and losses under California law that were alleged in the Complaint or that
6 could have been alleged based on the facts alleged in the Complaint, including, but not limited to:
7 any alleged failure by Defendant (1) to pay minimum wages; (2) to pay overtime wages; (3) to
8 provide meal periods; (4) to indemnify or reimburse employees for work-related expenses; (5) to
9 provide compliant wage statements; (6) to timely pay wages at the end of alleged employment; (7)
10 alleged unlawful deductions from wages; and (8) any right or claim for unfair business practices in
11 violation of California Business & Professions Code sections 17200, *et seq.*, based on the alleged
12 failures set forth in (1) through (7) above, arising from their employment with LVN during the
13 Class Period ("California Released Claims"). In addition, all Settlement Class members (whether
14 or not they opt out) who worked for Defendant in California at any point from April 30, 2018
15 through February 28, 2022 (the "PAGA Period") shall release any right or claim for civil penalties
16 pursuant to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*
17 ("PAGA"), arising under the California Labor Code or Wage Orders based on the alleged failures
18 set forth in (1) through (7) above arising from their employment with LVN during the PAGA Period
19 ("PAGA Released Claims").

20 18. The Court finds that as of the date of this Judgment and Order and the Settlement
21 being fully funded, Plaintiffs shall be deemed to have released, in addition to the Class Released
22 Claims and PAGA Released Claims, all claims, whether known or unknown, under federal law or
23 state law, against the Released Parties, arising from their employment with Defendant, through the
24 date this Settlement Agreement is signed by Plaintiffs ("Plaintiffs' Released Claims"). This release
25 of Plaintiffs' Released Claims does not resolve any workers' compensation claims, claims for
26 unemployment insurance benefits, or any other claims which cannot be released as a matter of law.
27 Plaintiffs understand that this release includes unknown claims and that Plaintiffs are, as a result,
28 waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which

1 provides: "A general release does not extend to claims that the creditor or releasing party does not
 2 know or suspect to exist in his or her favor at the time of executing the release and that, if known
 3 by him or her, would have materially affected his or her settlement with the debtor or released
 4 party."

5 19. This document shall constitute a final judgment pursuant to California Rule of Court
 6 3.769(h) which provides, "If the court approves the settlement agreement after the final approval
 7 hearing, the court must make and enter judgment. The judgment must include a provision for the
 8 retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court
 9 may not enter an order dismissing the action at the same time as, or after, entry of judgment."

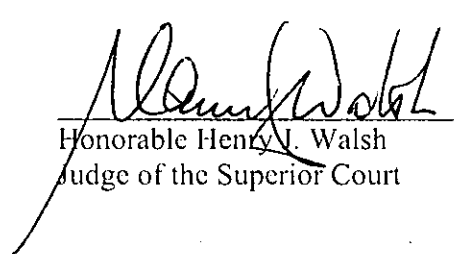
10 20. The Court will retain jurisdiction to enforce the Settlement, and this Judgment and
 11 Order. The Settlement Administrator shall give notice of this Judgment by posting it on its website.

12 21. Plaintiffs shall file a disbursement declaration on or before September 29, 2023. A
 13 Non-Appearence Case Review regarding the filing of a disbursement declaration is hereby set for

14 October 24, 2023 at 8:30 a.m./p.m.

16 **IT IS SO ORDERED.**

17 Dated: August 22, 2022

18 
 19 Honorable Henry J. Walsh
 20 Judge of the Superior Court