

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Francisco Agapito and Ambrocio Lezama (“Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant La Verne Nursery, Inc., (“Defendant” or “LVN”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, Neil M. Larsen, and Bianca V. Perez of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Arthur F. Silbergeld of Stradling Yocca Carlson & Rauth.

On April 18, 2019, Plaintiff Agapito filed his class action lawsuit against LVN, in Ventura County Superior Court, in the matter titled *Francisco Agapito v. La Verne Nursery, Inc.*, Case No. 56-2019-00527470-CU-OE-VTA (the “Action” or “Lawsuit”). On July 5, 2019, Plaintiff Agapito filed his First Amended Class and Representative Action Complaint (“Complaint”) alleging the following causes of action: (i) failure to pay all overtime wages; (ii) minimum wage violations; (iii) meal period violations; (iv) unlawful deductions from wages; (v) wage statement violations; (vi) waiting time penalties; (vii) failure to reimburse necessary business expenditures; (viii) unfair competition as a result of the aforementioned violations (Bus. & Prof. Code § 17200 *et seq.*); and (ix) civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, as a result of the aforementioned violations. On August 19, 2020, Plaintiffs filed the operative Second Amended Complaint (“Complaint”), which added Plaintiff Lezama as a Class Representative.

Given the uncertainty of litigation, Plaintiffs and LVN wish to settle both individually and on behalf of the Settlement Class (defined below). Accordingly, Plaintiffs and LVN agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and LVN stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of LVN who worked for LVN in California at any time from April 18, 2015 through the date of preliminary approval of the Settlement (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiffs.** 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, representatives, attorneys, accountants, partners, investors, shareholders, administrators, insurers and reinsurers, parent companies, subsidiaries,

affiliates, divisions, predecessors, successors, assigns, , and/or any party that was named as defendants in the Action (collectively, the “Released Parties”), as follows:

- A. Settlement Class members (except those who opt-out) shall release any and all causes of action, claims, rights, or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the Complaint or that could have been alleged based on the facts alleged in the Complaint, including, but not limited to: any alleged failure by Defendant (1) to pay minimum wages; (2) to pay overtime wages; (3) to provide meal periods; (4) to indemnify or reimburse employees for work-related expenses; (5) to provide compliant wage statements; (6) to timely pay wages at the end of alleged employment; (7) alleged unlawful deductions from wages; and (8) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, et seq., based on the alleged failures set forth in (1) through (7) above, arising from their employment with LVN during the Class Period (“California Released Claims”). In addition, all Settlement Class members (whether or not they opt out) who worked for Defendant in California at any point from April 30, 2018 through the end of the Class Period (the “PAGA Period”) shall release any right or claim for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”), arising under the California Labor Code or Wage Orders based on the alleged failures set forth in (1) through (7) above arising from their employment with LVN during the PAGA Period (“PAGA Released Claims”).
- B. In light of Plaintiffs’ Class Representative Service Awards, Plaintiffs have agreed to release, as individuals and, in addition to the California Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal law or state law, against the Released Parties, arising from their employment with Defendant, through the date this Settlement Agreement is signed by Plaintiffs (“Plaintiffs’ Released Claims”). The Parties understand and agree that Plaintiffs are not, by way of this release, releasing any workers’ compensation claims, claims for unemployment insurance benefits, or any other claims which cannot be released as a matter of law. Plaintiffs understand that this release includes unknown claims and that Plaintiffs are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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.

- 3. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary gross settlement amount (“Gross Settlement Amount”) of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
- B. The term “Final” and “Final Effective Date” means: (i) that the Settlement Agreement has received Final Approval by the Court and there were no timely objections or intervener requests filed, or that any timely objections and/or interveners have been withdrawn; or (ii) in the event that one or more timely objections or interventions has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector or intervener to seek appellate review of the Court’s order of Final Approval, without a timely appeal having been filed; or (iii) in the event that a timely appeal of the Court’s order of Final Approval has been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the Court’s Final Approval order without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.
- C. The Gross Settlement Amount will be paid by Defendant to the Settlement Administrator in three (3) installments, as follows: (i) one-third of the Gross Settlement Amount (\$133,333.33) shall be paid by Defendant within 14 Court days after the Court grants final approval of the Settlement; (ii) one-third of the Gross Settlement Amount (\$133,333.33) shall be paid within 3 months of the date the Court grants final approval; and (iii) the remaining one-third (\$133,333.34) shall be paid no later than six months after the date the Court grants final approval, or by December 31, 2022, whichever comes earlier.
- D. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator which are anticipated to be no greater than Eleven Thousand Dollars Cents (\$11,000.00);
 - (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) each (for a total of \$10,000.00) for Plaintiffs’ Class Representative Service Awards, in recognition of Plaintiffs’ contributions to the Action and Plaintiffs’ services to the Settlement Class;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated to be \$133,333.33), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); and
 - (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), will be

payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class members who do not opt out.

- E. **Employer Payroll Taxes.** The Gross Settlement Amount does not include employer-side payroll taxes, which shall be paid by Defendant separate from, and in addition to, the Gross Settlement Amount. The employer-side taxes shall be deposited by Defendant with the Settlement Administrator no later than the date the final installment is due.
- F. **Escalator Clause.** Defendant represents that there are approximately 422 Settlement Class members. The Parties agree that this is a material term of the Settlement. If the actual number of Settlement Class members is 5% or more greater than 422 (i.e., if there are 444 or more Settlement Class members), then the Gross Settlement Amount shall increase commensurate with the amount of increase to Settlement Class members (e.g., if the actual number of Settlement Class members is 10% greater than 422, the Gross Settlement Amount will increase by 10%).

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Shares will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Service Awards, the Settlement Administrator’s fees and expenses for administration, and the amount set aside as PAGA civil penalties. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. Payments to all participating Settlement Class members: Seventy percent (70%) of the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member’s proportionate workweeks worked for Defendant in California (“Workweeks”) during the Class Period, and which shall be calculated by multiplying 70% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.

- ii. Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” Each participating Settlement Class member whose employment with Defendant ended at any time from April 18, 2016 through the end of the Class Period shall receive an equal, pro-rata share of the Waiting Time Amount.
- iii. Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time from April 18, 2018 to the end of the Class Period (“Wage Statement Period”) shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked for Defendant in California (“Pay Periods”) during the Wage Statement Period, and which shall be calculated by multiplying 15% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of Pay Periods worked during the Wage Statement Period, and the denominator of which is the total Pay Periods worked by all participating Settlement Class members during the Wage Statement Period.
- iv. PAGA Amount: In addition to the Net Settlement Amount, each Settlement Class member (regardless whether they opt out) who was employed by Defendant in California at any time during the PAGA Period shall receive a portion of the \$12,500.00 of the Gross Settlement Amount that has been designated as the “PAGA Amount” (as indicated above), proportionate to the number of Pay Periods that he or she worked during the PAGA Period, and which shall be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s number of Pay Periods worked during the PAGA Period, and the denominator of which is the total Pay Periods worked by all Settlement Class members during the PAGA Period. Settlement Class members whose Settlement Award includes payments from both the Net Settlement Amount and the PAGA Amount will have both amounts aggregated in one check.

C. **Calculation of Individual Settlements.** Within five (5) Court days of the Effective Date, the Settlement Administrator will calculate individual Settlement Award amounts for all Settlement Class members, as well as the amount of the employer’s share of payroll taxes due on the wage portion of the Settlement Awards, and provide the same to counsel for review and approval.

D. **Payment of Individual Settlement Awards.** Within five (5) Court days of (i) the Final Effective Date occurring and (ii) Defendant’s deposit of the final installment of the Gross Settlement Amount and employer-side taxes, and after approval by counsel of the Settlement Award calculations, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel. The Settlement Administrator shall pay the amounts

approved by the Court for Class Counsel's attorneys' fees and costs, Plaintiffs' Class Representative Service Awards, and PAGA payment to the LWDA at the same time it mails Settlement Awards to Settlement Class members.

- E. For tax purposes, each Settlement Award shall be allocated as follows: any payment made from the PAGA Amount shall be treated as 100% penalties. Any payment made from the Net Settlement Amount shall be allocated as one-third (1/3) wages, one-third (1/3) penalties, and one-third (1/3) interest. The Settlement Administrator will be responsible for issuing to Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans. Moreover, each Settlement Class member is responsible for the proper tax treatment of his/her individual Settlement Award, and neither Plaintiffs, Defendant, nor their respective counsel are providing tax advice with respect to the proper tax treatment of Settlement Awards.
- F. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to Western Center on Law & Poverty as a *cy pres* beneficiary.
- G. Neither Plaintiffs nor Released Parties (nor their respective counsel) shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be \$133,333.33. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$25,000.00, from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Service Awards.** Defendant will not object to a request for a Class Representative Service Award of up to \$5,000.00 each (for a total of \$10,000.00) to Plaintiffs, for their time and risk in prosecuting this case and Plaintiffs' services to the Settlement Class. This award will be in addition to Plaintiffs' Settlement Awards as Settlement Class members, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiffs seeking approval to pay up to \$11,000 for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending Notice Packets to the Settlement Class members, calculating Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Awards have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Tuvia Korobkin, Neil M. Larsen, and Bianca V. Perez of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiffs Francisco Agapito and Ambrocio Lezama as Class Representatives for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Award), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) Court days after entry of an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, dates of employment, and Workweek and Pay Period data (“Class Data”) for each Settlement Class member.
- B. Within ten (10) Court days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Awards for each Settlement Class member, and receive approval from counsel of those calculations; and (iv) mail a Notice

Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Requests for Exclusion. Any Settlement Class member who wishes to opt out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must prepare and submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement (except for the PAGA release, if applicable) or have any right to object, appeal or comment thereon.
 - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.
- D. Objections. Members of the Settlement Class who do not opt out may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection to the Settlement Administrator (who shall serve all objections as received on Defendant’s counsel and Class Counsel, who will file all such objections with the Court) within the Response Deadline. Defendant’s counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are submitted within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant’s counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must be in writing and: (1) contain the objecting Settlement Class member’s full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and

legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Objecting Settlement Class members may, but need not, appear at the Final Approval Hearing to argue their written objection. Any attorney seeking to represent an objecting Settlement Class member at the Final Approval Hearing must submit a Notice of Appearance to the Court and serve it on all counsel, no later than the Response Deadline.

- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as the information that was used to calculate the Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, Objection, or dispute. Notice Packets that are re-sent shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative Service Awards, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or wrongdoing or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiffs: Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Suite 1550, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Arthur F. Silbergeld of Stradling Yocca Carlson & Rauth
10100 Santa Monica Blvd., Suite 1400, Los Angeles, CA 90067
asilbergeld@stradlinglaw.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Nondisclosure and Nonpublication.** Class counsel shall not publicize the settlement on its website or in advertising/marketing materials, other than filing documents with the Court. Plaintiffs and Class Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If Plaintiffs or Class Counsel receive an inquiry about the settlement from the media, they may respond only after the motion for preliminary approval has been filed and only by confirming the accurate terms of the settlement. Nothing in this provision shall prevent Defendant from making any required disclosure. Nothing shall prevent Class Counsel from including a general description of the settlement on their website, without the mention of the names of the parties, the street address, city or county location of LVN, or the industry and nature of business of LVN or the case number. For example, Class Counsel may include on their website, "\$400,000 settlement obtained on behalf of agricultural workers." Nor shall anything in this Settlement prevent Class Counsel from referring to this case in a declaration establishing qualification as class counsel in future cases.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

DATED:

11-29-2021

LA VERNE NURSERY, INC.

By:

Name:

Title:

Richard Wilson
Richard Wilson
CEO

DATED:

PLAINTIFF FRANCISCO AGAPITO

By:

Plaintiff and Settlement Class Representative

DATED:

PLAINTIFF AMBROSIO LEZAMA

By:

Plaintiff and Settlement Class Representative

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DATED:

LA VERNE NURSERY, INC.

By: _____
Name: _____
Title: _____

DATED:

Nov 17, 2021

PLAINTIFF FRANCISCO AGAPITO

By:  _____
Francisco Agapito (Nov 17, 2021 07:51 PST)
Plaintiff and Settlement Class Representative

DATED:

PLAINTIFF AMBROSIO LEZAMA

By: _____
Plaintiff and Settlement Class Representative

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DATED:

LA VERNE NURSERY, INC.

By: _____
Name: _____
Title: _____

DATED:

PLAINTIFF FRANCISCO AGAPITO

By: _____
Plaintiff and Settlement Class Representative

DATED: Nov 5, 2021

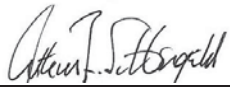
PLAINTIFF AMBROSIO LEZAMA

By:  _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM ONLY:

DATED: December 1, 2021

STRADLING YOCCA CARLSON & RAUTH LLP

By: 

Arthur F. Silbergeld
Attorneys for Defendant

DATED: December 8, 2021

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiffs

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

FRANCISCO AGAPITO,

Plaintiff,

vs.

LA VERNE NURSERY, INC.

Defendants.

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

**NOTICE OF PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees of La Verne Nursery, Inc. ("LVN") who worked for LVN in California at any time from April 18, 2015 through <<PRELIM APPROVAL DATE>> ("Class Period")

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this Notice?

The Ventura County Superior Court ("Court") has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Francisco Agapito, et al v. La Verne Nursery, Inc.*, Ventura County Superior Court Case No. 56-2019-00527470-CU-OE-VTA (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. LVN's records show that you were employed by LVN in California at some point between April 18, 2015 through <<PRELIM APPROVAL DATE>> and are therefore part of the proposed "Settlement Class." The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator's website, www.phoenixclassaction.com.

What is this case about?

Plaintiffs Francisco Agapito and Ambrocio Lezama ("Plaintiffs") have filed a lawsuit alleging that LVN violated California law by: (i) failing to pay all overtime wages; (ii) failing to pay all minimum wages; (iii) failing to provide meal periods; (iv) failing to indemnify or reimburse necessary business expenses; (v) failing to issue accurate itemized wage statements; (vi) failing to pay all wages owing upon separation of employment; (vii) taking unlawful deductions from wages; and, as a result of the above, (viii) engaging in unlawful business practices. In addition, Plaintiffs seek recovery of derivative civil penalties under the California Labor Code Private Attorneys General Act ("PAGA"), interest, and attorneys' fees and costs. Plaintiffs are known as the "Class Representatives." Plaintiffs' attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

LVN has denied and continues to deny that it has done anything wrong, and believes it has acted in compliance with all applicable laws and that Plaintiffs' claims have no merit. LVN also denies that it owes any wages, restitution, penalties, or other damages. By agreeing to settle, LVN is not admitting liability on any of the factual allegations or claims asserted in the Action or that the Action can or should proceed as a class action in a non-settlement context.

The Court has not ruled on the merits of Plaintiffs' claims. However, to avoid additional expense, inconvenience, and interference with its business operations, LVN has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After LVN provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representatives and Class Counsel also support the Settlement. Among the reasons for support are the defenses to liability potentially available to LVN, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by LVN, your decision about whether to participate in the Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. LVN will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs / the Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com Neil M. Larsen nlarsen@haineslawgroup.com Bianca V. Perez bperez@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for LVN: STRADLING YOCCA CARLSON & RAUTH Arthur F. Silbergeld asilbergeld@stradlinglaw.com 10100 San Monica Boulevard, Suite 1400 Los Angeles, California 90067 Tel.: (424) 214-7000 Fax: (424) 214-7010 www.stradlinglaw.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement on behalf of a Settlement Class consisting of all current and former non-exempt employees of LVN who worked for LVN in California at any time from April 18, 2015 through <<PRELIM APPROVAL DATE>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against LVN as specifically described below.

LVN has agreed to pay \$400,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including claims by Settlement Class members, attorneys' fees, costs, settlement administration costs, PAGA civil penalties, and the Class Representatives' enhancement awards.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$11,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel will ask for fees of up to one-third of Gross Settlement Amount, currently estimated to be \$133,333.33, as reasonable compensation for the work Class Counsel performed, and will continue to perform, in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$25,000.00 of verified costs Class Counsel incurred in connection with the Action.

Class Representative Enhancement Awards. Class Counsel will ask the Court to approve an enhancement award of up to \$5,000 to each Class Representative (for a total of \$10,000). This award is to compensate the Class Representatives for their service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The Parties have agreed to allocate \$50,000 of the Gross Settlement Amount as alleged civil penalties for the settlement of Plaintiffs' PAGA claim. Pursuant to the requirements of the PAGA, 75% of that amount, or \$37,500, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining \$12,500 has been designated as the "PAGA Amount" and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Class Members' Individual Settlements. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated to be approximately \$170,666.67. Together with the \$12,500 PAGA Amount, the total amount to be distributed to Settlement Class members is estimated to be \$183,166.67. Payments to Settlement Class members will be calculated as follows:

- (i) 70% of the NSA has been designated for all participating Settlement Class members, and will be allocated proportionally based on each Settlement Class member's total weeks worked for LVN in California ("Workweeks") during the Class Period.
- (ii) 15% of the NSA has been designated as the "Wage Statement Amount" and will be allocated to all participating Settlement Class members who were employed by LVN at any time from April 18, 2018 to <<PRELIM APPROVAL DATE>>, in proportion to the number of pay periods that each Settlement Class member worked for LVN in California during that time period.
- (iii) 15% of the NSA has been designated as the "Waiting Time Amount," and each participating Settlement Class member whose employment with LVN ended at any time from April 18, 2016 through <<PRELIM APPROVAL DATE>> will receive an equal share of the Waiting Time Amount.
- (iv) In addition to the NSA, \$12,500 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated to all Settlement Class members who worked for LVN in California at any time from April 30, 2018 to <<PRELIM APPROVAL DATE>> (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for LVN in California during that time period.

Deposit of Gross Settlement Amount. LVN will deposit the Gross Settlement Amount with the Settlement Administrator in three (3) installments, as follows: (i) one-third of the Gross Settlement Amount (\$133,333.33) will be paid by Defendant within 14 days after the Court grants final approval of the settlement; (ii) one-third of the Gross Settlement Amount (\$133,333.33) shall be paid within 3 months of the date the Court grants final approval; and the remaining one-third of the Gross Settlement Amount (\$133,333.34) shall be paid no later than six months after the date the Court grants final approval, or by December 31, 2022, whichever is earlier.

Payments to Settlement Class Members: Settlement Class members payments, known as "Settlement Awards," will be mailed approximately 5 Court days after LVN deposits the final installment of the Gross Settlement Amount with the Settlement Administrator.

Allocation and Taxes. For tax purposes, Settlement Awards shall be treated as follows: all amounts paid from the PAGA Amount will be treated as 100% penalties, and all amounts paid from the NSA will be treated as 1/3 wages, 1/3 penalties, and 1/3 interest. The Settlement Administrator will issue IRS forms W-2 for all amounts designated as "wages," and will issue IRS forms 1099 for all amounts designated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, LVN and its counsel, and Class Counsel cannot provide tax advice.

Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement and the Settlement becomes final, the Class Representatives, and every member of the Settlement Class (except those who opt out) will fully release and discharge LVN, and any of LVN's officers, directors, employees, agents, principals, representatives, attorneys, accountants, partners, investors, shareholders, administrators, insurers and reinsurers, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and/or any party that was named as defendants in the Action (collectively, the "Released Parties") from any and all causes of action, claims, rights, or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the operative Complaint in the Action, or which could have been alleged based on the facts alleged in the operative Complaint in the Action, including claims for: (1) failure to pay all overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to reimburse for necessary business expenses; (5) failure to furnish compliant wage statements; (6) failure to timely pay final wages; (7) unlawful deductions from wages; and (8) all claims for unfair business practices premised on the above-mentioned violations, arising from their employment with LVN during the Class Period ("California Released Claims"). In addition, all Settlement Class members (regardless whether they opt out) who worked for LVN at any time during the PAGA Period shall release LVN from all claims for civil penalties under PAGA based on the above-mentioned violations, arising from their employment with LVN during the PAGA Period (the "PAGA Released Claims").

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I receive money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your individual Settlement Award based on the number of Workweeks you worked for LVN in California during the Class Period; the number of pay periods, if any, you worked for LVN in California between April 18, 2018 and <<PRELIM APPROVAL DATE>>; the number of pay periods you worked for LVN in California during the PAGA Period; and whether your employment with LVN ended between April 18, 2016 and <<PRELIM APPROVAL DATE>>. Your estimated individual Settlement Award is included in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

Check Cashing Deadline and Uncashed Checks. You must cash or deposit your Settlement Award check within 180 days from the date that the Settlement Administrator mails the check to you. If you do not cash or deposit your check within 180 days, your check will be voided and the funds from the check will be sent to *cy pres* recipient Western Center on Law & Poverty, a non-profit law firm that advocates on behalf of low-income Californians.

What other options do I have?

Disputing Information in Notice of Estimated Individual Settlement. Your estimated Settlement Award has been calculated and is included in the enclosed Notice of Estimated Settlement Award. As stated above, your estimated Settlement Award is based on the number of Workweeks you worked for LVN in California during the Class Period; the number of pay periods, if any, you worked for LVN in California between April 18, 2018 and <<PRELIM APPROVAL DATE>>; the number of pay periods, if any, you worked for LVN in California during the PAGA Period; and whether your employment with LVN ended between April 18, 2016 and <<PRELIM APPROVAL DATE>>. The information contained in LVN's records regarding each of these factors is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve

any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or postcard, postmarked no later than <<RESPONSE DEADLINE>>, with your full name (as well as any former names you used while you were employed by LVN), your current address, telephone number, last 4 digits of your social security number, and your signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE AGAPITO V. LA VERNE NURSERY, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member with respect to the class claims alleged, shall be barred from participating in the class Settlement, and shall receive no benefits from the class Settlement. Any person who submits a valid and timely Request for Exclusion will also lack standing to submit any objection to the Settlement. However, all Settlement Class members who worked for LVN during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written Objection to the Settlement Administrator. Your written Objection must include your full name (as well as any former names used while employed by LVN), current address and phone number, last 4 digits of your social security number, the name and contact information of any attorney representing you, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. All objections or other correspondence must state the name and number of the case, which is *Francisco Agapito v. La Verne Nursery, Inc.*, Ventura County Superior Court Case No. 56-2019-00527470-CU-OE-VTA. Any Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing. You have the right to appear either in person or through your own attorney at this hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Francisco Agapito v. La Verne Nursery, Inc.*, Ventura County Superior Court Case No. 56-2019-00527470-CU-OE-VTA.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 42 of the Ventura County Superior Court, located at 800 South Victoria Avenue, Ventura, California 93009. At the Final Approval Hearing, the Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of expenses, the incentive awards to the Class Representatives, and the Settlement administration costs. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

If you plan on attending the hearing or otherwise visiting the Court, please consult the Court's website, www.ventura.courts.ca.gov, for information regarding court operations during COVID-19 as well as any face covering and social distancing requirements.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Ventura County Superior Court, located at 800 South Victoria Avenue, Ventura, California 93009, during regular court hours. You may also contact the Settlement Administrator or Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

FRANCISCO AGAPITO v. LA VERNE NURSERY, INC.
VENTURA COUNTY SUPERIOR COURT CASE NO. 56-2019-00527470-CU-OE-VTA

Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Individual Settlement:

According to La Verne Nursery, Inc.'s ("LVN") records:

- (a) you worked _____ Workweeks for LVN in California between April 18, 2015 and <<PRELIM APPROVAL DATE>>;
- (b) you worked _____ pay periods for LVN in California between April 18, 2018 and <<PRELIM APPROVAL DATE>>;
- (c) you worked _____ pay periods for LVN in California between April 30, 2018 and <<PRELIM APPROVAL DATE>>; and
- (d) your employment with LVN <<DID/DID NOT>> end between April 18, 2016 and <<PRELIM APPROVAL DATE>>.

Based on the above, your Settlement Award is estimated at \$ _____.

(IV) If you disagree with any of the items (a) - (d) in Section (III) above, please explain why in the space below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from LVN's records, LVN's records will control unless you are able to provide documentation that establishes that LVN's records are mistaken. If there is a dispute about whether LVN's information or yours is accurate, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Class Action Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.