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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

JUAN CARLOS CASTELLANOS, individually,
and on behalf of members of the general public
similarly situated;

Plaintiff,

vs.

DEVIL MOUNTAIN WHOLESALE
NURSERY, INC., a California Corporation; and
DOES 1 through 100, inclusive,

Defendants.

Lead Case No.: MSC20-02078

Hon. Edward Weil
Dept. 39

Action Filed: October 13, 2020
Date of Consolidation: August 2, 2021

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

JOEL GALVAN MONTES, on behalf of himself
and all others similarly situated and aggrieved,

Plaintiff,

vs.

DEVIL MOUNTAIN WHOLESALE
NURSERY, INC., a converted California
corporation; DEVIL MOUNTAIN
WHOLESALE NURSERY, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No.: MSC20-02647

Hon. Edward Weil
Dept. 39

Action Filed: December 29, 2020

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DEVIL MOUNTAIN WHOLESALE NURSERY, INC.

and DEVIL MOUNTAIN WHOLESALE NURSERY, LLC

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement is entered into by and
3 between Plaintiffs Juan Carlos Castellanos and Joel Galvan Montes, individually and on behalf
4 of the Class and Defendants Devil Mountain Wholesale Nursery, Inc. and Devil Mountain
5 Wholesale Nursery, LLC.

6 **DEFINITIONS**

7 1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class
8 Action and PAGA Settlement.

9 2. “Actions” means all causes of action, claims, and allegations in the operative
10 complaints in the lawsuits entitled *Castellanos v. Devil Mountain Wholesale Nursery, Inc. et al.*,
11 Contra Costa Superior Court Case No. MSC20-02078 and *Montes v. Devil Mountain Wholesale*
12 *Nursery, Inc. et al.*, Contra Costa County Superior Court Case No. MSC20-02647.

13 3. “Class Counsel” means Payne Nguyen, LLP and Bibiyan Law Group, P.C.

14 4. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s
15 litigation and resolution of the Actions and their expenses and costs incurred in connection with
16 the Actions, which shall be paid from the Total Settlement Amount. Class Counsel will request
17 attorneys’ fees not to exceed thirty-five percent (35%) of the Total Settlement Amount
18 (\$339,500.00) and the reimbursement of any costs and expenses associated with Class Counsel’s
19 litigation and settlement of the Actions, not to exceed Twenty-Five Thousand Dollars
20 (\$25,000.00), subject to the Court’s approval. Defendants have agreed not to oppose Class
21 Counsel’s request for fees and reimbursement of costs and expenses in the amounts set forth
22 above.

23 5. “Class List” means a complete list of all Class Members that Defendants will
24 diligently and in good faith compile from their records and provide to the Settlement
25 Administrator within ten (10) calendar days after Preliminary Approval of this Settlement. The
26 Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the
27 following information for each Class Member: (1) full name; (2) last known home address; (3)
28 last known telephone number; (4) social security number; (5) start and end dates of active

1 employment as a non-exempt employee of Defendants in the State of California; (6) total
2 workweeks during the Class Period; and (7) any other information required by the Settlement
3 Administrator in order to effectuate the terms of the Settlement. Under no circumstances will the
4 Class List be provided to Class Counsel.

5 6. “Class” or “Class Members” means all hourly, non-exempt employees of
6 Defendants in the State of California who worked at any time during the Class Period, excluding
7 those employees who have signed arbitration and/or separation agreements with Defendants.

8 7. “Class Notice” means the Notice of Class Action Settlement in a form
9 substantially similar to the form attached hereto as Exhibit A, in both English and Spanish, that
10 will be mailed to each Class Members’ last known address and which will provide Class Members
11 with information regarding the Actions and information regarding the settlement of the Actions.

12 8. “Class Period” means the period from October 13, 2016, through the date of
13 preliminary approval of the Settlement Agreement.

14 9. “Class Representatives” means Plaintiffs Juan Carlos Castellanos and Joel Galvan
15 Montes in their capacity as representatives of the Participating Class Members.

16 10. “Class Representative Enhancement Payments” means the amount that the Court
17 authorizes to be paid to Plaintiffs Juan Carlos Castellanos and Joel Galvan Montes, in addition to
18 their Individual Settlement Payments, in recognition of the efforts and risks they have taken in
19 assisting with the prosecution of the Actions and in exchange for the General Release of their
20 claims as provided herein.

21 11. “Court” means the Superior Court of the State of California for the County of
22 Contra Costa.

23 12. “Defendants” means Devil Mountain Wholesale Nursery, Inc. and Devil Mountain
24 Wholesale Nursery, LLC.

25 13. “Final Approval” means the Court entering an order granting final approval of the
26 Settlement Agreement.

27 14. “Individual Settlement Payment” means the amount payable from the Net
28 Settlement Amount to each Participating Class Member and any payment a PAGA Member is

1 eligible to receive from the employee portion of the PAGA Penalties. Individual Settlement
2 Payments shall be paid by a settlement check made payable to Participating Class Members and/or
3 PAGA Members.

4 15. “Net Settlement Amount” means the funds available for payments to the Class,
5 which shall be the amount remaining after the following amounts are deducted from the Total
6 Settlement Amount: (1) Class Counsel’s fees, (2) Class Counsel’s costs, (3) Settlement
7 Administration Costs, (4) Class Representative Enhancement Payments to Plaintiffs, and (5)
8 PAGA Penalties to be paid to the California Labor and Workforce Development Agency
9 (“LWDA”) and PAGA Members.

10 16. “PAGA” means the California Labor Code Private Attorneys General Act of 2004
11 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

12 17. “PAGA Penalties” means the amount that the Parties have agreed to allocate in
13 order to settle claims arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§
14 2698, *et seq.*). The Parties have agreed that Twenty Thousand Dollars (\$20,000.00) of the Total
15 Settlement Amount will be allocated to the resolution of Plaintiffs’ PAGA claims. Seventy-five
16 percent (75%) of the PAGA Penalties (i.e., \$15,000.00) will be paid to the LWDA in accordance
17 with Labor Code §§ 2698 *et seq.* The remaining twenty-five percent (25%) of the PAGA Penalties
18 (i.e., \$5,000.00), will be distributed to PAGA Members. PAGA Members will receive payment
19 from the employee portion of the PAGA Penalties regardless of their decision to participate in the
20 class action if the PAGA Penalties is approved by the Court.

21 18. “PAGA Period” means the period commencing on July 24, 2019, through the date
22 of preliminary approval of the Settlement Agreement.

23 19. “PAGA Members” means all current and former hourly, non-exempt employees
24 of Defendants in the State of California who worked at any time during the PAGA Period.

25 20. “Parties” means Plaintiffs and Defendants, collectively, and “Party” shall mean
26 either Plaintiffs or Defendants.

27 21. “Participating Class Members” means all Class Members who do not submit a
28 valid and timely Request for Exclusion.

22. “Pay Period” shall mean any bi-weekly pay period in which a Class Member or
PAGA Member performed work for Defendants at least one day.

23. “Plaintiffs” means Juan Carlos Castellanos and Joel Galvan Montes.

24. “Preliminary Approval” means the Court order granting preliminary approval of
the Settlement Agreement.

25. “Objection” means a Class Member’s valid and timely written objection to the
Settlement Agreement. For an Objection to be valid, it must include: (a) the objector’s full name,
address, telephone number, last four digits of the employee’s social security number or employee
ID number and (b) a written statement of all grounds for the objection accompanied by legal
support, if any, for such objection.

26. “Released Claims” means all claims, rights, demands, liabilities, and causes of
action, arising from, or related to, the same set of operative facts as those set forth in the operative
complaints in the Actions and in the Plaintiffs’ PAGA letters that occurred during the Class
Period. The Released Claims include, without limitation, claims for unpaid overtime, failure to
pay earned minimum wages, failure to provide compliant meal and rest periods, failure to pay
premium pay for meal and rest period violations, failure to provide sick leave in accordance with
the law, failure to pay final wages, failure to timely pay wages and final wages, improper rounding
of employee time records, failure to pay split shift premiums, failure to pay reporting time pay,
inaccurate wage statements, failure to maintain employment records and/or allow inspection of
employment records, failure to provide the notice requirements of the California Labor Code,
failure to indemnify employees for expenses and/or reimburse employees for deposits made,
failure to unfair business practices pursuant to California Business and Professions Code section
17200, *et. seq.*, violation of California Labor Code sections 96, 98.6, 201, 227.3, 232, 232.5, 246,
404, 432, 1174.5, 1197.5, and 2698, *et. seq.*, and liability for penalties pursuant to California
Labor Code sections 201, 202, 203, 210, 226, 226.3, 558, 1197.1, 1198.5, 2699 and 2699.5.

27. “Released Parties” means Defendants Devil Mountain Wholesale Nursery, Inc.
and Devil Mountain Wholesale Nursery, LLC, as named by the Plaintiffs in the operative
complaints in the Actions, and their past, present and/or future, direct and/or indirect, officers,

1 directors, members, managers, employees, agents, representatives, attorneys, insurers, partners,
2 investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions,
3 predecessors, successors, assigns, and joint venturers.

4 28. "Request for Exclusion" means a valid and timely written statement submitted by
5 a Class Member requesting to be excluded from the Actions. To be effective, the Request for
6 Exclusion must contain (a) the Class Member's name, address, telephone number, and the last
7 four digits of the Class Member's Social Security number and/or the Employee ID number and
8 (b) a clear statement requesting to be excluded from the settlement of the class claims similar to
9 the following: "I wish to exclude myself from the class settlement reached in the matter of
10 *Castellanos v. Devil Mountain Wholesale Nursery, Inc., et al.*" To be effective, the Request for
11 Exclusion must be post-marked by the Response Deadline and received by the Settlement
12 Administrator. Any Class Member who submits a valid Request for Exclusion will still receive
13 their PAGA Payment, assuming they are entitled to one as a member of the PAGA Group.

14 29. "Response Deadline" means the date forty-five (45) days after the Settlement
15 Administrator mails the Class Notice to Class Members and the last date on which Class Members
16 may submit Requests for Exclusion, written objections to the Settlement, or workweek disputes.
17 In the event the 45th day falls on a Sunday or Federal holiday, the Response Deadline will be
18 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
19 Requests for Exclusion or Objections will be extended fifteen (15) calendar days for any Class
20 Member who is re-mailed a Class Notice by the Settlement Administrator, unless the 15th day
21 falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to
22 the next day on which the U.S. Postal Service is open. The Response Deadline may also be
23 extended by express agreement between Class Counsel and Defendants. Under no circumstances,
24 however, will the Settlement Administrator have the authority to unilaterally extend the deadline
25 for Class Members to submit a Request for Exclusion or Objection to the settlement.

26 30. "Settlement" means the disposition of the Actions pursuant to this Agreement.

27 31. "Settlement Administrator" means Phoenix Settlement Administrators. The
28 Parties each represent that they do not have any financial interest in the Settlement Administrator

1 or otherwise have a relationship with the Settlement Administrator that could create a conflict of
2 interest.

3 32. "Settlement Administration Costs" means the costs payable from the Total
4 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
5 but not limited to, printing, distributing, and tracking documents for this Settlement,
6 calculating/confirming the Class Members' Workweeks and Pay Periods from the information
7 contained in the Class List, calculating each Participating Class Member's Individual Settlement
8 Payment, tax reporting, distributing the Total Settlement Amount, providing necessary reports
9 and declarations, and other duties and responsibilities set forth herein to process this Settlement,
10 and as requested by the Parties or the Court. Settlement Administration Costs shall not exceed
11 Ten Thousand Five Hundred Dollars (\$10,500.00).

12 33. "Total Settlement Amount" means the sum of Nine Hundred Seventy Thousand
13 Dollars (\$970,000.00). The Total Settlement Amount is non-reversionary; no portion of the Total
14 Settlement Amount will return to Defendants.

15 34. "Workweek" shall mean any calendar week (i.e. a week beginning on Sunday and
16 ending on Saturday) in which a Class Member or PAGA Member performed work for Defendants
17 at least one day.

18 **TERMS OF AGREEMENT**

19 35. Settlement Consideration. Defendants shall fully fund the Total Settlement
20 Amount following Final Approval by the Court. The following will be paid out of the Total
21 Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative
22 Enhancement Payment, Class Counsel's Fees and Costs, the PAGA Penalties, and the Settlement
23 Administration Costs, as specified in this Agreement. Except for any employer-side payroll taxes
24 due on the Individual Settlement Payments, or as a result of an increase in the number of
25 workweeks as set forth below, Defendants shall not be required to pay more than the Total
26 Settlement Amount. The Total Settlement Amount is non-reversionary; no portion of the Total
27 Settlement Amount will revert to Defendants.

1 36. Potential Increase to the Total Settlement Amount. Defendants have represented
2 there are approximately 22,000 Pay Periods within the Class Period. Should the actual number of
3 Pay Periods increase by more than ten percent (10%) (i.e. increase by more than 2,200 Pay
4 Periods), the Total Settlement Amount shall increase on a pro-rata basis equal to the percentage
5 increase in the number of Workweeks worked by the Class Members above 10%. For example,
6 if the number of Workweeks increases by 11%, the Total Settlement Amount will increase by
7 1%.

8 37. Funding of the Total Settlement Amount. Within thirty (30) calendar days of
9 service of a Notice of Entry of the Court order entering final approval and entry of Judgment,
10 Defendants will deposit the Total Settlement Amount, and all applicable employer-side payroll
11 taxes, into a Qualified Settlement Fund ("QSF") to be established by the Settlement
12 Administrator. Defendants shall also provide all information necessary for the Settlement
13 Administrator to calculate necessary payroll taxes including their official names, 8 digit state
14 unemployment insurance tax ID numbers, and other information requested by the Settlement
15 Administrator, no later than thirty (30) calendar days of service of a Notice of Entry of the Court
16 order entering final approval and entry of Judgment

17 38. Distribution of the Total Settlement Amount. Within seven (7) calendar days of
18 the funding of the Settlement, the Settlement Administrator will issue payments for: (a) Individual
19 Settlement Payments; (b) the PAGA Penalties to the LWDA; (c) the Class Representative
20 Enhancement Payments; (d) Class Counsel's Fees and Costs; and (e) Settlement Administration
21 Costs.

22 39. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any
23 application or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of
24 the Total Settlement Amount (\$339,500.00) plus the reimbursement of costs and expenses
25 associated with Class Counsel's litigation and settlement of the Actions, in an amount not to
26 exceed Twenty-Five Thousand Dollars (\$25,000.00), both of which will be paid from the Total
27 Settlement Amount. Any portion of the requested fees or costs that is not awarded by the Court
28

1 to Class Counsel shall be reallocated to the Net Settlement Amount and distributed to
2 Participating Class Members as provided in this Agreement.

3 40. Class Representative Enhancement Payments. Defendants agree not to oppose or
4 object to any application or motion by Plaintiffs for Class Representative Enhancement Payments
5 of Seven Thousand Five Hundred Dollars (\$7,500.00) to each of the Plaintiffs. The Class
6 Representative Enhancement Payments are in exchange for the General Release of Plaintiffs'
7 individual claims, and for each of the Plaintiffs' time, effort and risk in bringing and prosecuting
8 the Actions. Any adjustments made by the Court to the requested Class Representative
9 Enhancement Payments shall not be deemed a material modification of this Agreement. In the
10 event that the Court reduces or does not approve the requested Class Representative Enhancement
11 Payments, the Settlement Agreement remains in full force and effect, Plaintiffs shall not have the
12 right to revoke the settlement for that reason, it shall remain binding, and any portion of the
13 requested Class Representative Enhancement Payments that is not awarded by the Court to the
14 Class Representative shall be reallocated to the Net Settlement Amount and distributed to
15 Participating Class Members as provided in this Agreement.

16 41. Settlement Administration Costs. The Settlement Administrator will be paid for
17 the reasonable costs of administration of the Settlement and distribution of payments from the
18 Total Settlement Amount as further set forth in this Agreement. Settlement Administration Costs
19 shall not exceed Ten Thousand Five Hundred Dollars (\$10,500.00).

20 42. PAGA Penalties. Twenty Thousand Dollars (\$20,000.00) of the Total Settlement
21 Amount shall be allocated from the Total Settlement Amount for settlement of claims for civil
22 penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%)
23 of the PAGA Penalties, or Fifteen Thousand Dollars (\$15,000.00), to the LWDA. The remaining
24 twenty-five percent (25%) of the PAGA Penalties, or Five Thousand Dollars (\$5,000.00), will be
25 distributed to PAGA Members on a *pro rata* basis based on the total number of Pay Periods
26 worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their
27 portion of the PAGA Penalties regardless of their decision to opt-out of the class settlement.
28

43. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members' Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Total Settlement Amount	\$	970,000.00
Class Representative Enhancement Payments:	\$	15,000.00
Class Counsel's Fees:	\$	339,500.00
Class Counsel's Costs:	\$	25,000.00
PAGA Penalties:	\$	20,000.00
Settlement Administration Costs:	\$	10,500.00
Estimated Net Settlement Amount:	\$	560,000.00

44. Individual Settlement Payment Calculations. Individual Settlement Payments will be paid from the Net Settlement Amount and the 25% portion of the PAGA Penalties for PAGA Members and shall be paid pursuant to the formulas set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of workweeks worked by each Participating Class Member during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount.

b) Calculation of PAGA Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Pay Periods for all PAGA Members by adding the number of Pay Periods worked by each PAGA Member during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member's individual Pay Periods by the total Pay Periods of all PAGA Members, and multiplying the resulting fraction by the 25% share of the PAGA Penalties designated for distribution to

aggrieved employees. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they opt out of the participation regarding the class claims.

c) Allocation of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: twenty-five percent (25%) of each Individual Settlement Payment will be allocated as wages and seventy-five percent (75%) shall be allocated as interest and penalties. The PAGA Penalties to PAGA Members will be designated entirely as payments for alleged penalties. The portion of the Individual Settlement Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator.

45. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

46. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

46(a) Establish and maintain a Qualified Settlement Fund.

46(b) Calculate the Individual Settlement Payment each Participating Class Member is eligible to receive and the portion of the PAGA Penalties each PAGA Member shall receive.

46(c) Translate the Class Notice from English to Spanish.

46(d) Print and mail the Class Notice in English and Spanish.

46(e) Perform address searches as detailed below, including conducting

additional address searches and skip traces for mailed Class Notices that are returned as undeliverable.

46(f) Process Requests for Exclusion, Objections, calculate Participating Class Members' Individual Settlement Payment, field inquiries or disputes from Class Members.

46(g) Print and issue Settlement Payment Checks, prepare any IRS W2 and 1099 Tax Forms and any other filings required by any governmental taxing authority.

46(h) Provide declarations and/or other information to this Court as requested by the Parties and/or the Court.

46(i) Provide weekly status reports to counsel for the Parties.

46(j) Posting a notice of final judgment, after entry of the judgment, online at the Settlement Administrator's website for a period of sixty (60) days pursuant to California Rule of Court 3.769.

47. Delivery of the Class List. Within ten (10) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator. This is a material term of the Agreement, and if Defendants fail to comply, Plaintiffs shall have the right to void the Agreement.

48. Class Notice by First-Class U.S. Mail. Within seven (7) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail the Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

49. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing

on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. If any Class Notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendants shall make all reasonable efforts to obtain the current address from the Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an Objection to the Settlement.

50. Class Notice. All Class Members will be mailed a Class Notice. Each Class Notice will provide: (a) information regarding the nature of the Actions; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendants during the Class Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and PAGA Period; (g) the deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the Settlement, or workweek disputes; (h) the claims to be released, as set forth herein; and (j) the date for the final approval hearing.

51. Disputed Information on Class Notice. Class Members will have an opportunity to dispute the information provided in their Class Notice. To the extent Class Members dispute the number of Workweeks with which they have been credited or the amount of their Individual Settlement Payment, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence contrary to Defendants' records by the Response Deadline, the Settlement Administrator shall notify Class Counsel and Defendants' counsel to discuss and resolve the dispute, including providing all available relevant information to all counsel. The Parties will resolve all disputes

1 jointly, which shall be final and binding on any Class Member disputes, and shall thereafter
2 instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties
3 cannot reach an agreement, disputes shall be referred to the Settlement Administrator for a
4 determination and if the dispute remains unresolved after that, the dispute shall be submitted to
5 the Court for final determination. All such disputes are to be resolved or submitted to the Court
6 no later than fourteen (14) calendar days after the Response Deadline.

7 52. Defective Submissions. If a Class Member's Request for Exclusion is defective as
8 to the requirements listed herein, that Class Member will be given an opportunity to cure the
9 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
10 business days of receiving the defective submission to advise the Class Member that his or her
11 submission is defective and that the defect must be cured to render the Request for Exclusion
12 valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15)
13 calendar days from the date of the cure letter, whichever date is later, to postmark a revised
14 Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,
15 then the Settlement Administrator will have no further obligation to give notice of a need to cure.
16 If the revised Request for Exclusion is not postmarked within that period, it will be deemed
17 untimely.

18 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
19 Actions must sign and postmark a written Request for Exclusion to the Settlement Administrator
20 by the Response Deadline. The Request for Exclusion must include (a) the Class Member's name,
21 address, telephone number, and the last four digits of the Class Member's Social Security number
22 and/or the Employee ID number and (b) a clear statement requesting to be excluded from the
23 settlement of the class claims similar to the following: "I wish to exclude myself from the class
24 settlement reached in the matter of *Castellanos v. Devil Mountain Wholesale Nursery, Inc. et al.*" The
25 date of the postmark on the return mailing envelope receipt confirmation will be the exclusive
26 means to determine whether a Request for Exclusion has been timely submitted. All Requests for
27 Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class
28 Counsel and Defendants' Counsel the Requests for Exclusion that were timely submitted. All

Class Members who do not request exclusion from the Actions will be bound by all terms of the Settlement Agreement if the Settlement is granted final approval by the Court.

54. Defendants' Right to Rescind. If more than five percent (5%) of the Class Members in the Class Period (rounded to the next whole number) elect not to participate in the Settlement, Defendants may, at their election, rescind the Settlement Agreement and all actions taken in furtherance of it will be thereby null and void. Defendants must meet and confer with Class Counsel prior to exercising this right and must make clear its intent to rescind the Agreement within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of these opt-outs. If Defendants exercise their right to rescind the Agreement, Defendants shall be responsible for all Settlement Administration Costs incurred to the date of rescission.

55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. Class Members who opt-out of the Settlement shall not be bound by such Judgment or release. The names of Class Members who have opted-out of the settlement shall be disclosed to the Counsel for Plaintiffs and Defendants and noted in the proposed Judgment submitted to the Court.

56. Objection Procedures. To object to the Settlement, a Participating Class Member must postmark a valid Objection to the Settlement Administrator on or before the Response Deadline. The Objection must be signed by the Participating Class Member and contain all information required by this Settlement Agreement including the Class Member's full name, address, telephone number, the last four digits of their social security number and/or Employee ID number, and the specific reason including any legal grounds for the Participating Class Member's objection. The postmark date will be deemed the exclusive means for determining that the Objection is timely. Participating Class Members who fail to object in the manner specified above will be foreclosed from making a written objection, but shall still have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will

any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel will not represent any Participating Class Members with respect to any objections to this Settlement. Class Members who have submitted a valid Request for Exclusion may not submit an Objection.

57. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendants' Counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted Requests for Exclusion; (b) the number of re-mailed and/or undeliverable Class Notices; and (c) whether any Class Member has submitted a challenge to any information contained in the Class Notice. Additionally, the Settlement Administrator will provide to counsel for all Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested. The Settlement Administrator will provide a declaration to Class Counsel in advance of the hearing on Final Approval of the settlement which Class Counsel shall be responsible for reviewing and approving.

58. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his or her settlement check within 180 days of mailing, the Settlement Administrator shall distribute the uncashed funds, subject to Court approval, to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Members, whether or not they all cash their settlement checks. Therefore, Defendants will not be required to pay any interest on such amounts. The Individual Settlement Payments provided to Participating Class Members and to PAGA Members shall prominently state the expiration date or a statement that the settlement check will expire in one hundred eighty (180) days, or alternatively, such a

statement may be made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for good cause and as mutually agreed by the Parties in writing. The parties agree no unclaimed funds will result from the settlement process detailed in this Agreement.

59. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

60. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement, representation, or calculation by Defendants or by the Settlement Administrator in this regard. Plaintiffs and Participating Class Members understand and agree that except for Defendants' employer-side portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Defendants' share of any employer-side payroll taxes and other required employer withholdings due on the Individual Settlement Payments shall be paid separate and apart from the Total Settlement Amount.

61. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any

1 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
2 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
3 party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects
4 the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
5 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
6 tax structure of any transaction, including any transaction contemplated by this Agreement.

7 62. No Prior Assignments. The Parties and their counsel represent, covenant, and
8 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
9 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
10 action, cause of action or right herein released and discharged.

11 63. Release by Participating Class Members, PAGA Members, the LWDA and the
12 State of California. Upon the funding of the Total Settlement Amount, Participating Class
13 Members hereby do and shall be deemed to have fully, finally, and forever released and
14 discharged the Released Parties from any and all Released Claims for the Class Period. This
15 release shall be binding on all Participating Class Members. All PAGA Members, the LWDA,
16 and the State of California shall release claims under PAGA for the PAGA Period. All PAGA
17 Members shall release claims arising under PAGA regardless of their decision to participate in
18 the class settlement.

19 64. Release of Additional Claims & Rights by Plaintiffs. Upon the funding of the Total
20 Settlement Amount, each of the Plaintiffs will agree to the additional following General Release:
21 In consideration of Defendants' promises and agreements as set forth herein, Plaintiff releases the
22 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature
23 and description whatsoever, known or unknown, asserted or that might have been asserted,
24 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising
25 out of, relating to, or in connection with any act or omission by or on the part of any of the
26 Released Party committed or omitted prior to the execution thereof. Specifically, Plaintiff will
27 expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and
28 benefits afforded of section 1542 of the California Civil Code, or any other provision under

1 federal or state law, which provides:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
3 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
4 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
5 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
6 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7 This release specifically excludes claims for unemployment insurance, disability, social
8 security, and workers' compensation (with the exception of claims arising pursuant to California
9 Labor Code Sections 132(a) and 4553).

10 65. Nullification of Settlement Agreement. In the event that: (a) the Court does not
11 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
12 material term of this Settlement Agreement; or (c) the Settlement does not become final as written
13 and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
14 documents generated to bring it into effect, will be null and void, all amounts deposited into the
15 QSF will be returned to Defendants, and the Parties shall be returned to their original respective
16 positions. Any order or judgment entered by the Court in furtherance of this Settlement
17 Agreement will likewise be treated as void from the beginning. Pursuant to California Evidence
18 Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding
19 to approve, interpret, or enforce this Settlement Agreement. Should the Court fail to approve this
20 settlement for any reason, the Parties agree that they will return to and attend mediation with a
21 mutually agreed mediator in an effort to reach a settlement that may be approved by the Court.

22 66. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
23 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
24 Approval Order for: (a) conditional certification of the Class for settlement purposes only, (b)
25 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
26 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the
27 Class Notice to be sent to all Class Members as specified herein. In conjunction with the
28 Preliminary Approval hearing, Plaintiffs will submit this Agreement, which sets forth the terms

of the Settlement, and will include the proposed Class Notice attached as Exhibit A. Defendants agree that they will not oppose Plaintiffs' Motion for Preliminary Approval. Plaintiffs will provide a draft of the Motion for Preliminary Approval to Defendants' counsel for review and comment prior to filing it. This is a material term of the settlement and any opposition by Defendants will be grounds for Plaintiffs to withdraw from the settlement. Any failure by the Court to fully and completely approve the Agreement as to the Actions, or the entry of any Order by another Court with regard to any of the Actions which has the effect of preventing the full and complete approval of this Settlement Agreement as written and agreed to by the Parties, will result in this Settlement Agreement and the Memorandum of Agreement entered into by the Parties, and all obligations under this Settlement Agreement and the Memorandum of Agreement being nullified and voided.

67. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of the Class Notice process, including the expiration of the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA Penalties to the LWDA; (c) Class Counsel's Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payments; and (e) the Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval but shall provide the proposed Judgment to Defendants' Counsel for their approval (which shall not be unreasonably withheld). Any failure by the Court to fully and completely approve the Settlement Agreement as to all of the Actions, or the entry of any Order by another Court with regard to any of the Actions which has the effect of modifying material terms of this Agreement or preventing the full and complete approval of the Settlement Agreement as written and agreed to by the Parties, will result in this Agreement and all obligations under this Agreement being null and void. Defendants agree they shall not oppose the granting of the Motion for Final Approval, provided Defendants have not exercised their right to rescind pursuant to the terms of this Agreement. Plaintiffs will provide a draft of the Motion for Final Approval to Defendants' counsel for review and comment prior to filing it.

68. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by

1 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
2 Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing
3 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms
4 of the Settlement, (b) settlement administration matters, and (c) such post-Judgment matters as
5 may be appropriate under court rules or as set forth in this Settlement.

6 69. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
7 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
8 forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

9 70. Entire Agreement. This Settlement Agreement and any attached Exhibits
10 constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or
11 oral agreements may be deemed binding on the Parties.

12 71. Amendment or Modification. This Settlement Agreement may be amended or
13 modified only by a written instrument signed by counsel for all Parties or their successors-in-
14 interest.

15 72. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
16 and represent they are expressly authorized by the Parties whom they represent to negotiate this
17 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
18 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
19 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
20 counsel will cooperate with each other and use their best efforts to affect the implementation of
21 the Settlement. If the Parties are unable to reach agreement on the form or content of any
22 document needed to implement the Settlement, or on any supplemental provisions that may
23 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
24 of the Court to resolve such disagreement.

25 73. Binding on Successors and Assigns. This Settlement Agreement will be binding
26 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
27 defined.

28 74. California Law Governs. All terms of this Settlement Agreement hereto will be

governed by and interpreted according to the laws of the State of California.

75. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

76. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

77. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

78. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that either party may appeal any court order that materially alters the Settlement Agreement's terms.

79. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a class action should be certified or (b) Defendants are liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

1 80. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
2 dispute that has arisen between them and to avoid the burden, expense and risk of continued
3 litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, they
4 have violated any federal, state, or local law; violated any regulations or guidelines promulgated
5 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
6 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
7 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,
8 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
9 as an admission or concession by Defendants of any such violations or failures to comply with
10 any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement,
11 this Agreement and its terms and provisions shall not be offered or received as evidence in any
12 action or proceeding to establish any liability or admission on the part of Defendants or to
13 establish the existence of any condition constituting a violation of, or a non-compliance with,
14 federal, state, local or other applicable law.

15 81. Captions. The captions and section numbers in this Agreement are inserted for the
16 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
17 provisions of this Agreement.

18 82. Waiver. No waiver of any condition or covenant contained in this Settlement
19 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
20 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
21 right or remedy.

22 83. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
23 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
24 strictly against one Party than another merely by virtue of the fact that it may have been prepared
25 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
26 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

27 84. Representation By Counsel. The Parties acknowledge that they have been
28 represented by counsel throughout all negotiations that preceded the execution of this Agreement,

1 and that this Agreement has been executed with the consent and advice of counsel and reviewed
2 in full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the
3 Agreement.

4 85. All Terms Subject to Final Court Approval. All amounts and procedures described
5 in this Settlement Agreement herein will be subject to final Court approval.

6 86. Cooperation and Execution of Necessary Documents. The Parties agree to
7 cooperate to promote participation in the Settlement, and in seeking Court approval of the
8 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
9 Members to opt out of and/or object to the Settlement.

10 87. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
11 with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant
12 to California Code of Civil Procedure § 664.6. The Court shall retain continuing jurisdiction over
13 the Actions and over all Parties and Class Members, to the fullest extent to enforce and effectuate
14 the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this
15 Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the
16 prevailing party in any motion or action taken and based on an alleged violation of any material
17 term of the Settlement Agreement.

18 88. Voluntary Agreement. The Parties acknowledge that they have entered into this
19 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
20 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
21 statements made by the other Parties other than those contained in this Settlement Agreement.
22 Each of the Parties hereto expressly waives any right they might ever have to claim that this
23 Settlement Agreement was in any way induced by fraud.

24 89. Confidentiality. The Parties and their counsel agree to keep the terms of the
25 Settlement confidential until the filing of Plaintiffs' Motion for Preliminary Approval. Plaintiffs,
26 Class Counsel, Defendants, and their counsel agree that they will not issue any press releases,
27 initiate any contact with the press, respond to any press inquiry or have any communication with
28 the press about the fact, amount or terms of the Settlement Agreement. Notwithstanding anything

1 in this provision, Plaintiffs' Counsel can discuss the Settlement with Plaintiffs and with Class
2 Members and can include it in all necessary Court and ancillary documents supporting the
3 resolution of the Actions. Nothing in this paragraph is intended to interfere with Class Counsel's
4 duties and obligations to faithfully discharge their duties as Class Counsel, including but not
5 limited to, communicating with Class Members regarding the Settlement.

6 90. Binding Agreement. The Parties warrant that they understand and have full
7 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
8 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
9 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
10 provisions that otherwise might apply under federal or state law.

11 APPROVED AS TO FORM AND CONTENT:
12

13 Dated: 02/01/2022 17:19 UTC
14 _____

PLAINTIFF

15 By: Juan Carlos Castellanos

16 Juan Carlos Castellanos

17
18 Dated: _____

PLAINTIFF

19 By: _____

20 Joel Galvan Montes

21
22 Dated: _____

DEFENDANT DEVIL MOUNTAIN
WHOLESALE NURSERY, INC.

24 By: Drew McMillan

25 Name: Drew McMillan

26 Title: CEO

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2 Members and can include it in all necessary Court and ancillary documents supporting the
3 resolution of the Actions. Nothing in this paragraph is intended to interfere with Class Counsel's
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8 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
9 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
10 provisions that otherwise might apply under federal or state law.

11 APPROVED AS TO FORM AND CONTENT:
12

13 Dated: _____
14

PLAINTIFF

15 By: _____
16

Juan Carlos Castellanos
17

18 Dated: Jan 28, 2022
19

PLAINTIFF

20 By: *Joel Galvan Montes*
21 Joel Galvan Montes (Jan 28, 2022 12:13 PST)

Joel Galvan Montes
22

23 Dated: _____
24

**DEFENDANT DEVIL MOUNTAIN
WHOLESALE NURSERY, INC.**

25 By: _____
26

27 Name: _____
28

Title: _____

1 Dated: _____

**DEFENDANT DEVIL MOUNTAIN
WHOLESALE NURSERY, LLC**

2
3 By: 

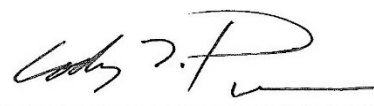
4 Name: Drew McMillan

5 Title: CEO

6 APPROVED AS TO FORM ONLY:

7
8 Dated: January 31, 2022

PAYNE NGUYEN, LLP

9
10 By: 

11 Cody Payne, Esq.

12 Kim Nguyen, Esq.

13 Attorneys for Plaintiff Juan Carlos
Castellanos

14
15 Dated: _____

BIBIYAN LAW GROUP, P.C.

16 By: _____

17 David D. Bibiyan, Esq.

18 Jeffrey D. Klein, Esq.

19 Diego Aviles, Esq.

20 Sara Ehsani-Nia, Esq.

Attorneys for Plaintiff Joel Galvan Montes

21
22 Dated: _____

WENDEL ROSEN LLP

23 By: 

24 Tammy A. Brown, Esq.

25 Attorneys for Defendants Devil Mountain
Wholesale Nursery, Inc. and Devil
Mountain Wholesale Nursery, LLC

1 Dated: _____

**DEFENDANT DEVIL MOUNTAIN
WHOLESALE NURSERY, LLC**

2
3 By: _____

4 Name: _____

5 Title: _____

6 APPROVED AS TO FORM ONLY:

7
8 Dated: _____

PAYNE NGUYEN, LLP

9
10 By: _____

Cody Payne, Esq.

Kim Nguyen, Esq.

Attorneys for Plaintiff Juan Carlos
Castellanos

11
12
13
14 Dated: January 31, 2022

BIBIYAN LAW GROUP, P.C.

15
16 By:  _____

David D. Bibiyan, Esq.

Jeffrey D. Klein, Esq.

Diego Aviles, Esq.

Sara Ehsani-Nia, Esq.

Attorneys for Plaintiff Joel Galvan Montes

17
18
19
20
21 Dated: _____

WENDEL ROSEN LLP

22
23 By: _____

Tammy A. Brown, Esq.

Attorneys for Defendants Devil Mountain
Wholesale Nursery, Inc. and Devil
Mountain Wholesale Nursery, LLC

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Juan Carlos Castellanos et al. v. Devil Mountain Wholesale Nursery, Inc. et al.

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California for the County of Contra Costa (the "Court" or "Contra Costa County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between Juan Carlos Castellanos and Joel Galvan Montes ("Plaintiffs") and Devil Mountain Wholesale Nursery, Inc. and Devil Mountain Wholesale Nursery, LLC ("Defendants," collectively "the Parties"), was granted on [Preliminary Approval Date], in the cases entitled *Castellanos v. Devil Mountain Wholesale Nursery, Inc. et al.*, Contra Costa County Superior Court Case Nos. MSC20-02078 and *Montes v. Devil Mountain Wholesale Nursery, Inc. et al.*, Contra Costa County Superior Court Case Nos. MSC20-02647 ("the Actions"), which may affect your legal rights.

You need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the settlement (in which case you will not receive payment under the settlement), object to the settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

I. IMPORTANT DEFINITIONS

"Class" means all hourly, non-exempt employees of Defendants in the State of California who worked at any time from October 13, 2016, through [Preliminary Approval Date], excluding those employees who have signed arbitration and/or separation agreements with Defendants.

"Class Member" means a member of the Class.

"Class Period" means the time period from October 13, 2016, through [Preliminary Approval Date].

II. BACKGROUND OF THE ACTIONS

On October 13, 2020, Plaintiff Juan Carlos Castellanos, a former employee of Defendants, filed a putative class action, currently pending in the Contra Costa Superior Court, Case No. MSC20-02078 ("*Castellanos Action*"). On November 13, 2020, Plaintiff Castellanos filed an amended complaint to add a representative cause of action under the Private Attorneys General Act, California Labor Code section 2698, et seq. ("PAGA"). On December 29, 2020, Plaintiff Joel Galvan Montes, a former employee of Defendants, filed a putative class action, currently pending in the Contra Costa Superior Court, Case No. MSC20-02647 ("*Montes Action*"). On March 4, 2021, Plaintiff Montes filed an amended complaint. Together, the *Castellanos Action* and the *Montes Action* are referred to as "the Actions."

On August 2, 2021, the Contra Costa Superior Court deemed the Actions consolidated. Together, Plaintiffs allege that Defendants violated the California Labor Code and California Business and Professions Code with respect to themselves and the Class Members by, *inter alia*, failing to properly pay for all hours worked, including minimum and overtime wages, failing to provide legally-compliant meal and rest periods or premium pay in lieu thereof, failing to reimburse business expenses and deposits made, failing to provide sick leave, failing to pay paid time off and vacation time owed at termination, failing to provide accurate wage statements, failing to provide timely wages during employment or at termination, failing to keep requisite payroll records, and engaging in unfair business practices. The settlement also seeks to recover penalties pursuant to PAGA.

Collectively, Plaintiffs seek, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, declaratory relief, penalties, interest, and attorneys' fees and costs.

Defendants deny all of the allegations in the Actions and maintain that at all times they have fully complied with all applicable federal, state, and local laws. Defendants further deny that they have any liability to Plaintiffs, or to any of the Class Members, or to any of the individuals whom Plaintiffs sought to represent in the Actions. Defendants further deny that the Actions may be maintained as class or representative actions, other than for the purposes of this Settlement.

Plaintiffs and Defendants participated in a full-day mediation session with a respected wage and hour class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”). The Court has not decided in favor of Plaintiffs or Defendants. Instead, the Parties have agreed to settle the lawsuit in light of the risks of further litigation.

On [Preliminary Approval Date], the Court entered an order preliminarily approving the Settlement. The Court has appointed [redacted] as the administrator of the settlement (“Settlement Administrator”), Plaintiffs Juan Carlos Castellanos and Joel Galvan Montes as representatives of the Class (“Class Representatives”), and the following law firms as counsel for the Class (“Class Counsel”):

PAYNE NGUYEN, LLP
Cody Payne, Esq.
Kim Nguyen, Esq.
4640 Admiralty Way, Suite 500
Marina del Rey, California 90292
Telephone: (310) 360-9882

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan, Esq.
Jeffrey D. Klein, Esq.
Diego Aviles, Esq.
Sara Ehsani-Nia, Esq.
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Telephone: (310) 438-5555

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The Total Settlement Amount Defendants shall pay to settle the claims in the Actions is Nine Hundred and Seventy Thousand Dollars (\$970,000.00) (the “Total Settlement Amount”). The portion of the Total Settlement Amount that is available for payment to Class Members who do not timely and validly request exclusion from the settlement (“Participating Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to Court approval: (1) attorneys’ fees in the amount up to \$339,500.00 and reimbursement of litigation costs and expenses in the amount up to \$25,000.00 to Class Counsel (“Class Counsel’s Fees and Costs”); (2) enhancement payments in the amount up to \$7,500.00 to each Class Representative (“Class Representative Enhancement Payments”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$10,500.00 (“Settlement Administration Costs”); and (4) PAGA penalties in the amount of \$20,000.00 for the settlement of claims arising under PAGA. Seventy-Five percent (75%) of this amount, (\$15,000.00) shall be paid to the Labor Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$5,000.00) will be distributed to PAGA Members (all current and former hourly, non-exempt employees of Defendants in the State of California who worked at any time during the “PAGA Period” from July 24, 2019, through [Preliminary Approval Date] for the release of their claims arising under PAGA (“PAGA Penalties”).

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of eligible weeks (“Workweeks”) you worked in California as an hourly-paid, non-exempt employee employed by Defendants during the Class Period. Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Penalties.

Your Individual Settlement Payment will be apportioned as twenty-five percent (25%) wages and seventy-five percent (75%) penalties and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Total Settlement Amount. The penalties and interest portions of each Class Member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

If the Court grants final approval of the settlement, Individual Settlement Payments will be mailed to Participating Class Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the**

Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.

B. Your Workweeks Based on Defendants' Records

According to Defendants' payroll records:

You worked XXX Workweeks during the Class Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.

This amount was determined based on Defendants' record of your employment during the period from October 13, 2016, through [Preliminary Approval Date], and is presumed correct. If you dispute the accuracy of Defendants' records as to the number of weeks worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [Response Deadline]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator.

C. Your Estimated Individual Settlement Payment

As explained above, your estimated Individual Settlement Payment is based on the number of Workweeks credited to you.

The Individual Settlement Payment is subject to reduction for employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payment and will only be distributed if the Court approves the settlement and after the settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Payment reflected in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

D. Released Claims

Upon the funding of the Total Settlement Amount, in exchange for the consideration set forth by the Settlement, Participating Class Members (including Plaintiffs) will fully, finally, and forever release and discharge the "Released Parties" from the "Released Claims" that arose during the Class Period.

The "Released Parties" include Defendants Devil Mountain Wholesale Nursery, Inc. and Devil Mountain Wholesale Nursery, LLC, and any of their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

The "Released Claims" include all claims, rights, demands, liabilities, and causes of action, arising from, or related to, the same set of operative facts as those set forth in the operative complaints in the Actions that occurred during the Class Period.

This release of these claims pertains to the Class Period from October 13, 2016, through [Preliminary Approval Date].

All PAGA Members will be deemed to have fully, finally and forever released and discharged any and all Released Claims arising under PAGA for the PAGA Period with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of \$339,500.00 and reimbursement of litigation costs and expenses in an amount not to exceed \$25,000.00 to be paid from the Total Settlement Amount, subject to approval by the Court. Class Counsel has been prosecuting the Actions on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payments to Plaintiffs

Plaintiffs will seek the amount of \$7,500.00 to each Plaintiff as Enhancement Payments in recognition of their services in connection with the Actions. The Enhancement Payments will be paid from the Total Settlement Amount subject to approval by the Court, and if awarded, it will be paid to Plaintiffs in addition to their Individual Settlement Payments that they are entitled to under the settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed **Ten Thousand Five Hundred Dollars (\$10,500.00)** for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the settlement, processing Requests for Exclusion, Workweeks Disputes, and objections, calculating Individual Settlement Payments, and distributing payments and tax forms under the settlement, and shall be paid from the Total Settlement Amount subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to receive money from the settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the settlement. If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there (please see https://www.sco.ca.gov/upd_msg.html).

B. Request Exclusion from the Settlement

If you do not wish to participate in the settlement, you may seek exclusion from the settlement by submitting a written request to be excluded from the settlement ("Request for Exclusion") to the Settlement Administrator at the following address:

[Settlement Administrator]
[Address]

A request for exclusion must: (a) contain your full name, address, telephone number, the last 4 digits of Social Security Number or Employee ID Number, and signature; (b) contain the case name of the Actions (*Castellanos v. Devil Mountain Wholesale Nursery, Inc. et al.*); (c) contain a statement indicating that you intend to be excluded from the settlement.

Your request for exclusion must be mailed to the Settlement Administrator at the address listed above and postmarked **no later than [Response Deadline]**. You cannot opt-out by phone.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be entitled to receive any payment from the settlement, will not be bound by the settlement (and the release of Released Claims stated in Section III.D above), and will not have any right to object to, appeal, or comment on the settlement. Any Class Members who do not submit a timely and valid Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the settlement, including those pertaining to the release of Released Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

C. Object to the Settlement

You can object to the terms of the settlement as long as you have not submitted a Request for Exclusion.

To object, you must do so by way of a written objection that: (a) contains your full name, address, telephone number, the last 4 digits of your Social Security Number or Employee ID Number, and signature; and (b) contains the specific reason (including any legal grounds) for the objection to the Settlement.

The objection must be mailed to the Settlement Administrator and postmarked **no later than [Response Deadline]**.

If you do not submit a request for exclusion you may still attend the Final Approval Hearing and make an objection at that time, even if you do not submit a written objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 39 of the Contra Costa County Superior Court located at the Wakefield Taylor Courthouse, 725 Court Street, Martinez, California 94553, on **[Final Approval Hearing Date]**, at **[Time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys' fees and costs to Class Counsel, Enhancement Payments to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator should be awarded.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to do so. You may attend in person, but you may also attend remotely by audio or video if you wish. Please see <https://www.cc-courts.org/civil/court-call.aspx> for more information on remote appearances.

You can also learn if the settlement was approved at the Final Approval Hearing by viewing the Judgment which shall be posted online by the Settlement Administrator at [REDACTED].

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at [REDACTED] or by contacting the Settlement Administrator or Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TELEPHONE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.