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RYAN CHANLEY, OLIVIER LARA, VERONICA MEDINA, and CELIA OROZCO on  
behalf of themselves and all similarly situated employees

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF MONTEREY**

RYAN CHANLEY on behalf of himself  
and all similarly situated employees

Plaintiff,

vs.

GROWERS TRANSPLANTING, INC., a  
California corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No. 22CV002837

(Assigned to the Honorable Thomas W. Wills,  
Dept. 15)

**DECLARATION OF MAX W. GAVRON IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: March 22, 2024

Time: 8:30 a.m.

Dept: 15

Action Filed: September 22, 2022

Trial Date: Not Set

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thereof, in violation of Labor Code §§ 226.7 and 1198; (3) failure to pay hourly and overtime wages, in violation of Labor Code §§ 1194 and 1198; (4) failure to comply with itemized employee wage statement requirements, in violation of Labor Code §§ 226, 1174, and 1175; (5) failure to pay all wages upon termination, in violation of Labor Code §§ 201, 202, and 203; (6) violation of Labor Code § 2802; (7) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”); and (8) unfair business practices, in violation of Business and Professions Code § 17200, *et seq.*

#### **MEDIATION AND SETTLEMENT**

7. After Chanley initiated the Action, the Parties agreed to participate in private mediation. In connection with mediation, the Parties agreed to exchange informal discovery sufficient to allow the Parties to assess the claims and liability.

8. On February 7, 2023, the Parties engaged in a full day mediation with experienced neutral Mark S. Rudy, Esq. Despite conducting arm’s length negotiations, the Parties were unable to reach an agreement. Thereafter, the Parties resumed litigation.

9. Following the filing of the operative First Amended Complaint, the Parties agreed to attempt a second mediation. On October 24, 2023, the Parties engaged in a full day mediation with neutral Michael Loeb, Esq.

10. In connection with the second mediation, Defendants produced necessary data pertaining to the number of putative class members and aggrieved employees and the number of pay periods at issue, wage statements and time records, as well as documents pertaining to Defendants’ policies regarding the payment of meal and rest period premiums, business reimbursements, and COVID health checks. Defendant GTI produced all of the time and pay records for putative class member during the class period for review. However, many of the time and pay records for the putative class members directly hired by Nor-West were kept in a paper format rendering production of the records tedious and time consuming. Accordingly, Nor-West produced a 10% sampling of time and pay records, which Plaintiffs’ consultant used to extrapolate a damages model.

11. As a result of the second mediation, the Parties agreed to settle the Action and

1 entered into a memorandum of understanding. The Parties then worked together to reach a  
2 more detailed, formalized settlement agreement to be submitted to the Court for preliminary  
3 and final approval. A true and correct copy of the Parties' Joint Stipulation of Class Action  
4 and PAGA Settlement ("Agreement" or "Settlement Agreement") is attached hereto as  
5 **Exhibit A.**

6 12. Additionally, Chanley and GTI also entered into a separate, confidential  
7 agreement to resolve the FEHA Action ("Confidential Settlement Agreement").

8 **SUMMARY OF THE SETTLEMENT TERMS**

9 13. The Settlement Agreement provides for Seven Hundred Thousand Dollars  
10 (\$700,000.00) as the Gross Settlement Amount. *See* Agreement ¶ 15. The Net Distribution  
11 Fund (calculated after deduction of the Class Counsel Award of attorneys' fees (up to  
12 \$233,333.33) and costs (up to \$35,000.00), Class Representatives' Service Awards (up to  
13 \$20,000.00 total), payment of PAGA Penalties to the LWDA (\$37,500.00) and PAGA  
14 Members (\$12,500.00), and Settlement Administration Costs (up to \$17,950.00) is estimated  
15 to be approximately \$343,717.67. *See* Agreement ¶¶ 5, 15, 20, 27, 37, 47.e.i).

16 14. Each Class Member that does not opt-out of the settlement (or "Participating  
17 Class Member") will receive their share of the Net Distribution Fund based upon the number  
18 of workweeks worked during the Class Period. *See* Agreement ¶ 47.e.v.

19 15. Based thereon, on a raw average, each Class Member may potentially recover  
20 approximately \$198.57. The amount actually paid to each Class Member may increase or  
21 decrease depending on the actual number of workweeks worked during the Class Period and  
22 the number of opt-outs received. To the extent that there are valid opt-outs, the Settlement  
23 Administrator will proportionately increase the Individual Class Payments to each  
24 Participating Class Member so that the amount actually distributed to Participating Class  
25 Members equals 100% of the Net Distribution Fund.

26 16. Additionally, as part of the payment of PAGA Penalties, 25% of the PAGA  
27 Penalties, or \$12,500.00, will be distributed to PAGA Members who worked during the PAGA  
28 Period on a pro rata basis, based on the number of weeks worked by each PAGA Member

1 during the PAGA Period. Agreement ¶ 18.

2 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

3 17. Based on the class data provided by Defendants, Plaintiffs estimated that  
4 Defendants would face potential liability of up to approximately \$13 million for Plaintiffs'  
5 class and PAGA claims if Plaintiffs succeeded at trial on all claims. Plaintiffs were able to  
6 estimate the potential class penalties based on class data and sample records provided by  
7 Defendants. *Id.* The violation rates below were deduced from analysis of the records provided  
8 by Defendants. Specifically, this amount was calculated based on the following breakdown  
9 for each class claim:

- 10 • \$1.4 million for meal break violations calculated at an approximate 31% average  
11 violation rate;
- 12 • \$1.4 million for rest period violations calculated at an approximate 31% average  
13 violation rate;
- 14 • \$70,000 for unpaid for unpaid minimum and overtime wages because of  
15 Defendant's alleged underpayment of time spent during COVID;
- 16 • \$1.45 million for derivative Labor Code § 226(e) penalties;
- 17 • \$82,000 premised on Plaintiffs' allegation that, although Defendants had lawful  
18 reimbursement policies and their records demonstrated reimbursements were made,  
19 Defendants failed to pay enough for the reimbursements they made; and
- 20 • \$7 million maximum exposure in waiting time penalties based on average rate of  
21 pay of \$15.00 between Defendants, which was heavily discounted for the reasons  
22 that follow.

23 18. With respect to potential liability of Plaintiffs' PAGA claims, Plaintiffs  
24 estimated that Defendants could face civil penalties of up to approximately \$1.6 million. This  
25 amount was calculated based on approximately 16,000 pay periods during the relevant time  
26 period and a \$100 penalty per violation, which assumes that the Court would not "stack"  
27 PAGA penalties for distinct violations of the Labor Code. Courts have recently been hesitant  
28 to award a higher PAGA penalty for "subsequent" violations where there is no prior citation

1 by the Labor Commissioner, which renders the evaluation of the potential PAGA penalties  
2 without “stacking” reasonable. *C.f. Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir.  
3 2021) (“Virgin was not notified by the Labor Commissioner or any court that it was subject to  
4 the California Labor Code until the district court partially granted Plaintiffs’ motion for  
5 summary judgment. On this basis, we reverse the district court’s holding that Virgin is subject  
6 to heightened penalties for any labor code violation that occurred prior to that point.”). While  
7 *Bernstein* addresses whether the higher subsequent penalty should be applied, defendants often  
8 argue that this decision supports their position that the court should not award multiple  
9 penalties for different predicate violations of the Labor Code during the same pay period.  
10 Accordingly, evaluating the settlement compared to a potential penalty of \$100 per pay period  
11 is fair, adequate, and reasonable.

12 19. **Discount Factors for Class Claims:** Outside of substantive arguments  
13 regarding the claims presented, Defendants argued that a portion of the putative class had  
14 signed arbitration agreements, which precluded class claims altogether. Furthermore, a  
15 portion of the putative class signed severance agreements, which Defendants contended  
16 precluded any claim at all. Substantively, Defendants also asserted several defenses to  
17 Plaintiffs’ claims. For example, Plaintiffs alleged that employees were not properly paid for  
18 time spent undergoing COVID temperature checks. However, Defendants argued that: 1) they  
19 paid employees for the time spent during COVID screenings; and 2) even if Plaintiffs’ could  
20 prevail on this theory, the time period during which employees were required to undergo  
21 temperature checks was limited thus limiting the potential exposure during the class period.  
22 Review of Defendants’ records demonstrated that they were paying employees for time spent  
23 during COVID screenings; however, Plaintiffs disputed that the amount paid was sufficient.

24 20. With respect to Plaintiffs’ meal and rest period claims, Defendants maintained  
25 facially compliant policies, which they argued would preclude class certification. *See Brinker*  
26 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On the other  
27 hand, the employer is not obligated to police meal breaks and ensure no work thereafter is  
28 performed.”). Defendants argued that their policies satisfied Brinker and that any failure to

1 take a legally compliant meal or rest period by employees was the result of individual choice  
2 and thus not capable of class resolution. Defendants also disputed that they controlled  
3 employees during meal or rest periods.

4 21. Defendants would have argued that the waiting time penalties, which comprise a  
5 significant portion of the estimated damages, are subject to a complete defense. Defendants  
6 would have argued that a good faith dispute exists as to whether the allegedly underpaid wages  
7 were due to Plaintiffs and the class members considering Defendants' legally compliant  
8 policies and that Defendants paid employees for the time spent undergoing COVID  
9 temperature checks. If Defendants were successful on the good faith defense, the Court may  
10 not have awarded waiting time penalties at all, reducing the exposure by approximately \$7  
11 million on the class claims. *Hill v. Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding  
12 good faith defense because defendant reasonably believed wages were not due and owing at  
13 time of separation of employment); *Naranjo v. Spectrum Security Services, Inc.*, \_\_ Cal. Rptr.  
14 3d \_\_, 2023 WL 2261253 (Feb. 27, 2023), review granted 2023 WL 3745105 (May 31, 2023);  
15 *Chavez v. Converse, Inc.*, 2020 WL 1233919, at \*1 (N.D. Cal. 2020) (holding that an  
16 employer's failure to pay is not willful where there is uncertainty in the law or a "good faith  
17 mistaken belief that wages are not owed").

18 22. Similarly, on Plaintiffs' wage statement claim, Plaintiffs would face the  
19 additional burden of demonstrating that any alleged omission of information from the wage  
20 statements was a "knowing and intentional failure" by Defendants to comply with Labor Code  
21 § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)  
22 (granting summary judgment in favor of employer and finding its conduct was not "knowing  
23 and intentional"). Defendant also would have argued that penalties under Section 226 are  
24 subject to a similar "good faith" defense as articulated above in the context of Plaintiffs'  
25 claims for waiting time penalties. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL  
26 2533427, at \*3 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief that it is  
27 not in violation of Section 226, any violation is not knowing and intentional."); *Wright v.*  
28 *Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at \*9 (N.D. Cal. Apr. 24, 2013)

(same); *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at \*5 (S.D. Cal. Mar. 22, 2011) (same). *Naranjo* also permitted a good faith defense to rebut the plaintiff's claim for penalties, pursuant to Labor Code § 226.

23. Defendants' records also demonstrated that they routinely reimbursed employees for expenses associated with the use of cellular phones. Accordingly, to the extent that there was any exposure on this claim, Defendants argued that it was not subject to class resolution.

24. **Discount Factors for PAGA Claims:** With respect to the PAGA claims, Defendant Nor-West argued that the only Plaintiff directly employed by it was outside the statute of limitations and thus would not be a suitable representative to pursue the PAGA claim against it. Plaintiffs countered that the relation back doctrine would apply to preserve the claim, relying on *Hutcheson v. Superior Ct.*, 74 Cal. App. 5th 932, 940 (2022). *But see Pointe San Diego Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, 195 Cal.App.4th 265, 279 (2011) (holding relations back only applies where original complaint alleged similar facts). Because Nor-West's workforce accounted for a larger portion of the pay periods during the PAGA Period, the potential exposure on this claim was discounted when considering settlement.

25. Even if Plaintiffs were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Under PAGA, trial courts have considerable discretion to reduce the penalty award. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper and affirmed a judgment which only provided for a PAGA penalty of \$5 per pay period. *Id.* at 539; *see O'Connor*, 2016 WL 4398271, at \*17 (noting that

1 even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court  
2 may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary  
3 and oppressive, or confiscatory”).

4 26. Courts routinely award far less than the statutory maximum amount of civil  
5 penalties, even where an underlying violation of the Labor Code is found. Just very recently,  
6 in the matter of *Magadia v. Wal-Mart Assocs., Inc.*, et al., while the trial court imposed  
7 substantial PAGA penalties upon the defendant, such amount still represented reductions of  
8 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at \*87-  
9 \*100 (N.D. Cal. May 31, 2019). Moreover, this was only after the plaintiff in *Magadia* had  
10 prevailed after trial. Thereafter, the Ninth Circuit reversed the trial court’s ruling, which  
11 demonstrates the significant risk presented in moving forward with litigation. *Magadia v. Wal-*  
12 *Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

13 27. Based on the potential exposure discussed above, the class and PAGA penalties  
14 at maximum total approximately \$13 million. However, if the Court were to determine that  
15 the Defendants acted in good faith such that the imposition of Section 203 or 226 penalties  
16 was not appropriate, the exposure would be reduced to \$4.5 million, and even further reduced  
17 if the Court did not award full PAGA penalties for the reasons above. Given these  
18 considerations, Plaintiffs’ counsel believes the proposed settlement to be fair, adequate, and  
19 reasonable.

20 28. Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in  
21 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs  
22 involved in not prevailing on one or more of the causes of action or theories alleged in the  
23 operative First Amended Complaint at trial, the possibility of non-certification, and the  
24 potential for appeals. These risks on class certification are compounded by the California  
25 Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the  
26 plaintiffs obtained class certification and subsequently prevailed at trial after eight years of  
27 litigation, but the judgment and the certification ruling were reversed by the California  
28 Supreme Court after an additional five years of litigation. The case was remanded to superior

1 court where class certification was denied and plaintiffs' subsequent appeal also was denied

2 29. The proposed settlement ranges from 5%, if completely disregarding the various  
3 defenses presented, up to 16% if considering Defendants' good faith defenses. I believe this to  
4 be a fair, adequate, and reasonable settlement given the risks and other issues addressed in  
5 Plaintiffs' brief and counsels' declarations.

6 30. From the inception of the case, Plaintiffs' counsel have zealously represented the  
7 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to  
8 the individual Class Representatives. Further, Plaintiffs' counsel have been approved as class  
9 counsel on a number of prior cases, have litigated numerous other class action cases, and are  
10 competent to represent the Class.

11 31. Both Plaintiffs' and Defendants' counsel have a great deal of experience in wage  
12 and hour class action litigation. Plaintiffs' counsel have been approved as class counsel in a  
13 number of wage and hour class actions and have extensive litigation experience.

14 32. Each side has apprised the other of their respective factual contentions, legal  
15 theories, and defenses, resulting in negotiations taking place between the Parties.

16 33. Based on my review of all the information, and based on my experience in class  
17 action litigation, I believe this settlement to be fair, adequate, and reasonable.

18 34. My office was retained based upon a contingency fee arrangement wherein  
19 Plaintiffs' counsel agreed to advance all costs and receive no fee unless a recovery was  
20 accomplished. Specifically, had Plaintiffs failed to prevail in this case, counsel for Plaintiffs  
21 would have spent a significant amount of time, money and other resources without any benefit  
22 or return. In addition, had Plaintiffs also failed to prevail in the present case, Defendants would  
23 have been able to seek costs in connection with their defense of the case.

#### 24 **ATTORNEY'S EXPERIENCE**

25 35. My qualifications are as follows: I received a full-tuition scholarship, and  
26 graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of  
27 my class. During my time at Southwestern, I was a Notes and Comments Editor on the  
28 Southwestern Law Review. I also received awards for achieving the highest grade in my class

1 in several courses. In 2012, I was a full-time extern, at the United States District Court for the  
2 Central District. Immediately after law school, I taught several courses at Southwestern,  
3 including Principles of Legal Analysis and Legal Methods. I taught those courses for  
4 approximately four years.

5 36. I practiced civil litigation at Haight Brown & Bonesteel LLP from  
6 approximately September 2013, through January 2016. I was third-chair in a federal court jury  
7 trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach  
8 of contract dispute. I also regularly litigated cases across the civil litigation spectrum,  
9 including employment matters.

10 37. From February 2016, through Fall 2017, I practiced at the international law firm  
11 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune  
12 50 companies in Multi-District Litigation primarily in the product liability sphere. I also  
13 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a  
14 summary judgment decision regarding trade secret issues, in addition to working in several  
15 other practice groups.

16 38. From September 2017, through September 2018, I served as a law clerk to a  
17 Judge sitting on the United States District Court, Central District of California. I regularly  
18 prepared bench memoranda, on cases involving all types of civil litigation, including regularly  
19 working on wage and hour class actions.

20 39. I am currently an associate at the law firm Diversity Law Group, P.C., an  
21 employment law firm that has handled numerous wage and hour class and individual actions,  
22 on both plaintiff and defense sides. My current practice focuses on employment matters  
23 involving both class actions, and single plaintiffs. The firm currently has cases in the Los  
24 Angeles Superior Courts, the Orange County Superior Courts, the San Diego County Superior  
25 Courts, and the United States District Courts for the Central, Northern, and Eastern Districts of  
26 California. I am currently handling numerous wage and hour class action lawsuits with the  
27 firm, including, but not limited to: Agar v. Sensient Natural Ingredients, LLC (Case No. CV-  
28 19-001906, Stanislaus County Superior Court); Cunningham, et al. v. Diverse Business

1 Solutions (Case No. CIVDS1817095, San Bernardino County Superior Court); Heredia v.  
2 Eddie Bauer LLC (Case No. 16CV300475, United States District Court, Northern District of  
3 California); Parsons v. Estenson Logistics, LLC (Case No. 34-2019-00252929, Sacramento  
4 County Superior Court); Wood v. Reeve Trucking Co., Inc. (Case No. STK-CV-UOE-2018-  
5 0004414, San Joaquin County Superior Court); and Coronel v. Pinnacle Agriculture (Case No.  
6 18CV004287, Monterey County Superior Court).

7 40. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court  
8 of Appeals. One of them was Rodriguez v Nike Retail Service Inc., Case No. 17-16866. On  
9 June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor  
10 of our clients. Rodriguez v. Nike Retail Servs., Inc., 928 F.3d 810 (9th Cir. 2019).

11 41. I have also assisted the firm in numerous wage and hour class action mediations.

12 42. In conjunction with the filing of this Motion, my office will provide notice to the  
13 Labor and Workforce Development Agency.

14 43. Plaintiff's counsel does not have any relationship with or connection to  
15 Watsonville Law Center, the proposed cy pres beneficiary.

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct.

18 Executed on this 1st day of March 2024, at Los Angeles, California.

19   
20 \_\_\_\_\_  
21 Max W. Gavron