

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO

CRESCENCIO CRUZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HOLLAND AMERICA FLOWERS, LLC, a
California limited liability company; and DOES
1 through 100,

Defendants.

Case No.: 21CV-0620

*[Assigned for all purposes to Hon. Rita
Federman; Dept. 2]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 27, 2023
Time: 9:00 a.m.
Dept.: 2

Action Filed: November 5, 2021
Trial Date: None Set

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I, Paul K. Haines, declare as follows:

1. I am the principal of Haines Law Group, APC and counsel for the named Plaintiff, Francisco Cruz (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in that state. I have personal knowledge of the facts stated in this declaration and could testify truthfully to them if called upon to do so.

2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated *ude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy, in Encino, California. I also spent a semester in law school working as an extern for the Honorable Edward Rafeedie, District Judge for the United States District Court for the Central District of California.

3. Since graduating from law school, my practice has focused almost exclusively on employment litigation. In September 2007, I began working as an associate attorney at the national law firm of Littler Mendelson, P.C. at its Los Angeles office, which according to its website is the “largest U.S.-based law firm exclusively devoted to representing management in all aspects of labor and employment law.” While at Littler Mendelson, I was primarily staffed on wage and hour class actions in both state and federal courts, and I also worked on a number of individual and multi-plaintiff wage and hour matters as well.

4. During my employment at Littler Mendelson, I played a significant role in the class that I was staffed on, as I was often the only associate staffed on such cases. In particular, I gained a wide array of wage and hour class action experience performing the following types of tasks: drafting demurrers, motions to strike, and motions to dismiss; removing actions from state court to federal court; drafting and responding to written discovery; drafting and opposing summary judgment motions; arguing discovery related motions; drafting motions to consolidate matters; interviewing putative class members and obtaining declarations in connection with class certification; drafting oppositions to motions for class certification; drafting motions for class certification following class certification; conducting exposure analyses to assess the

1 strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification, and
2 potential damages resulting from such claims; drafting mediation briefs; serving as the primary
3 contact to in-house counsel; deposing named plaintiffs and putative class members; deposing
4 retained expert witnesses; and defending the depositions of corporate witnesses. In short, I played
5 an integral role in all aspects of litigation from the inception of a matter through and beyond class
6 certification. I also supervised the work of several junior attorneys who were staffed on the same
7 wage and hour class actions.

8 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
9 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP at
10 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
11 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
12 actions. For the vast majority of these cases, I was the only associate staffed on the matters, and I
13 performed the same job duties as described in the immediately preceding paragraph. In addition
14 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
15 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
16 Standards Act, as well as California-specific claims under Rule 23 of the Rules of Civil Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016 as a Shareholder of Haines Law Group, APC. Currently, over ninety percent (90%)
20 of my practice is dedicated exclusively to the prosecution of wage and hour class actions, and my
21 law firm is currently responsible for prosecuting over fifty (50) wage and hour class actions filed
22 in both State and Federal courts throughout California. I have been appointed as Class Counsel in
23 over one hundred (100) wage and hour class action settlements in state and federal courts within
24 California. Some examples of the matters in which I have been appointed as Class Counsel, all of
25 which have been granted final approval, include the following: *Shaw v. Conant Auto Retail, San*
26 *Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San
27 Diego, Hon. Judge Joan M. Lewis, presiding; *Tirado v. Ricon Corp.*, Case No. BC537042,
28 California Superior Court, County of Los Angeles, Hon. John S. Wiley, presiding; *Horta v.*

1 *Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of
2 San Bernardino, Hon. Donald Alvarez presiding; *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-
3 100007-DRL, California Superior Court, County of Kern, Hon. David R. Lampe presiding;
4 *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No. RG14727191,
5 California Superior Court, Alameda County, Hon. Winifred Y. Smith presiding; *Leverage, et al*
6 *v. Traeger Pellet Grills, LLC, et al*, Case No. 16-cv-00784-KAW, United States District Court for
7 the Northern district of California, Hon. Kandis A. Westmore presiding; *Nunez v. CompuCom*
8 *Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John
9 Shepard Wiley, Jr., presiding; *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191,
10 California Superior Court, County of Los Angeles, Hon. William F. Highberger presiding;
11 *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-CTL, California Superior
12 Court, County of San Diego, Hon. Joel R. Wohlfeil, presiding; *Beach-Barrow, et al v. The Hertz*
13 *Corp.*, Case No. RG17848833, California Superior Court, County of Alameda, Hon. Ioana Petrou
14 presiding; *Gooding v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States
15 District Court for the Central District of California, Hon. Otis D. Wright II presiding; *Afa, et al v.*
16 *Alliance Ground Int'l, LLC*, Case No. BC661449, California Superior Court, County of Los
17 Angeles, Hon. William F. Highberger presiding.

18 7. I have also moved to certify and have received an order certifying a class action
19 and/or conditionally certifying a collective action in the following cases:

- 20 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
21 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
22 presiding (certifying a class of employees who were misclassified as independent
23 contractors);
- 24 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
25 States District Court, Central District of California, Honorable Judge Beverly Reid
26 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 27 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
28 District Court, Central District of California, Honorable Judge John F. Walter, presiding

- (certifying rest period class and conditionally certifying FLSA unpaid overtime class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
 - *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);
 - *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class);
 - *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class);
 - *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations);
 - *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties);
 - *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);

- 1 • *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, California Superior
2 Court, County of San Bernardino, Honorable David Cohn presiding (certifying a wage
3 statement class);
- 4 • *Perez v Sunbelt Rentals, Inc.*, Case No. Case No. 37-2018-00026405-CU-OE-CTL,
5 California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon, presiding
6 (certifying wage statement class);
- 7 • *Bowlin-Burdick et al v. Life Care Centers of America*, Case No. BC657139, Los Angeles
8 County Superior Court, Hon. Maren E. Nelson (certifying four classes for meal period
9 violations, rest period violations, wage statement violations, and waiting time penalties);
10 and
- 11 • *McDonald, et al. v. Sierra Pacific Industries*, Case No. 191133, Shasta County Superior
12 Court, Hon. Tamara L. Wood (certifying eight classes for meal period violations, rest
13 period violations, unpaid wages, unreimbursed business expenses, wage statement
14 violations, and waiting time penalties).

15 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a top young attorney
16 in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an honor
17 awarded to no more than two-and-a-half percent of attorneys under the age of forty in Southern
18 California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me as a “Super
19 Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than five percent
20 of all attorneys in Southern California each year.

21 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
22 involved in every aspect of this case from its inception through the present, and I believe that the
23 proposed Settlement is a favorable result for the Settlement Class.

24 10. Defendant Holland America Flowers, LLC (“Defendant”) is a cut flower farming
25 company and operates in Arroyo Grande, California. Defendant grows a variety of flowers and
26 greens, including lilies, tulips, freesias, peonies, and sells to wholesalers, mass markets and other
27 retailers.

28 11. On November 5, 2021, Plaintiff filed his Class Action Complaint in San Luis

Obispo County Superior Court, alleging causes of actions for: (i) minimum wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) wage statement penalties; (vi) waiting time penalties; and (vii) unfair competition in violation of California Business & Professions Code § 17200 *et seq.* On January 10, 2022, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) which added a cause of action for Civil Penalties Under the Private Attorneys Generals Act (“PAGA”). A true and correct copy of Plaintiff’s November 5, 2021 PAGA letter to the Labor & Workforce Development Agency (“LWDA”) is attached hereto as **Exhibit B**.

12. Prior to mediation, the parties engaged in significant informal discovery, including Defendant’s production of a random sampling of timekeeping and payroll data for the putative class, all relevant wage and hour written policies, and other relevant data and information. Defendant also produced a “class list” with Settlement Class members’ hire and termination dates (if applicable). Plaintiff hired a labor economist with a Ph.D. in economics to analyze and extrapolate the data to assist Plaintiff in calculating Defendant’s potential exposure for each of Plaintiff’s claims. This discovery allowed the parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Defendant’s potential defenses.

13. On September 28, 2022, the parties participated in a full-day mediation with Jeffrey Krivis, Esq., a well-respected wage and hour class action mediator. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the claims and defenses. At the conclusion of mediation, Mr. Krivis issued a mediator’s proposal for a class-wide settlement, which was ultimately accepted by all parties and documented in a Memorandum of Understanding (“MOU”). During the months that followed, the parties negotiated and finalized the long-form Settlement Agreement now before this Court. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**. The proposed Class Notice and Notice of Estimated Settlement Payment are attached as **Exhibits 1 and 2**, respectively, to the Settlement Agreement.

14. The monetary terms of the Settlement are summarized below:

- Maximum Settlement Amount (“MSA”): \$775,000.00
- Minus Court-approved attorneys’ fees (up to 1/3): \$258,333.33

• Minus Court-approved verified costs (up to):	\$25,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus payment to the LWDA:	\$30,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$14,000.00</u>
Net Settlement Amount (“NSA”):	\$440,166.67

15. According to Defendant, there are approximately 750 total Settlement Class members. Therefore, the average individual Settlement Payment is projected to be approximately \$586.89.

16. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff alleges Defendant failed to provide legally-compliant first meal periods such that first meal periods were regularly late and/or less than 30-minutes. Specifically, Plaintiff alleges that Defendant rings a bell each workday at noon signaling the beginning of employees’ 30-minute meal period. Plaintiff alleges that this practice resulted in “late” first meal periods as Settlement Class members regularly started working prior to 7:00 a.m. Plaintiff further alleges that Settlement Class members were not required to clock out/in for their meal periods. Rather, Plaintiff alleges that Defendant automatically deducted 30 minutes from employees’ daily hours worked for a meal period each workday, regardless of whether a 30-minute compliant first meal period was actually provided. Based on Plaintiff’s review of Defendant’s timekeeping records, approximately 106,325 shifts during the Class Period reflected a non-compliant first meal period. Plaintiff further calculated that the average rate of pay for putative class members during the Class Period at approximately \$14.81. Therefore, Plaintiff estimated total maximum damages for first meal period violations at approximately \$1,574,673 (106,325 non-compliant first meal periods * \$14.81 premium). However, Defendant contends that it provided all legally-compliant meal periods to Settlement Class members throughout the Class Period. Defendant also argues that under *Brinker*, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. Defendant also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. With respect to Plaintiff’s claims that Defendant’s auto-deduct policies/practices were unlawful, Defendant maintains that all operations cease from 12:00 p.m. – 12:30 p.m., and therefore, Defendant need not record its employees’ meal periods. Lastly, Defendant argues that individualized inquiries

1 will be required to determine why each meal period was taken late or short or missed by each
2 employee, and whether there was a valid waiver, thereby making certification of this claim
3 unlikely. Based on these defenses, Plaintiff discounted the maximum amount by 50% for risk of
4 non-certification and an additional 55% for risk of losing on the merits or failing to recover the
5 full amount sought, to arrive at an estimated exposure of approximately \$354,301.

6 17. Plaintiff further alleges that Settlement Class members were not provided with
7 second meal periods when they worked shifts in excess of 10.0 hours in a workday. Plaintiff's
8 analysis and extrapolation of the timekeeping data showed that during the Class Period there were
9 approximately 29,672 shifts worked in excess of 10.0 hours that did not reflect a compliant second
10 meal period. Therefore, Plaintiff calculates Defendant's maximum exposure for second meal
11 period violations at approximately \$439,442 (29,672 second meal period violations * \$14.81
12 premium). Defendant argues that second meal periods may lawfully be waived on shifts of more
13 than 10.0 hours but less than 12.0 hours per Labor Code § 512. Defendant further argues that
14 Plaintiff's second meal period exposure is grossly inflated as Plaintiff already seeks a meal period
15 premium for first meal period violations on many shifts, and Plaintiff cannot recover more than
16 one meal period premium for each workday. In addition, as with first meal periods, Defendant
17 argued this claim would not be certified as requiring individualized inquiries into both the merits
18 and damages. In light of these risks, Plaintiff discounted the maximum amount that the class could
19 potentially recover for second meal periods by 50% for a risk of non-certification, and an
20 additional 75% for a risk of losing on the merits, or having exposure reduced due to Defendant's
21 waiver argument, to arrive at an estimated exposure amount of approximately \$54,930.

22 18. Plaintiff alleges that Defendant's timekeeping policies/practices fail to
23 compensate Settlement Class members for all hours worked. Specifically, beginning in March
24 2019, Plaintiff alleges that despite Settlement Class member clocking in/out through an electronic
25 timeclock, Defendant only compensated Settlement Class members for their scheduled hours, as
26 opposed to all hours on the clock. Plaintiff alleges that this timekeeping policy/practice resulted
27 in a systematic underpayment of wages to Settlement Class members. Based on Plaintiff's
28 analysis and extrapolation of Defendant's time and payroll records, Plaintiff estimated that

1 Defendant's timekeeping policies/practices resulted in approximately 21,408 hours in unpaid
2 wages over the Class Period. Therefore, Plaintiff estimates Defendant's maximum exposure for
3 this claim at approximately \$317,052 (21,408 unpaid hours * \$14.81 average hourly rate of pay).
4 Defendant counters that it utilizes a neutral time-rounding mechanism that results, over time, in
5 employees being paid for all hours worked. Defendant also argues that any unpaid time could
6 have only amounted to a few minutes per day, at most, and was thus *de minimis*. While Plaintiff
7 points to *Troester v. Starbucks Corp.*, where the California Supreme Court held California's labor
8 laws generally do not recognize a *de minimis* defense, Defendant argues *Troester* should be
9 limited to its facts. Defendant further argues that it simply allowed employees to clock-in prior to
10 their scheduled start of shift, however, it was not possible for employees to begin working prior
11 to the scheduled start of shift, and therefore, employees could not perform compensable work
12 prior to the start of their scheduled shift. Similarly, Defendant argues that it is not possible for
13 Settlement Class members to perform compensable work after the end of their scheduled shift.
14 Finally, Defendant asserts that Plaintiff would be unable to certify this claim since its timekeeping
15 policy is facially neutral and some employees were *overpaid* due to rounding, and individualized
16 inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each
17 workday in question (including whether they were actually working when they were clocked in),
18 resulting in an unmanageable series of mini-trials. Based on these defenses, Plaintiff discounted
19 the estimated maximum amount by 45% for risk of non-certification, and by an additional 55%
20 to account for risk of losing on the merits or failure to recover the maximal amount sought, to
21 arrive at an estimated exposure of approximately \$78,471.

22 19. Plaintiff further alleges that Defendant failed to authorize and permit all legally-
23 compliant off-duty rest periods. Specifically, Plaintiff alleges that Defendant failed to authorize
24 and permit a third rest period when employees worked shifts in excess of 10.0 hours. Based on
25 Plaintiff's analysis and extrapolation of Defendant's timekeeping records, Plaintiff estimated
26 there were approximately 29,672 shifts over 10.0 hours during the Class Period. Therefore,
27 Plaintiff estimated Defendant's maximum potential exposure for rest period violations at
28 approximately \$439,442 (29,672 rest period violations * \$14.81 premium). Defendant counters

1 that it has maintained compliant written rest period policies and has always authorized and
2 permitted employees a 10-minute rest period for each 4 hours worked, or major fraction thereof,
3 as required under the Wage Order, and that any failure to take rest periods was as a result of
4 employee choice, rather than any Defendant policy and/or practice. Defendant further argues that
5 Plaintiff's rest period claim is not amenable to class treatment, since individual inquiries would
6 be required to determine which employees failed to take rest periods, how many rest periods they
7 failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift.
8 These manageability concerns are especially present with respect to rest period claims, Defendant
9 argues, given that rest periods are not recorded. Given these defenses, Plaintiff discounted this
10 maximum amount by 55% for risk of non-certification and an additional 50% for a risk of being
11 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
12 realistic exposure of approximately \$98,875.

13 20. As a result of Defendant's alleged failure to pay all wages and all meal and rest
14 period premiums, Plaintiff asserts Defendant failed to comply with its final payment obligations
15 set forth in Labor Code § 203. Defendant's records reflected approximately 534 former Settlement
16 Class members who separated from their employment with Defendant and are therefore eligible
17 for waiting time penalties. Based on an hourly rate of \$14.81, Plaintiff estimated the average
18 waiting time penalty per former employee to be \$3,554 ($\$14.81 * 8 \text{ hours per day} * 30 \text{ days}$).
19 Therefore, Plaintiff calculated Defendant's maximum exposure for potential waiting time
20 penalties to be approximately \$1,897,836 ($534 \text{ former employees} * \$3,554 \text{ average penalty}$).
21 Defendant asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding
22 the imposition of waiting time penalties. Moreover, because the waiting time claim is derivative
23 of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses,
24 both as to class certification and on the merits, as to his underlying claims. Defendant further
25 asserts Plaintiff's waiting time penalty exposure was grossly inflated as not every former
26 employee experienced the alleged Labor Code violations. To account for Defendant's defenses,
27 Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an
28 additional 80% for risk of losing on the merits, and/or not receiving the maximum penalties

1 sought, to arrive at an estimated exposure of approximately \$170,805.

2 21. As a further result of Defendant's alleged failure to pay all wages and all meal and
3 rest period premiums, Plaintiff alleges that Defendant failed to issue accurate and compliant wage
4 statements in violation of Labor § 226. Plaintiff further alleges that Defendant issued facially
5 deficient wage statements that did not list the address of the legal entity of the employer in
6 violation of Labor Code § 226(a)(8). Specifically, Plaintiff alleges the wage statements only listed
7 the city, state, and zip code of Defendant, and did not list its street address. Plaintiff's analysis
8 reflected that there were approximately 365 unique employees and approximately 6,495 pay
9 periods worked during the liability period applicable to Plaintiff's wage statement claim. In
10 calculating Defendant's exposure, Plaintiff gave Defendant the benefit of assuming that Plaintiff
11 could only obtain the "initial" wage statement violation rate of \$50 per pay period, for a total of
12 approximately \$324,750 (6,495 pay periods * \$50 "initial" penalty) in potential penalties.
13 Defendant further contends any alleged wage statement violations could not be shown to be
14 "knowing and intentional" given its good-faith defenses, and that Plaintiff cannot show he or
15 other employees "suffer[ed] injury," as required by Labor Code § 226(e) for the imposition of
16 penalties. Defendant further argues that wage statements always accurately reflected hours
17 worked and amounts paid to employees. With respect to Plaintiff's allegations that the wage
18 statement did not list the full address of the legal entity that is the employer, Defendant argues
19 that employees' paychecks contain Defendant's full address, including its street number.
20 Moreover, Defendant argues it revised its wage statements in March 2022 to list its full address
21 on the wage statement, thereby cutting off liability for this claim. Based on these defenses,
22 Plaintiff discounted the maximum exposure by 50% for risk of non-certification, and by an
23 additional 60% for risk of being unsuccessful on the merits, for an estimated realistic exposure of
24 approximately \$64,950.

25 22. As a result of the foregoing Labor Code violations, Plaintiff alleges that Defendant
26 is liable for civil penalties under the PAGA. Plaintiff estimated a maximum total PAGA exposure
27 at \$649,500 (6,495 pay periods * \$100 "initial" penalty). Since Plaintiff's PAGA claim is
28 derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail

1 with those claims. Defendant further maintains that, given its good faith defenses, this Court
2 would exercise its discretion to substantially reduce any PAGA penalties if it were to find
3 Defendant liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum figure
4 by 60% for risk of losing on the merits and manageability issues and/or not recovering a PAGA
5 penalty for each and every pay period, and an additional 80% to account for the possibility of this
6 Court reducing penalties, to arrive at an estimated exposure of approximately \$51,960.

7 23. Using these estimated figures for each of the claims described above, Plaintiff
8 predicted that the potential recovery for the Settlement Class would be approximately \$874,292.
9 The proposed settlement of \$775,000.00 therefore represents approximately 88.6% of the
10 reasonably forecasted recovery for the Settlement Class.

11 24. Although the parties engaged in significant informal discovery prior to mediation,
12 the parties still had significant formal discovery to complete had the matter not settled. This would
13 have required expenditure of substantial time and resources by both parties that would have very
14 likely spanned several years. Even if Plaintiff was to certify the classes, the parties would incur
15 considerably more attorneys' fees and costs through a possible decertification motion, trial, and
16 possible appeal. This Settlement avoids those risks and the accompanying expense.

17 25. Class Counsel will also apply for an attorneys' fees award of one-third of the
18 Maximum Settlement Amount, which is currently estimated to be \$258,333.33, and up to
19 \$25,000.00 in verified costs reimbursement. Plaintiff submits the requested fee is fair
20 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
21 purely contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting
22 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting
23 extensive informal discovery, interviewing Settlement Class members regarding their work
24 experiences, analyzing Settlement Class members' timekeeping and payroll records, working
25 with its retained expert to create a comprehensive damages model, preparing for and attending
26 mediation, negotiating and preparing the long-form Settlement Agreement, preparing this Motion,
27 and otherwise litigating the case. Class Counsel expect to expend additional attorney time in
28 attending the hearing on this Motion, overseeing the Notice process and fielding questions from

1 Settlement Class members, preparing the final approval papers, and attending the Final Approval
2 hearing.

3 26. Plaintiff will apply for Class Representative Enhancement Payment at the time of
4 seeking final approval of the proposed class action settlement in the amount of \$7,500, for his
5 service to the Settlement Class. I believe this is reasonable given Plaintiff's efforts in this case as
6 well as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this
7 case and agreeing to a general release of all claims subject to a waiver of California Civil Code
8 section 1542. Plaintiff was integral in the prosecution of this action, by, among other things,
9 providing substantial factual information and documents to Class Counsel, attending multiple
10 meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and
11 otherwise actively participating in the prosecution of his claims.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed on March 31, 2023, at El Segundo, California.

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15 _____
16 Paul K. Haines
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EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Crescencio Cruz (“Plaintiff”), as an individual and on behalf of all others similarly situated, on one hand, and Defendant Holland America Flowers, LLC (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Jonathan Fraser Light, Jamie N. Stein, and Brier Miron Setlur of LightGabler.

On November 5, 2021, Plaintiff filed a Class Action Complaint against Defendant in San Luis Obispo Superior Court, in the matter entitled *Crescencio Cruz v. Holland America Flowers, LLC*, Case No. 21CV-0620 (the “Action”). On January 10, 2022, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”). The FAC alleges the following causes of action: (i) minimum wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) wage statement penalties; (vi) waiting time penalties; (vii) unfair competition; and (viii) civil penalties under the Private Attorneys General Act (“PAGA”).

Defendant denies the claims raised in the Action and asserts that its wage and hour practices are proper and legal. Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

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

All current and former non-exempt employees who worked for Defendant Holland America Flowers, LLC in California from May 11, 2017, through the date of preliminary approval of the settlement (“Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved, does not become Final as defined below, or is terminated or materially modified without agreement of the Parties, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Additionally, the “PAGA Aggrieved Employees” shall be defined as:

All current and former non-exempt employees who worked for Defendant Holland America Flowers, LLC in California from November 5, 2020, through the date of preliminary approval of the settlement (the “PAGA Period”).

2. **Release by Settlement Class Members and Plaintiff.** Upon the Effective Date (as defined below) and upon the complete funding of the Maximum Settlement Amount, Plaintiff and all

Settlement Class Members (except those who opt out of the non-PAGA claims) will fully release and discharge Defendant, and all of its present and former owners, officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Defendant (collectively the “Released Parties”), as follows:

- A. Settlement Class members will release all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including: (a) failure to pay all minimum wages; (b) failure to pay all overtime wages; (c) failure to provide all meal periods in accordance with California law; (d) failure to authorize and permit all rest periods in accordance with California law; (e) failure to furnish accurate and itemized wage statements; (f) failure to pay all wages owed upon separation of employment; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; and (h) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Class Released Claims”). The period of the Class Released Claims shall extend to the limits of the Class Period.
- B. Release by PAGA Aggrieved Employees. Plaintiff and all PAGA Aggrieved Employees, regardless if they opt-out, will release and discharge the Released Parties from liability for all claims under the PAGA based on the factual allegations alleged in the FAC, that arose during the PAGA Period (“Released PAGA Claims”). It is understood and acknowledged that PAGA Aggrieved Employees receiving a share of the PAGA Amount as set forth in Paragraph 4.B.iv. will be issued a check for their share of the PAGA Amount and will not have the opportunity to opt out of, or object to, the PAGA Release as set forth in this Paragraph. The PAGA Release is binding upon Plaintiff and all PAGA Aggrieved Employees upon Court approval and payment of the PAGA Amount as set forth in Paragraph 4.B.iv.
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff has agreed to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Plaintiff understands that this release includes unknown claims, and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

3. **Maximum Settlement Amount.** As consideration and subject to the express condition precedent that this Settlement Agreement becomes Effective (as defined below), Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of Seven Hundred Seventy-Five Thousand Dollars and Zero Cents (\$775,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. The Settlement shall become effective upon the Court's signing of an Order granting final approval of the Settlement (the "Effective Date"). The Maximum Settlement Amount shall be deposited with the Settlement Administrator no later than thirty (30) days after the Effective Date.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Fourteen Thousand Dollars and Zero Cents (\$14,000.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff's Class Representative Enhancement Payment in recognition of his contributions to the Action and his service to the Settlement Class. If Plaintiff's request for his enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members;
 - (4) Up to one-third of the Maximum Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). If Class Counsel's request for attorneys' fees and/or reimbursement of litigation costs is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will revert to the participating Settlement Class members; and
 - (5) Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such

penalties, or Thirty Thousand Dollars and Zero Cents (\$30,000.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Ten Thousand Dollars and Zero Cents (\$10,000.00) will be payable to the Settlement Class as the “PAGA Amount.”

- D. Defendant’s share of employer payroll taxes on the amounts of the settlement attributable as W-2 wages as provided in Section 4(D), below, shall be paid by Defendant separately from, and in addition to, the Maximum Settlement Amount.
- E. **Escalator Clause.** Defendant represents that there are an estimated 27,153 total work weeks worked by the Settlement Class members between May 11, 2017 to September 28, 2022. If the number of work weeks worked from May 11, 2017 to September 28, 2022 exceeds this figure by more than 10% (i.e., if there are 29,869 or more work weeks), Defendant shall increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 12% increase in the work weeks from May 11, 2017, to September 28, 2022, Defendant shall increase the Maximum Settlement Amount by 12%).

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

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Enhancement Payment, payment to the Labor and Workforce Development Agency, and the Settlement Administrator’s fees and expenses for administration. The remaining amount shall be known as the “Net Settlement Amount.”
- B. Payments from the Net Settlement Amount. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment based on the following formula:
 - i. Payments to all participating Settlement Class members: Eighty percent (80%) of the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member’s proportionate work weeks worked during the Class Period, and will be calculated by multiplying 80% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of work weeks worked during the Class Period, and the denominator of which is the total work weeks worked by all participating Settlement Class members during the Class Period.
 - ii. Waiting Time Amount: Fifteen Percent (15%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” Each participating Settlement Class member whose employment with Defendant

ended at any time from May 11, 2018, to the date of preliminary approval of this Settlement, shall receive an equal share of the Waiting Time Amount. In other words, the Waiting Time Amount will be divided equally among all participating Settlement Class members whose employment with Defendant ended at any time from May 11, 2018, to the date of preliminary approval of this Settlement.

- iii. Wage Statement Amount: Five percent (5%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time from May 11, 2020, to the date of preliminary approval of this Settlement shall receive a portion of the Wage Statement Amount proportionate to the number of work weeks that he or she worked during the period from May 11, 2020, to the date of preliminary approval of this Settlement, and which will be calculated by multiplying 5% of the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of work weeks worked from May 11, 2020 to the date of preliminary approval of this Settlement, and the denominator of which is the total number of work weeks worked by all participating Settlement Class members during the time period from May 11, 2020, to the date of preliminary approval of this Settlement.
- iv. PAGA Amount: Each Settlement Class member who was employed by Defendant at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a portion of the Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Maximum Settlement Amount that has been designated as the “PAGA Amount,” proportionate to the number of work weeks that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s number of work weeks worked during the PAGA Period, and the denominator of which is the total number of work weeks worked by all Settlement Class members during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement).

- C. Within ten (10) calendar days following Defendant’s deposit of the Maximum Settlement Amount and its share of employer payroll taxes with the Settlement Administrator, the Settlement Administrator will calculate the Individual Settlement Payments and provide the same to counsel for review and approval. Within seven (7) calendar days of approval by counsel, the Settlement Administrator will prepare and mail the Individual Settlement Payments, less applicable taxes, and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant’s counsel. After the Individual Settlement Payments are mailed to Settlement Class members, the Settlement Administrator shall distribute the amounts approved for

Class Counsel's attorneys' fees and litigation costs, Plaintiff's Enhancement Payment, payment to the LWDA for its share of PAGA civil penalties, and settlement administration expenses.

- D. For purposes of calculating applicable taxes and withholdings, each Individual Settlement Payment shall be allocated as follows: one-third (1/3) wages, one-third (1/3) penalties, and one-third (1/3) interest. Any payment from the PAGA Amount shall be classified as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Maximum Settlement Amount, which is currently estimated to be Two Hundred Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$258,333.33). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This payment will be in addition to Plaintiff's Individual Settlement Payment

as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking permission to pay up to Fourteen Thousand Dollars and Zero Cents (\$14,000.00) for its services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Payments and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after Individual Settlement Payments have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

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

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- C. Appointing Crescencio Cruz as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet, which is comprised of the Class Notice and Notice of Estimated Settlement Award, and which is attached hereto as **Exhibits 1** and **2**, respectively, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within fifteen (15) business days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, and workweek information for each Settlement Class member employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format reasonably satisfactory to the Settlement Administrator.

- B. Within ten (10) business days from receipt of the information provided for in Paragraph 9(A), the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet in English and Spanish to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that a Settlement Class member who wishes to exclude themselves from the settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Settlement Class members employed during the PAGA Period, whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendant at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PAGA Amount described above, and will be bound by the Released PAGA Claims.
- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the settlement or opt out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.

- iii. Notwithstanding any other provisions of this Settlement Agreement, in the event that ten percent (10%) or more of the total Settlement Class members exclude themselves and opt out of the settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the Settlement Agreement for any reason. In the event that Defendant elects to terminate this settlement under this provision, Defendant shall pay all the Administrative Costs incurred by the Settlement Administrator up to that point.
- D. Objections. Settlement Class members who do not request exclusion may object to this Settlement Agreement by submitting a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel via e-mail) by the Response Deadline. All objections must contain: 1) the objecting Settlement Class member's full name, current address and last four digits of the Social Security number, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; 2) a statement of the Settlement Class member's objections and the factual and legal bases for same, include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, and 3) be postmarked no later than the Response Deadline. Settlement Class members may also appear at the final approval hearing to orally object, even if they have not submitted a written objection.
- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all the information that was used from Defendant's records in order to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator, and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Payments under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Payment shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement

Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

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

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

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

12. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree that they have not and will not publish the Settlement Agreement, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff, the Settlement Class, or the settlement on their website, and shall not contact any reporters or media regarding the settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the

venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

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

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

if to Defendant: Jamie N. Stein, LightGabler, 760 Paseo Camarillo, Suite 300,
Camarillo, CA 93010; jstein@lightgablerlaw.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive,
Suite 180, El Segundo, California 90245;
phaines@haineslawgroup.com.

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

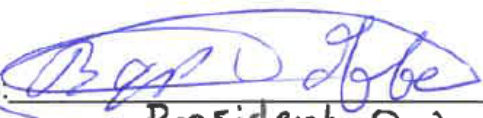
16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this settlement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED:

March 29, 2023

Defendant Holland America Flower, LLC

By: 
Its: President, Owner

DATED: Mar 27, 2023

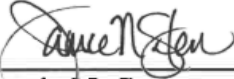
Plaintiff Crescencio Cruz

By: 
Crescencio Cruz (Mar 27, 2023 05:15 PDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

LIGHTGABLER

By: 
Jamie N. Stein
Attorneys for Defendant

DATED: 3/27/23

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

CRESCENCIO CRUZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

HOLLAND AMERICA FLOWERS, LLC, a California
limited liability company; and DOES 1 through 100,

Defendants.

Case No. 21CV-0620

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

To: All current and former non-exempt employees who worked for Defendant Holland America Flowers, LLC in California from May 11, 2017, through <<PRELIM APPROVAL DATE>> (“Class Period”). Collectively, these employees will be referred to as “Settlement Class members.”

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The San Luis Obispo County Superior Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in the case of *Crescencio Cruz v. Holland America Flowers, LLC*, San Luis Obispo Superior Court Case No. 21CV-0620 (the “Action”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Holland America Flowers, LLC’s (“Holland America”) records show that you were employed at Holland America in California as a non-exempt employee between May 11, 2017, through <<PRELIM APPROVAL DATE>> (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Crescencio Cruz (“Plaintiff”) brought this Action against Holland America, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Holland America in California at any time from May 11, 2017, through <<PRELIM APPROVAL DATE>>. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

Plaintiff alleges that Holland America failed to pay Settlement Class members for all earned minimum and overtime wages and failed to provide all required meal and rest periods to Settlement Class members. The Action also alleges that as a result of the unpaid minimum and overtime wages and unpaid meal and rest period premiums, Holland America failed to provide Settlement Class members with accurate and complete wage statements, and failed to timely pay all final wages at the time of separation of employment. As a result

of the foregoing alleged violations, Plaintiff alleges that Holland America engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Holland America denies that it has done anything wrong. Holland America denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Holland America, which expressly denies all liability.

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

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

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

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class members: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Alexandra R. McIntosh amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Defendant Holland America: LIGHTGABLER Jamie N. Stein jstein@lightgablerlaw.com Brier Miron Setlur bsetlur@lightgablerlaw.com 760 Paseo Camarillo, Suite 300 Camarillo, California 93010 Tel: (805) 248-7208 Fax: (805) 248-7209 lightgablerlaw.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Holland America in California between May 11, 2017, through <<PRELIM APPROVAL DATE>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Holland America as described below.

Holland America has agreed to pay \$775,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Action, including payments to Settlement Class members, requested attorneys’ fees and expenses, settlement administration costs, PAGA civil penalties, and the Class Representative’s Enhancement Payment.

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

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$14,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is estimated to be \$258,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$25,000.00 for verified costs Class Counsel incurred in connection with the Action.

Enhancement Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative an enhancement payment in the amount of \$7,500.00 to compensate him for his service and extra work provided on behalf of the Settlement Class members.

PAGA Payment to State of California. \$30,000.00 will be paid to the California Labor & Workforce Development Agency (“LWDA”), representing 75% of the \$40,000.00 the parties have agreed to allocate to the settlement of Plaintiff’s claims on behalf of the Settlement Class members under the PAGA. The remaining \$10,000.00 will be payable to certain aggrieved employees as the “PAGA Amount,” as described below.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$440,166.67 and will be divided as follows:

- (i) Payments to all Participating Settlement Class Members: Eighty percent (80%) of the NSA will be distributed to all participating Settlement Class members based on their proportionate number of workweeks worked during the Class Period, and which will be calculated by multiplying 80% of the NSA by a fraction, the numerator of which is the participating Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- (ii) Wage Statement Amount: Five percent (5%) of the NSA has been designated as the “Wage Statement Amount” and will be allocated to all participating Settlement Class members who were employed by Holland America at any time between May 11, 2020, to <<PRELIM APPROVAL DATE>> in proportion to the number of workweeks that he or she worked between May 11, 2020, to <<PRELIM APPROVAL DATE>>.
- (iii) Waiting Time Amount: Fifteen percent (15%) of the NSA shall be designated as the “Waiting Time Amount,” and shall be distributed equally to each participating Settlement Class member who separated their employment with Holland America between May 11, 2018, to <<PRELIM APPROVAL DATE>>.
- (iv) PAGA Amount: \$10,000.00 has been designated as the “PAGA Amount” and will be allocated to Aggrieved Employees who were employed by Holland America at any time from November 5, 2020, through <<PRELIM APPROVAL DATE>> (the “PAGA Period”) (regardless of whether they opt out of the Settlement Class) in proportion to the number of workweeks that he or she worked between November 5, 2020, through <<PRELIM APPROVAL DATE>>.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion. Settlement checks will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be treated as follows: one-third (1/3) as “wages,” for which an IRS form W-2 will be issued; one-third (1/3) penalties and one-third (1/3) as interest, for which an IRS form 1099 will be issued. Any payment from the PAGA Amount shall be designated as 100% penalties. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Holland America and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, and upon the complete funding of the Maximum Settlement Amount, each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release Holland America, and all of its present and former owners, officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, as well as any individual or entity that could be jointly liable with Holland America (collectively, the “Released Parties”) from all claims, causes of action, and legal theories alleged or which could have been alleged based on the facts in the operative First Amended Class and Representative Action Complaint (“FAC”), including: (a) failure to pay all minimum wages; (b) failure to pay all overtime wages; (c) failure to provide all meal periods in accordance with California law; (d) failure to authorize and permit all rest periods in accordance with California law; (e) failure to furnish accurate and itemized wage statements; (f) failure to pay all wages owed upon separation of employment; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the FAC; and (h) all damages, penalties, interest, costs (including attorney’s fees), and other amounts recoverable under said claims or causes of action as to the facts and/or legal theories alleged or which could have been alleged in the FAC (collectively, the “Class Released Claims”). This release shall run from May 11, 2017, through <<PRELIM APPROVAL DATE>>.

In addition, all Settlement Class members (whether or not they opt out) who worked for Holland America in California at any point during the PAGA Period will release the Released Parties from liability for all claims under the PAGA based on the factual allegations alleged in the FAC, that arose during the PAGA Period (the “Released PAGA Claims”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked between May 11, 2020, through <<PRELIM APPROVAL DATE>>, the proportionate number of workweeks you worked during the PAGA Period, and whether you ended your employment between May 11, 2018, through <<PRELIM APPROVAL DATE>>, as stated in the accompanying Notice of Estimated Settlement Payment. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Payment. Your award is based on the proportionate number of workweeks you worked during the Class Period, the proportionate number of workweeks you worked between May 11, 2020, through <<PRELIM APPROVAL DATE>>, the proportionate number of workweeks you worked during the PAGA Period, and whether you ended your employment between May

11, 2018, through <<PRELIM APPROVAL DATE>>. The information contained in Holland America's records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Estimated Settlement Payment. If you disagree with the information in your Notice of Estimated Settlement Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Payment. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, your signature, and a statement that you wish to be excluded from the class action settlement.

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no benefits from the class action Settlement. However, all Settlement Class members who worked for Holland America during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator. Your written objection should include your name, address, last four digits of your Social Security Number, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 2 of the San Luis Obispo County Superior Court, located at 1050 Monterey Street, San Luis Obispo, California 93408. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Crescencio Cruz v. Holland America Flowers, LLC*, San Luis Obispo Superior Court Case No. 21CV-0620. You do not need to object in writing to be heard at the Final Approval Hearing.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 2 of the San Luis Obispo County Superior Court, located at 1050 Monterey Street, San Luis Obispo, California 93408. The Court also will be

asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Payment to the Class Representative. The Final Approval Hearing may be postponed without further notice to the Settlement Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Luis Obispo County Superior Court, located at 1050 Monterey Street, San Luis Obispo, California 93408, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, HOLLAND AMERICA, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

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

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

EXHIBIT 2

NOTICE OF ESTIMATED SETTLEMENT PAYMENT

CRESCENCIO CRUZ v. HOLLAND AMERICA FLOWERS, LLC
SAN LUIS OBISPO COUNTY SUPERIOR COURT CASE NO. 21CV-0620

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Settlement Payment:

According to Holland America Flowers, LLC's ("Holland America") records:

- (a) you worked [] workweeks for Holland America in California between May 11, 2017, through **<<PRELIM APPROVAL DATE>>**;
- (b) you worked [] workweeks for Holland America in California between May 11, 2020, through **<<PRELIM APPROVAL DATE>>**;
- (c) you worked [] workweeks for Holland America in California between November 5, 2020, through **<<PRELIM APPROVAL DATE>>**; and
- (d) your employment with Holland America **<<DID/DID NOT>>** end between May 11, 2018, through **<<PRELIM APPROVAL DATE>>**.

Based on the above, your Individual Settlement Payment is estimated at \$ [].

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

If you dispute the above information from Holland America's records, Holland America's records will control unless you are able to provide documentation that establishes otherwise, and that Holland America's records are mistaken. If there is a dispute about whether Holland America's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT B

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

November 5, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Crescencio Cruz v. Holland America Flowers, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Crescencio Cruz (“Mr. Cruz”) in claims arising from his employment with Holland America Flowers, LLC; and Does 1 through 100 (collectively “Holland America”). Mr. Cruz is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Holland America’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020, through October 1, 2020. Accordingly, the relevant time period for the violations described herein is one year plus 178 days prior to the date of this letter. Thus, the “aggrieved employees” whom Mr. Cruz seeks to represent include all non-exempt employees who worked for Holland America in California at any time from the one year plus 178 days prior to the date of this letter through the present.

Holland America is a cut flower farming company that produces and grows flowers and other plants, including lilies, tulips, freesias, snapdragons, and a variety of other flowers and plants. Mr. Cruz began working for Holland America at its Arroyo Grande, California location as a non-exempt employee in 2001, and worked until his termination in approximately October 2021.

Throughout Mr. Cruz’s employment with Holland America, Holland America’s timekeeping policies and/or practices resulted in Mr. Cruz and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Holland America require Mr. Cruz and other aggrieved employees to clock out and in through an electronic timeclock which records employees’ hours worked to the minute. However, upon information and belief, Holland America rounds Mr. Cruz’s and other aggrieved employees’ timekeeping entries in an uneven manner to a quarter of an

hour increment, so that, over a period of time, Mr. Cruz and other aggrieved employees were deprived of all earned minimum and overtime wages. Upon information and belief, Holland America's timekeeping system regularly, systematically, and impermissibly rounded the hours worked by Mr. Cruz and non-exempt employees in Holland America's favor, resulting, over a period of time, in the failure to compensate Mr. Cruz and other aggrieved employees for all hours worked. As a result, Mr. Cruz and other aggrieved employees were not compensated for all required minimum and overtime wages.

Holland America failed to provide Mr. Cruz and other aggrieved employees with all legally compliant meal periods due to Holland America's meal period policies/practices, which have frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. Specifically, Mr. Cruz's and other aggrieved employees' meal periods frequently commenced after the completion of five hours of work. During "busy season," which is typically from February through June, Mr. Cruz and other aggrieved employees begin their workday at 6:00 a.m. - 6:30 a.m.; however, Mr. Cruz and other aggrieved employees were not provided with a first meal period until 12:00 p.m., which is after the completion of the fifth hour of work. Additionally, Holland America's meal period policies/practices do not provide for a second meal period for shifts in excess of 10.0 hours, nor were Mr. Cruz and other aggrieved employees provided with a second meal period for shifts over 10.0 hours. Moreover, Holland America does not keep accurate records of Mr. Cruz's and other aggrieved employees' hours worked, including time records showing when employees take their meal periods. Although Holland America does not cease operations during meal periods, Holland America does not require Mr. Cruz and other aggrieved employees to clock out and in for their meal periods, and maintains no other records of employee meal periods. Instead, upon information and belief, Holland America automatically deducts 30-minutes from employee time records each work shift regardless of whether an employee took a 30-minute compliant meal period. On those occasions when Mr. Cruz was not provided with all legally-compliant meal periods to which he was entitled, Holland America failed to compensate Mr. Cruz with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Holland America maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that a legally-compliant meal period was not provided to its non-exempt employees.

Mr. Cruz and other aggrieved employees were not authorized and permitted to take all required rest periods due to Holland America's unlawful rest period policies/practices, which failed to authorize and permit a net 10-minute rest period for every four hours worked, or major fraction thereof. Specifically, although Mr. Cruz and other aggrieved employees regularly worked shifts in excess of 10.0 hours, Mr. Cruz and other aggrieved employees were not authorized and permitted a third rest period during shifts in excess of 10.0 hours. On those occasions when Mr. Cruz was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Holland America failed to compensate Mr. Cruz with the required rest period premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and

belief, Holland America maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that a legally-compliant rest period was not authorized and permitted to their non-exempt employees.

As a result of Holland America's failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Holland America maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Cruz and other aggrieved employees. Additionally, Holland America issued facially deficient wage statements to Mr. Cruz and other aggrieved employees which fail to list the address of the legal entity of the employer in violation of Labor Code § 226(a)(8). As a further result of Holland America's failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Holland America failed to timely pay all final wages to Mr. Cruz and other former employees upon their separation of employment from Holland America.

As described above, Holland America committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"):

Minimum Wage Violations

Holland America was required to pay Mr. Cruz and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 14, § 4. As alleged above, Holland America failed to conform its pay practices to the requirements of the law by failing to pay Mr. Cruz and other aggrieved employees for all hours worked, including, but not limited to, all hours they were subject to the control of Holland America and/or suffered or permitted to work under the California Labor Code and Wage Order 14. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Cruz and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Holland America was required to properly pay Mr. Cruz and other aggrieved employees for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 14 § 3. As alleged above, Holland America caused Mr. Cruz and other aggrieved employees to work overtime hours, but failed to credit these employees with all overtime hours actually worked. As a result of these policies/practices, Mr. Cruz and other aggrieved employees were not compensated for all overtime and double-time wages.

Meal Period Violations

As alleged above, Holland America failed to provide Mr. Cruz and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 14, § 11. As a result, Mr. Cruz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they

experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, Holland America also failed to authorize and permit Mr. Cruz and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 14, § 12. As a result, Mr. Cruz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Holland America was required to furnish Mr. Cruz and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned, and the address of the legal entity that is the employer. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 14, § 7. As alleged above, Holland America issued wage statements which failed to list the address of the legal entity of the employer. Furthermore, as a result of Holland America’s failure to pay all overtime, minimum, and double-time wages, and failure to pay all required meal and rest period premium wages, Holland America maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Cruz and other aggrieved employees in violation of Labor Code § 226. Holland America’s failure to comply with its wage statement obligations was knowing and intentional, and Mr. Cruz and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Holland America failed to timely pay Mr. Cruz and other aggrieved employees all of their final wages at the time of separation, which included all overtime, double-time, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, Holland America’s failure to pay all final wages due to Mr. Cruz and other aggrieved employees was willful and, consequently, entitles Mr. Cruz and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Holland America failed to pay their final wages after their separation, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Cruz will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Cruz’s own investigation, and on information and belief, Holland America committed and continues to commit the following Labor Code violations:

- a. Holland America violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Cruz and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Holland America violated Labor Code §§ 204, 510, 1194, and 1198 by failing to pay Mr. Cruz and other aggrieved employees all overtime compensation earned;
- c. Holland America violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Cruz and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. Holland America violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Cruz and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Cruz and other aggrieved employees at these employees’ respective regular rates of compensation for rest period violations;
- e. Holland America violated Labor Code § 226 by failing to furnish Mr. Cruz and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Holland America violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Mr. Cruz and other aggrieved employees;
- g. Holland America violated Labor Code § 204 by failing to pay Mr. Cruz and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Holland America violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Cruz and other aggrieved employees.

LWDA
November 5, 2021
Page 6 of 6

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Holland America if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to be 'P. H.', with a long horizontal stroke extending to the right.

Paul K. Haines

cc: Holland America Flowers, LLC (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 11/06/2021

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:
9214 8901 9403 8358 5571 35

Our records indicate that this item was accepted by the USPS at:
ORIGIN ACCEPTANCE EL SEGUNDO, CA 90245 11/05/2021

ORIGINAL INTENDED RECIPIENT:
HOLLAND AMERICA FLOWERS LLC
C/O: BERNARDUS AP DOBBE
808 ALBERT WAY
ARROYO GRANDE CA 93420-5828

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Aaron Clark](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Friday, November 05, 2021 4:18:41 PM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-851402-21

Order Number: ORD-000141623

Total:\$75.00

Card Type: Visa

Date: 11/5/2021

Billing Information

Name: Haines Paralegals

Email: aclark@haineslawgroup.com

Billing Address:

2155 Campus Drive, Suite 180, 180

El Segundo, California

90245