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8 GENARO REYES VILLAGRA, and all others similarly situated

9 (Additional attorneys for Plaintiff on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA BARBARA**

12 **(UNLIMITED JURISDICTION)**

13 GENARO REYES VILLAGRA, on behalf of
14 himself and all others similarly situated, and the
15 general public, and as an “aggrieved employee”
16 on behalf of himself and other similarly situated
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19
20 INNOVATIVE PRODUCE, INC., a California
21 corporation; and DOES 1–50, inclusive,

22 *Defendant(s).*

Case No.: 22CV02747

[Consolidated with 22CV02744]

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Hearing Date: May 21, 2024

Hearing Time: 8:30 a.m.

Hearing Dept.: 2, The Honorable
James F. Rigali

Action filed: July 18, 2022

Trial Date: Not Set



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1 The Motion of Plaintiff Genaro Reyes Villagra (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable James F. Rigali presiding. The Court having considered the Motion, the Class
4 Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:
6

7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit 1 to the Declaration of David
9 Spivak in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. All
10 terms herein shall have the same meaning as defined in the Settlement. The Court has determined
11 only that there is sufficient evidence to suggest that the proposed settlement might be fair,
12 adequate, and reasonable, and that any final determination of those issues will be made at the final
13 hearing. The Court will make a determination at the hearing on the motion for final approval of
14 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
15 adequate, and reasonable to the Settlement Class.
16

17 2. This action is provisionally certified pursuant to section 382 of the California Code
18 of Civil Procedure and Rule 3.760, *et seq.* of the California Rules of Court as a class action for
19 purposes of settlement only with respect to the proposed Settlement Class.
20

21 3. Not later than 15 days after the Court grants Preliminary Approval of the
22 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
23 of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator
24 must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
25 and for no other purpose, and restrict access to the Class Data to Administrator employees who
26 need access to the Class Data to effect and perform under the Settlement Agreement. Defendant
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1 has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
2 omitted class member identifying information and to provide corrected or updated Class Data as
3 soon as reasonably feasible. Without any extension of the deadline by which Defendant must send
4 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
5 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
6 Class Data.
7

8 4. No later than three (3) business days after receipt of the Class Data, the
9 Administrator shall notify Class Counsel that the list has been received and state the number of
10 Class Members, PAGA Members, Pay Periods, and Pay Periods in the Class Data.
11

12 5. Using best efforts to perform as soon as possible, and in no event later than 14
13 days after receiving the Class Data, the Administrator will send to all Class Members identified
14 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
15 with Spanish translation, substantially in the forms attached to this order as **Exhibits A, B, C,**
16 **and D.** The first page of the Class Notice shall prominently estimate the dollar amounts of any
17 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the
18 number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts.
19 Before mailing Notice Packets, the Administrator shall update Class Member addresses using the
20 National Change of Address database.
21

22 6. Not later than 3 business days after the Administrator’s receipt of any Notice
23 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
24 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
25 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
26 Packet to the most current address obtained. The Administrator has no obligation to make further
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1 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
2 the USPS a second time.

3 7. The deadlines for Class Members' written objections, Challenges to Class Pay
4 Periods and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an
5 additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
6 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
7 extended deadline with the re-mailed Notice Packet.
8

9 8. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
10 discovers any persons who believe they should have been included in the Class Data and should
11 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
12 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
13 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
14 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
15 requiring them to exercise options under the Settlement Agreement not later than 14 days after
16 receipt of Notice Packet, or the deadline dates in the Notice Packet, whichever are later.
17
18

19 9. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
20 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
21 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
22 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
23 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
24 the Class Member's election to be excluded from the Settlement and includes the Class Member's
25 name, address, and email address or telephone number. To be valid, a Request for Exclusion
26 must be timely faxed, emailed, or postmarked by the Response Deadline. A Request for Exclusion
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1 form, attached as Exhibit B, may be used for this purpose but is not required.

2 10. The Administrator may not reject a Request for Exclusion as invalid because it
3 fails to contain all the information specified in the Class Notice. The Administrator shall accept
4 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
5 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
6 determination shall be final and not appealable or otherwise susceptible to challenge. If the
7 Administrator has reason to question the authenticity of a Request for Exclusion, the
8 Administrator may demand additional proof of the Class Member's identity. The Administrator's
9 determination of authenticity shall be final and not appealable or otherwise susceptible to
10 challenge.
11

12 11. Every Class Member who does not submit a timely and valid Request for Exclusion
13 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
14 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
15 Members' Releases under Paragraphs 6.3 of the Settlement, regardless of whether the
16 Participating Class Member actually receives the Class Notice or objects to the Settlement.
17

18 12. Every Class Member who submits a valid and timely Request for Exclusion is a
19 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
20 right to object to the class action components of the Settlement.
21

22 13. All Aggrieved Employees will be deemed to release the Released PAGA Claims,
23 which include all claims identified in paragraph 6.3 of the Settlement that arise and/or are
24 assertable under PAGA, regardless of whether the Participating Class Member actually receives
25 the Class Notice.
26

27 14. Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days
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1 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
2 whose Notice Packet is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay
3 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.
4 A Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but is not required.
5 The Class Member may challenge the allocation by communicating with the Administrator via
6 fax, email, or mail. The Administrator must encourage the challenging Class Member to submit
7 supporting documentation. In the absence of any contrary documentation, the Administrator is
8 entitled to presume that the Pay Periods contained in the Class Notice are correct so long as they
9 are consistent with the Class Data. The Administrator's determination of each Class Member's
10 allocation of Class Pay Periods and/or PAGA Pay Periods shall be final and not appealable or
11 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all
12 challenges to calculation of Class Pay Periods and/or PAGA Pay Periods to Defense Counsel and
13 Class Counsel and the Administrator's determination the challenges.

16 15. Objections to Settlement. Only Participating Class Members may object to the
17 class action components of the Settlement and/or this Agreement, including contesting the
18 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
19 Counsel Litigation Expenses Payment, and/or Class Representative Service Payment.

21 16. Participating Class Members may send written objections to the Administrator, by
22 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
23 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
24 Participating Class Member who elects to send a written objection to the Administrator must do
25 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
26 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as



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Exhibit D may be used for this purpose but is not required.

17. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

18. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under the Settlement Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), and the number of written objections and attach the Exclusion List, except that any personal identifying information (e.g., names and contact information) shall be redacted from any copies of the Requests for Exclusion forms or other documentation. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

19. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to this Order, the Request for Exclusion form in substantially the form attached as Exhibit B to this Order, the Pay Periods Dispute form in substantially the form attached as Exhibit C to this Order, and the Objection form in substantially the form attached as Exhibit D to this Order.

20. The Court approves, for settlement purposes only, David G. Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation as Class Counsel.

21. The Court approves, for settlement purposes only, Genaro Reyes Villagra as the



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1 Class Representative.

2 22. The Court approves IYLM Group, Inc. Settlement Administrators as the
3 Administrator.

4 23. The Court preliminarily approves Class Counsel's request for attorneys' fees and
5 costs subject to final review by the Court.

6 24. The Court preliminarily approves the estimated Administrator costs payable to the
7 Administrator subject to final review by the Court.

8 25. The Court preliminarily approves Plaintiff's Class Representative Service
9 Payment subject to final review by the Court.

10 26. A Final Approval Hearing shall be held on _____ at _____.m.
11
12 in Department 2 of the Superior Court for the State of California, County of Santa Barbara, located
13 at the Cook Division, 312 East Cook Street, Building C, Santa Maria, CA 93454, to consider the
14 fairness, adequacy, and reasonableness of the proposed Settlement preliminarily approved by this
15 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
16 and costs and the Class Representative Service Payment to the Class Representative. The notice
17 of motion and all briefs and materials in support of the motion for final approval of class action
18 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
19 Court on or before _____. Plaintiff's counsel must give notice to any objecting party
20 of any continuance of the hearing of the motion for final approval.

21 27. If for any reason the Court does not execute and file a Final Approval Order and
22 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
23 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
24 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
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litigation, as more specifically set forth in the Settlement.

28. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATE

**THE HONORABLE JAMES F. RIGALI
SUPERIOR COURT JUDGE**



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