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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

RAFAEL LARA ZAVALA, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

NATURIPE BERRY GROWERS, INC., a California Stock Corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 25CV002099
Consolidated Case No. 25CV006542

[*Assigned for rotational assignment among three judicial officers: Judge Thomas W. Wills; Judge Carrie M. Panetta, Judge Ian A. Rivamonte*]

[PROPOSED] **ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY**

This Court, having considered the Motion of plaintiff Rafael Lara Zavala ("Plaintiff") for Preliminary Approval of Class and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only ("Motion for Preliminary Approval"), the Declarations of Keaton Mendoza, David D. Bibiyan, Plaintiff, and Jodey Lawrence, the Class and PAGA Settlement Agreement ("Settlement," "Agreement" or "Settlement Agreement"), the proposed Notice of Proposed Class Action Settlement and Date for Final Approval Hearing ("Class Notice"), and other documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1. The definitions set out in the Settlement Agreement are incorporated by reference into this Order; all terms defined therein shall have the same meaning in this Order.

2. The Court certifies the following settlement class ("Settlement Class," "Settlement Class Members," "Class Members") for the purpose of settlement only: all persons currently or formerly employed by Defendant Naturipe Berry Growers, Inc. ("Defendant"), either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the period from April 22, 2021, through September 18, 2026, or Preliminary Approval, whichever is later, except that, in the event that the escalator clause in Section 8.1 of Settlement Agreement is triggered because the number of workweeks worked increases by more than 10% or an additional 577 workweeks worked, then the end of the Class Period shall be through the date that the 10% escalator is triggered ("Class Period") in the State of California.

3. "Aggrieved Employees" means all persons currently or formerly employed by Defendant Naturipe Berry Growers, Inc. ("Defendant"), either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the period from January 28, 2024, through the end of the Class Period ("PAGA Period") in the State of California.

4. The Court preliminarily appoints the named plaintiff Rafael Lara Zavala ("Plaintiff") as Class Representative, and David D. Bibiyan and Sarah Cohen of Bibiyan Law Group, P.C., as Class Counsel.

5. The Court preliminarily approves the proposed class settlement upon the terms and

conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the settlement appears to be within the range of reasonableness of settlement that could ultimately be given final approval by the Court. It appears to the Court on a preliminary basis that the settlement amount is fair, adequate, and reasonable as to all potential class members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that extensive and costly investigation and research has been conducted such that counsel for the parties at this time are reasonably able to evaluate their respective positions. It further appears to the Court that the settlement at this time will avoid substantial additional costs to all parties, as well as the delay and risks that would be presented by the further prosecution of the Action. It further appears that the settlement has been reached as the result of intensive, non-collusive and arms-length negotiations utilizing an experienced third-party neutral.

6. The Court approves, as to form and content, the Class Notice that has been submitted herewith.

7. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to the Class Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies with the requirements of law and appears to be the best notice practicable under the circumstances.

8. The Court hereby preliminarily approves the definition and disposition of the Gross Settlement Amount of $200,000.00, which is inclusive of: attorneys' fees of not more than thirty-five percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Agreement, amounts to $70,000.00, in addition to actual costs incurred of up to $30,000.00; service award of up to $6,000.00 to Plaintiff; costs of settlement administration of no more than $7,250.00 and Private Attorneys General Act of 2004 ("PAGA") penalties in the amount of $30,000.00, of which $19,500.00 (65%) will be paid to the Labor and Workforce Development Agency ("LWDA") and $10,500.00 (35%) to Aggrieved Employees.

9. The Gross Settlement Amount expressly excludes Employer's Share of Payroll Taxes, which will be paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

10. Class Member's "Workweek" shall mean any week during which a Class Member worked for Defendant, for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

11. Defendant represents that its best estimate is that there are no more than 5,769 workweeks worked during the Class Period. In the event that the number of workweeks worked increases by more than 10% or an additional 577 workweeks worked, the release period shall be cut off as of the date that the 10% escalator clause is triggered. In no event shall Defendant pay more than the GSA to fully and finally resolve all of Plaintiff's known and unknown claims, the Class Action, and the PAGA Action, and any other actions.

12. The Court deems Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"), the settlement administrator, and preliminarily approves payment of administrative costs, not to exceed $7,250.00 out of the Gross Settlement Amount for services to be rendered by Phoenix on behalf of the class.

13. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. "Class Data" means Class Member identifying information in Defendant's custody, possession, or control, including the Class Member's (1) name; (2) last known address(es); (3) last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

14. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

15. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

16. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline would otherwise expire.

17. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

18. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

19. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or

amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Participating Class Members may send written objections to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

20. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control, and the Objection will be disregarded. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

21. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data.

22. Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

23. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments, and the Individual PAGA Payments.

24. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment in each installment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

25. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

26. Participating Class Members will receive an Individual Settlement Payment. Individual Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Thereafter, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to the Cy Pres Recipient, which is Rancho Cielo located at 710 Old Stage Road, Salinas, CA 93908. The P.O. Box designated for donations is: P.O. Box 6948, Salinas, CA 93912.

27. All papers filed in support of final approval, including supporting documents for attorneys' fees and costs, shall be filed by _____.

28. A Final Approval Hearing shall be held with the Court on _____ at ___:___ _.m in Department 15 of the above-entitled Court to determine: (1) whether the proposed settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

IT IS SO ORDERED.

Dated: _____

_____
Judge of the Superior Court