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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF CONTRA COSTA**

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

17 Plaintiff,

18 vs.

19 DEVIL MOUNTAIN WHOLESALE  
20 NURSERY, INC., a California Corporation; and  
21 DOES 1 through 100, inclusive,  
22 Defendants.

23 Case No.: MSC20-02078 (lead case)  
24 MSC20-02647

25 Assigned for all purposes to Hon. Edward  
26 Weil, Dept. 39

27 **CLASS ACTION**

28 **NOTICE OF ENTRY OF ORDER**

Date of Consolidation: August 2, 2021  
Trial Date: None Set

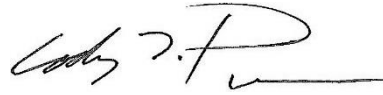
1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:** Please take notice that  
2 on July 1, 2022, the Honorable Edward Weil entered an Order Granting Motion for Preliminary  
3 Approval of Class Action and PAGA Settlement.

4           Attached as **Exhibit A** is a true and correct copy of the Court's Order.

5  
6 Dated: July 12, 2022

**PAYNE NGUYEN, LLP**

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8  
9 By



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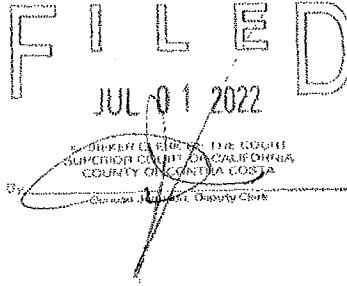
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# **EXHIBIT A**

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF CONTRA COSTA**

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

14 Plaintiff,

15 vs.

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

18 Defendants.

19  
20 JOEL GALVAN MONTES, on behalf of  
himself and all others similarly situated and  
21 aggrieved,

22 Plaintiff,

23 vs.

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

28 Defendants.

Case No.: MSC20-02078 (lead case)  
MSC20-02647

*Assigned for All Purposes to: Hon. Edward  
Weil, Dept. 39*

**ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date of Consolidation: August 2, 2021  
Trial Date: None Set

ORDER

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13 Attorneys for Plaintiff

14 JOEL GALVAN MONTES

15 **ORDER**

16 Plaintiffs Juan Castellanos and Joel Montes move for preliminary approval of their class  
17 action and PAGA settlement with defendants Devil Mountain Wholesale Nursery, Inc. and  
18 Devil Mountain Wholesale Nursery, LLC.

19 **A. Background and Settlement Terms**

20 Castellanos filed the original complaint on October 13, 2020, raising a class action on  
21 behalf of non-exempt employees alleging that defendant violated the Labor Code in various  
22 ways, including unpaid overtime, unpaid minimum wage, con-compliant meal and rest periods,  
23 unreimbursed business expenses, failure to maintain payroll records, waiting time, and wage  
24 statement claims. On November 13, 2020, the complaint was amended to add PAGA claims. On  
25 December 29, 2020, Montes filed a similar complaint, also in this county. The two cases were  
26 consolidated by stipulation and order on August 2, 2021.

27 The settlement would create a gross settlement fund of \$970,000. The class  
28 representative payment to each of the two plaintiffs would be \$7,500. Counsel's attorney's fees  
would be \$339,500 (35% of the settlement). Litigation costs would not exceed \$25,000. The  
settlement administrator would receive an estimated \$10,500. PAGA penalties would be

1 \$20,000, resulting in a payment of \$15,000 to the LWDA. The fund is non-reversionary. The  
2 approximate net payment amount is \$560,000, and the estimated class size is 284 members.

3 The proposed settlement would certify a class of all hourly, non-exempt employees of  
4 defendants in the State of California who worked at any time from October 13, 2016, through  
5 the date of preliminary approval, excluding employees who have signed arbitration and/or  
6 separation agreements (estimated at 708 employees).

7 The class members will not be required to file a claim. Class members may object or opt  
8 out of the settlement. (Class members cannot opt out of the PAGA portion of the settlement.)  
9 Funds would be apportioned to class members based on the number of individual workweeks  
10 worked by the individual employee during the relevant time period. As to the PAGA Members,  
11 the employee portion of the PAGA penalties will be allocated in the same manner. (Par. 44(b).)  
12 Since PAGA members cannot opt out, they will receive their portion of the PAGA penalties  
13 regardless of whether they opt out.

14 Various prescribed follow-up steps will be taken with respect to mail that is returned as  
15 undeliverable. Checks uncashed checks after 180 days will be tendered to the State Controller's  
16 unclaimed property fund.

17 The settlement contains release language, releasing all claims "arising from, or related  
18 to, the same set of operative facts as those set forth in the operative complaints in the Actions  
19 and in the Plaintiffs' PAGA letters." (Par. 26, 63.) It then identifies specific types of claims  
20 falling within that general provision. The limitation to claims arising from facts alleged in the  
21 complaint is important. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537  
22 ["A court cannot release claims that are outside the scope of the allegations of the complaint."  
23 "Put another way, a release of claims that go beyond the scope of the allegations in the  
24 operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.*  
25 (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

26 Informal discovery was undertaken prior to mediation, including analysis of a 20%  
27 sample of time and payroll data. The matter settled after extensive arms-length negotiations,  
28 with included a mediation session with an experienced mediator.

1 Counsel also has provided a summary of a quantitative analysis of the case, and how the  
2 settlement compares to the potential value of the case, after allowing for various risks and  
3 contingencies. Counsel estimates the maximum potential liability at \$11,799,803.76. This is  
4 broken down by separate categories for meal and rest period violations, unpaid off-the-clock  
5 work and overtime, unreimbursed business expenses, waiting time penalties, and wage  
6 statement penalties. Plaintiffs also estimate PAGA penalties at a maximum of \$8,953,500. The  
7 potential liability needs to be adjusted for various evidence and risk-based contingencies,  
8 including problems of proof, as well as the derivative nature of wage statement and waiting time  
9 penalties. Claims for PAGA penalties are difficult to evaluate for a number of reasons: they  
10 derive from other violations, they include “stacking” of violations, the law may only allow  
11 application of the “initial violation” penalty amount, and the total amount may be reduced in the  
12 discretion of the court. (*See* Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where  
13 “based on the facts and circumstances of the particular case, to do otherwise would result in an  
14 award that is unjust arbitrary and oppressive, or confiscatory.”])

15 The LWDA was notified of the settlement.

#### 16 **B. Legal Standards**

17 The primary determination to be made is whether the proposed settlement is “fair,  
18 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,  
19 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
20 further litigation, the risk of maintaining class action status through trial, the amount offered in  
21 settlement, the extent of discovery completed and the state of the proceedings, the experience  
22 and views of counsel, the presence of a governmental participant, and the reaction ... to the  
23 proposed settlement.” (*See also Amaro v. Anaheim Arena Mgmt., LLC, supra*, 69 Cal.App.5th  
24 521.)

25 Because this matter also proposes to settle PAGA claims, the Court also must consider  
26 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*  
27 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the  
28 court found that the “fair, reasonable, and adequate” standard applicable to class actions applies

1 to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the  
2 fairness of the settlement’s allocation of civil penalties between the affected aggrieved  
3 employees[.]” (*Id.*, at 64-65.)

4 California law provides some general guidance concerning judicial approval of any  
5 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*  
6 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement  
7 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,  
8 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot  
9 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a  
10 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*  
11 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not  
12 always apply, because “[w]here the rights of the public are implicated, the additional safeguard  
13 of judicial review, though more cumbersome to the settlement process, serves a salutatory  
14 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141  
15 Cal.App.4th 48, 63.)

### 16 C. Attorney fees

17 Plaintiffs seek 35% of the total settlement amount as fees, relying on the “common  
18 fund” theory. Even a proper common fund-based fee award, however, should be reviewed  
19 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480,  
20 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine  
21 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means  
22 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether  
23 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable  
24 range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)  
25 Following typical practice, however, the fee award will not be considered at this time, but only  
26 as part of final approval.  
27  
28



1 Similarly, litigation costs and the requested representative payment of \$7,500 for each  
2 plaintiff will be reviewed at time of final approval. Criteria for evaluation of such requests are  
3 discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

4 **D. Discussion**

5 The moving papers sufficiently establish that the proposed settlement is fair, reasonable,  
6 and adequate to justify preliminary approval.

7 **E. Terms**

8 1. The Court GRANTS preliminary approval of the class action settlement as set  
9 forth in the Settlement Agreement and finds its terms to be within the range of reasonableness  
10 of a settlement that ultimately could be granted approval by the Court at a Final Approval  
11 hearing. All terms used herein shall have the same meaning as defined in the Settlement  
12 Agreement. For purposes of the Settlement only, the Court finds that the proposed Class is  
13 ascertainable and that there is a sufficiently well-defined community of interest among the  
14 members of the Class in questions of law and fact. Therefore, for settlement purposes only, the  
15 Court grants conditional certification of the following settlement Class:

16 All hourly, non-exempt employees of Defendants Devil Mountain Wholesale  
17 Nursery, Inc. and Devil Mountain Wholesale Nursery, LLC (“Defendants”) in the  
18 State of California who worked at any time from October 13, 2016, through the  
19 date of preliminary approval of the Settlement, excluding those employees who  
20 have signed arbitration and/or separation agreements with Defendants.

21 2. For purposes of the Settlement only, the Court designates Plaintiffs Juan Carlos  
22 Castellanos and Joel Galvan Montes as the Class Representatives and designates Payne Nguyen,  
23 LLP and Bibiyan Law Group, P.C. as Class Counsel.

24 3. The Court designates Phoenix Settlement Administrators as the third-party  
25 Settlement Administrator.

26 4. The Parties are ordered to implement the Settlement according to the terms of the  
27 Settlement Agreement.

28 5. The Court approves the non-reversionary Total Settlement Amount of  
\$970,000.00, exclusive of any employer-side payroll taxes. Defendants have represented there  
are approximately 22,000 Pay Periods within the Class Period. Should the actual number of Pay

1 Periods increase by more than ten percent (10%) (i.e. increase by more than 2,200 Pay Periods),  
2 the Total Settlement Amount shall increase on a pro-rata basis equal to the percentage increase  
3 in the number of Pay Periods worked by the Class Members above 10%. For example, if the  
4 number of Pay Periods increases by 11%, the Total Settlement Amount will increase by 1%. *See*  
5 Settlement Agreement ¶¶ 33, 35 36. Accordingly, the Total Settlement Amount, including  
6 attorneys' fees, are subject to escalation.

7 6. The Total Settlement Amount, subject to escalation, will initially be allocated as  
8 follows:

- 9 a. Class Counsel's attorneys' fees, subject to escalation, in an amount of  
10 thirty-five percent (35%) of the Total Settlement Amount, amounting to  
11 \$339,500.00.
- 12 b. Class Counsel's actual litigation costs and expenses, not to exceed  
13 \$25,000.00.
- 14 c. Settlement Administration Costs performed by the Settlement  
15 Administrator, estimated not to exceed \$10,500.00.
- 16 d. Class Representative Enhancement Payments to each Plaintiff in the  
17 amount of \$7,500.00.
- 18 e. PAGA Penalties of \$20,000.00, including the distribution of \$15,000.00  
19 to the LWDA, which constitutes 75% of the settlement amount allocated  
20 to the PAGA claims, and \$5,000.00 to PAGA Members.

21 *See* Settlement Agreement ¶¶ 38-42.

22 7. After deducting these amounts, the Net Settlement Amount of approximately  
23 \$560,000.00, subject to escalation, shall be distributed to the Participating Class Members on a  
24 *pro-rata* basis based on the number of Workweeks worked during the Class Period. *See*  
25 Settlement Agreement ¶¶ 43-44(a).

26 8. The Court approves, as to form and content, the Notice of Class Action  
27 Settlement ("Class Notice") attached as Exhibit A to the Settlement Agreement.

1           9.     The Court finds that the form of notice to the Class regarding the pendency of  
2 the action and of the Settlement, the dates selected for mailing and distribution, and the methods  
3 of giving notice to members of the Class, satisfy the requirements of due process, constitute the  
4 best notice practicable under the circumstances, and constitute valid, due, and sufficient notice  
5 to all members of the Class. The form and method of giving notice complies fully with the  
6 requirements of California Code of Civil Procedure § 382, California Civil Code § 1781,  
7 California Rules of Court §§ 3.766 and 3.769, the California and United States Constitutions,  
8 and other applicable law.

9           10.    The Court further approves the procedures for Class Members to opt-out of or  
10 object to the Settlement, as set forth in the Class Notice and the Settlement Agreement. The  
11 procedures and requirements for filing objections in connection with the Final Approval  
12 Hearing are intended to ensure the efficient administration of justice and the orderly  
13 presentation of any Class Member's objection to the Settlement, in accordance with the due  
14 process rights of all Class Members.

15           11.    The Court directs the Defendants to provide the Class List to the Settlement  
16 Administrator within ten (10) calendar days of Preliminary Approval. "Class List" means a  
17 complete list of all Class Members that Defendants will diligently and in good faith compile  
18 from their records. The Class List will be formatted in a readable Microsoft Office Excel  
19 spreadsheet containing the following information for each Class Member: (1) full name; (2) last  
20 known home address; (3) last known telephone number; (4) social security number; (5) start and  
21 end dates of active employment as a non-exempt employee of Defendants in the State of  
22 California; (6) total workweeks during the Class Period; and (7) any other information required  
23 by the Settlement Administrator in order to effectuate the terms of the Settlement.

24           12.    The Court directs the Settlement Administrator to mail the Class Notice to the  
25 members of the Class in accordance with the terms of the Settlement.

26           13.    The Class Notice shall provide 45 calendar days' notice for Class Members to  
27 submit disputes, opt-out of, or object to the Settlement.

1           14. Any Class Member wishing to opt-out from the Actions must sign and postmark  
2 a written Request for Exclusion to the Settlement Administrator by the Response Deadline.  
3 “Response Deadline” means the date 45 days after the Settlement Administrator mails the Class  
4 Notice to Class Members. The Request for Exclusion must include (a) the Class Member’s  
5 name, address, telephone number, and the last four digits of the Class Member’s Social Security  
6 number and/or the Employee ID number and (b) a clear statement requesting to be excluded  
7 from the settlement of the class claims. The date of the postmark on the return mailing envelope  
8 receipt confirmation will be the exclusive means to determine whether a Request for Exclusion  
9 has been timely submitted. All Requests for Exclusion will be submitted to the Settlement  
10 Administrator, who will certify jointly to Class Counsel and Defendants’ Counsel the Requests  
11 for Exclusion that were timely submitted. All Class Members who do not request exclusion  
12 from the Actions will be bound by all terms of the Settlement Agreement if the Settlement is  
13 granted final approval by the Court.

14           15. Any Class Member wishing to make a written objection to the Settlement must  
15 sign and postmark a written Objection by the Response deadline. The objection must be signed  
16 by the Participating Class Member and include the Class Member’s name, address, telephone  
17 number, the last four digits of their social security number and/or Employee number, and the  
18 specific reason including any legal grounds for the Participating Class Member’s objection. The  
19 postmark date will be deemed the exclusive means for determining that the objection is timely.  
20 Participating Class Members who fail to object in the manner specified above will be foreclosed  
21 from making a written objection, but shall still have a right to appear at the Final Approval  
22 Hearing in order to have their objections heard by the Court.

23           16. The hearing on Plaintiffs’ Motion for Final Approval of Settlement on the  
24 question of whether the Settlement should be finally approved as fair, reasonable, and adequate  
25 is scheduled in Department 39 of this Court, located at 725 Court Street, Martinez, California  
26 94553, on **October 6, 2022, at 9:00 a.m.**

27           17. At the Final Approval Hearing, the Court will consider: (a) whether the  
28 Settlement should be approved as fair, reasonable, and adequate for the Class; (b) whether a

1 judgment granting final approval of the Settlement should be entered; and (c) whether  
2 Plaintiffs' application for enhancement payments, settlement administration costs, and Class  
3 Counsel's attorney's fees and costs, should be granted.

4 18. Counsel for the Parties shall file memoranda, declarations, or other statements  
5 and materials in support of their request for final approval of Plaintiffs' application for  
6 enhancement payments, settlement administration costs, Class Counsel's attorneys' fees and  
7 costs, prior to the hearing on Plaintiffs' Motion for Final Approval of Settlement according to  
8 the time limits set by the Code of Civil Procedure and the California Rules of Court.

9 19. An implementation schedule is below:

Event	Date
Defendants to provide class contact information to Settlement Administrator no later than:	July 10, 2022 [10 days following preliminary approval]
Settlement Administrator to mail the Class Notice to the Class Members no later than:	July 17, 2022 [7 days, or soon thereafter, following provision of contact information]
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement:	August 31, 2022 [45 days after mailing of the Class Notice]
Deadline for Plaintiffs to file Motion for Final Approval of Class Action and PAGA Settlement:	September 13, 2022 [16 court days prior to the Final Approval Hearing]
Hearing on Motion for Final Approval of Settlement	October 6, 2022

26 20. Pending the Final Approval Hearing, all proceedings in this action, other than  
27 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and  
28 this Order, are stayed. To facilitate administration of the Settlement pending final approval, the

1 Court hereby enjoins Plaintiffs and all members of the Class from filing or prosecuting any  
2 claims, or suits regarding claims released by the Settlement, unless and until such Class  
3 Members have filed valid Requests for Exclusion with the Settlement Administrator.

4 21. Counsel for the Parties are hereby authorized to utilize all reasonable procedures  
5 in connection with the administration of the Settlement which are not materially inconsistent  
6 with either this Order or the terms of the Settlement.

7 **F. Conclusion**


8 The motion is granted. Counsel are directed to prepare an order reflecting this tentative  
9 ruling, the other findings in the previously submitted proposed order, and to obtain a hearing  
10 date for the motion for final approval from the Department clerk. Other dates in the scheduled  
11 notice process should track as appropriate to the hearing date.

12 The ultimate judgment must provide for a compliance hearing after the settlement has  
13 been completely implemented. Plaintiffs' counsel are to submit a compliance statement one  
14 week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the  
15 claims administrator pending satisfactory compliance as found by the Court.

16 The further case management conference set for July 27, 2022 at 8:30 a.m. is vacated.  
17

18 **IT IS SO ORDERED.**  
19

20  
21 DATED: July 1, 2022

22 By:   
HON. EDWARD WEIL  
JUDGE OF THE SUPERIOR COURT  
23  
24  
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26  
27  
28