

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

THIS CLASS ACTION SETTLEMENT AGREEMENT (hereinafter “Settlement Agreement”) is entered into and effective upon its execution by all parties hereto, subject to final approval by the Court. It is entered into by and between Lawrence Branco and Kathy Elliott (“Plaintiffs”), on their own behalf and on behalf of all members of the “Settlement Class,” as defined below, and as proxies for California’s Labor & Workforce Development Agency (“LWDA”), on the one hand, and Orchard Supply Company, LLC (“Defendant”), on the other hand, with reference to the recitals and provisions set forth below.

RECITALS

A. Certain claims, demands and differences have existed heretofore between Plaintiffs, on their own behalf, the Settlement Class (as defined below), and Plaintiffs as proxies for the LWDA, on the one hand, and Defendant, on the other hand, including the Settlement Class and PAGA Group’s (as defined below) contentions that Defendant: (1) misclassified the Settlement Class Members and PAGA Group Members as exempt employees, rather than non-exempt employees; (2) failed to pay the Settlement Class Members and PAGA Group Members overtime in violation of California Labor Code §§ 510 and 1194, and in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”); (3) violated California Business & Professions § 17200 *et seq.* by failing to pay the Settlement Class Members and PAGA Group Members overtime and failing to provide the Settlement Class Members and PAGA Group Members with meal and rest breaks; (4) failed to timely pay the Settlement Class Members and PAGA Group Members all wages due when their employment with Defendant terminated; (5) failed to provide the Settlement Class Members and PAGA Group Members with accurate wage statements in violation of California Labor Code § 226; and (6) failed to reimburse Settlement Class Members and PAGA Group Members for business expenses, including out-of-pocket transportation costs and expenses related to the use of cell phones, in violation of California Labor Code § 2802. Plaintiffs and the PAGA Group also seek penalties against Defendant pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”) based on the aforementioned claims.

B. These claims were brought by Plaintiffs on behalf of the Settlement Class and the PAGA Group against Defendant in the matter of *Lawrence Branco, et al. v. Orchard Supply Company, LLC*, Case No. 5:18-cv-00531-EJD (the “Lawsuit”), which is pending before the Honorable Edward J. Davila in the United States District Court for the Northern District of California (the “Court”).

C. Plaintiffs are represented in the Lawsuit by the following law firms (“Settlement Class Counsel”):

**WYNNE LAW FIRM
SHAVITZ LAW GROUP, P.A.**

D. Defendant is represented in the Lawsuit by:

HUNTON ANDREWS KURTH LLP

E. Plaintiffs and Defendant prepared for and engaged in a formal mediation on November 29, 2018. The mediation was presided over by an experienced mediator, Jeffrey A. Ross, Esq. Settlement discussions continued thereafter for several months through Mr. Ross while the litigation proceeded until a settlement ultimately was reached.

F. The parties hereto have conducted substantial formal discovery and informal investigation in connection with the claims asserted in the Lawsuit. The parties have propounded substantial written discovery, taken party depositions, and researched and briefed the relevant legal and factual issues arising from all of the claims that are alleged in, or could have been alleged in, the Lawsuit. The parties have considered: (1) Plaintiffs' ability to conditionally certify a class under the FLSA (and, if such a class were conditionally certified, Defendant's ability to have the class decertified); (2) Plaintiffs' ability to certify a class under Federal Rule of Civil Procedure 23; (3) the relative merits of the case and the uncertainties of trial; (4) the benefits of settlement; (5) the costs, risks, and delays associated with litigating this Lawsuit; and (6) the likely appeals from any dispositive rulings or denial of class certification. Based on these considerations, the parties agreed to completely settle this Lawsuit to avoid the risk and cost of continued litigation and trial.

G. Defendant denies each and every allegation by Plaintiffs. Defendant contends that Plaintiffs, the Settlement Class Members, and the PAGA Group Members were properly classified as exempt employees. Defendant also denies that the Lawsuit is amenable to collective or class treatment. Neither this Settlement Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement Agreement, is or may be construed or used in the Lawsuit or in any other action or proceeding as an admission, concession, or indication by or against Defendants of any fault, wrongdoing, or liability whatsoever.

H. It is the intention of the parties to this Settlement Agreement to settle and dispose of, fully and completely, any and all claims, demands and causes of action that were or could have been, set forth in the Lawsuit.

PROVISIONS

1. COOPERATION BY THE PARTIES

The parties to this Settlement Agreement and their counsel agree to cooperate fully with each other to promptly execute all documents and take all steps necessary to effectuate the terms and conditions of this Settlement Agreement.

2. APPOINTMENT OF ADMINISTRATOR

The parties will stipulate to and seek the Court's order appointing Simpluris Inc. to act as the settlement and claims administrator (the "Claims Administrator") for purposes of this settlement. The Claims Administrator shall be responsible for, among other matters:

(a) The Settlement Administrator will be responsible for establishing a qualified settlement fund account; updating addresses with the U.S. Postal Service's National Change of Address ("NCOA") database; making commercially reasonable searches for new addresses for Settlement Class Members whose Notice Packages are returned as undeliverable with no

forwarding address; maintaining a manned and dedicated toll free number and email address for this Settlement; designing, maintaining and manning a website with information about the settlement including the ability to request and download a Claim Form or Request for Exclusion, determining the amount of payments allocated to each Settlement Class Member in accordance with this Settlement Agreement, along with the amount of all payroll taxes to be paid and deductions to be withheld; providing the Parties with a sortable spreadsheet of all Claiming Settlement Class Members including all information included on their Claim Forms; preparing and mailing settlement checks; distributing any approved incentive award and attorneys' fees and expenses; calculating and paying all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; determining the tax characterization of the incentive award; and retaining and providing a copy of the settlement checks and Claim Forms signed by the Claiming Settlement Class Members (with contact information redacted) to Defendant's Counsel, and a copy of Claim Forms signed by Claiming Settlement Class Members to Plaintiffs' Counsel.

(b) Preparing and mailing of the Notice Package (as defined in Paragraph 10 below) and reminder notice to Settlement Class Members and receiving Claim Forms and Request for Exclusion Forms (as defined in Paragraph 10 below);

(c) After final approval of the settlement by the Court, the Claims Administrator shall determine the timeliness of submissions of Claim Forms (as set forth in Paragraph 10 below) and shall resolve any dispute by any member of the Settlement Class (as defined below) as to any factor or issue regarding the computation of that member of the Settlement Class's Individual Settlement Award (as defined in Paragraph 11 below) as well as any similar issues regarding any member of the PAGA Group's Individual PAGA Payment (as defined in Paragraph 11 below); and the Claims Administrator's decision on any such issue or dispute shall be final, binding, and non-appealable;

(d) Resolving any disputes regarding membership in the Settlement Class (as defined in Paragraph 4 below) and the PAGA Group (as defined in Paragraph 4 below) and the Claims Administrator's decision on any such issue or dispute shall be final, binding, and non-appealable;

(e) Issuing the Individual Settlement Awards and Individual PAGA Payments, making appropriate payroll deductions, and complying with any necessary reporting as set forth in Paragraph 18(b) below.

(f) Providing Settlement Class Counsel and Defendant's Counsel with periodic reports of the administration process, including but not limited to the mailing of Notice Packages, the number of Claim Forms received, remailing of returned Notice Packages, defective Claim Forms received, letters mailed notifying Settlement Class Members of defective Claim Forms, reminder postcard mailed, settlement checks mailed, and settlement checks cashed.

3. APPOINTMENT OF SETTLEMENT CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

For the purpose of the settlement of the Lawsuit only, Plaintiffs shall request that the Court appoint them as representatives of the Settlement Class ("Settlement Class Representatives"), and

to appoint Wynne Law Firm and Shavitz Law Group, P.A. as “Settlement Class Counsel.” Defendant shall not oppose Plaintiffs’ request. In the event that this settlement does not receive final approval from the Court (or if a final approval order is reversed on appeal), no party shall use this provision of the Settlement Agreement or the appointment of Settlement Class Representatives and/or Settlement Class Counsel for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

4. DEFINITION OF THE SETTLEMENT CLASS AND PAGA GROUP

(a) For purposes of this settlement only, the parties agree that the “Settlement Class” is defined as follows:

Those individuals who were employed by Defendant as Assistant Store Managers (i) in California on or after January 24, 2014 or (ii) in Florida or Oregon on or after January 24, 2015; and who (i) did not enter into a severance agreement or an arbitration agreement with Defendant after March 6, 2016 or (ii) submitted a declaration in support of Plaintiffs’ Motion for Conditional Class Certification and did not enter into a severance agreement with Defendant.

For purposes of this settlement only, the parties agree that: (1) members of the Settlement Class who worked as Assistant Store Managers (“ASMs”) for Defendant in California shall be known as the “Rule 23 Sub-Class”; and (2) members of the Settlement Class who worked as ASMs for Defendant in Oregon or Florida shall be known as the “FLSA Sub-Class.”

(b) For purposes of this settlement only, the parties agree that the “PAGA Group” is defined as follows:

Those individuals employed by Defendant as Assistant Store Managers in California on or after November 20, 2016.

(c) Persons Expressly Excluded From the Settlement Class

Any person who previously settled or released all of the claims covered by this settlement, any person who previously was paid or received awards through civil or administrative actions for all of the claims covered by this settlement, any person who excludes him or herself from the Rule 23 Sub-Class pursuant to Paragraph 6(a), or any member of the FLSA Sub-Class who does not opt-in to the settlement, shall not be a member of the Settlement Class.

5. CERTIFICATION OF THE SETTLEMENT CLASS

Solely for the purposes of implementing this Settlement Agreement and effectuating the settlement, Defendant shall not oppose a request by Plaintiffs that the Court enter an order: (1) preliminarily certifying a collective action with respect to the Settlement Class; (2) preliminarily certifying the Rule 23 Sub-Class; (3) appointing Wynne Law Firm and Shavitz Law Group, P.A. as Settlement Class Counsel; and (4) appointing Plaintiffs as Settlement Class Representatives. In the event that this settlement does not receive final approval from the Court (or if a final approval

order is reversed on appeal), no party shall use this provision or the certification of the Settlement Class, the appointment of Plaintiffs as Settlement Class Representatives, or the appointment of Wynne Law Firm and Shavitz Law Group, P.A. as Settlement Class Counsel for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

6. MEMBERS' RIGHT TO EXCLUDE THEMSELVES FROM THE SETTLEMENT

(a) Members of the Rule 23 Sub-Class may exclude themselves from the Rule 23 Sub-Class and from participation in the settlement by completing the Request for Exclusion Form (in substantially the same form as attached to this Settlement Agreement as Exhibit "D") and returning it to the Claims Administrator postmarked no later than thirty-five (35) days after the Notice (as defined below) is first mailed to Settlement Class Members as set forth hereinafter, except that those members of the Rule 23 Sub-Class who receive the Notice pursuant to the one skip trace (described in Paragraph 10(d) of this Settlement Agreement) shall be informed (via an insert in the Notice) that their time to submit a Request for Exclusion Form to the Claims Administrator shall thirty-five (35) days from the date the Notice is mailed to the updated address obtained as a result of the skip trace. Any member of the Rule 23 Sub-Class who does not provide the Claims Administrator with a timely Request for Exclusion Form shall be bound by all the terms and conditions of this Settlement Agreement, including the release of identified claims set forth hereinafter, whether or not he or she submits a Claim Form.

(b) Members of the FLSA Sub-Class need not do anything to exclude themselves from the settlement.

(c) PAGA Group Members shall have no right to exclude themselves from the PAGA Group, because Plaintiffs are settling the PAGA claims as proxies for the LWDA on behalf of the State of California.

7. DEFENDANT'S RIGHT TO VOID SETTLEMENT

If the total number of persons who opt-out of the Rule 23 Sub-Class on a timely basis is equal to or in excess of fifteen percent (15%) of the number of persons to whom Notices are mailed, Defendant shall have the option, in its sole and absolute discretion, to be exercised within 30 days of receiving notice of the total opt-out percentage to void this Settlement Agreement and the parties' settlement by notifying Settlement Class Counsel in writing of its intention to do so. The Settlement Agreement and the parties' settlement shall become void seven (7) days after the delivery of such written notification unless, during that period, the parties agree in writing to a mutually acceptable resolution and thereafter the Court approves such resolution. Should Defendant exercise its right under this Paragraph, Defendant shall be solely responsible for all costs incurred by the Claims Administrator.

8. CONSIDERATION BY DEFENDANT

In consideration for the releases and dismissals set forth in this Settlement Agreement, Defendant agrees to: (a) the payments to the individual Settlement Class Members pursuant to the payment procedure as described herein; (b) the PAGA Allocation, as defined below and as set forth herein and as approved by the Court; (c) the payment of attorneys' fees and costs, as set forth

herein and as awarded by the Court; (d) the payment of incentive awards to Plaintiffs, as set forth herein and as awarded by the Court; and (e) the payment of the cost of administration of the settlement, including, without limitation, the fees of the Claims Administrator, as set forth hereinafter.

(a) “Maximum Settlement Amount” to be Paid by Defendant

The “Maximum Settlement Amount” to be paid by Defendant is the total sum of One Million Two Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00). This is a non-reversionary settlement. No amount of the “Maximum Settlement Amount” shall be retained by Defendant. Subject to Paragraph 8(a)(2), the maximum payment by Defendant shall be “all inclusive,” including: any damages, penalties, or other relief arising from the alleged misclassification of the Settlement Class and PAGA Group as exempt employees; any failure to pay the Settlement Class Members and PAGA Group Members overtime wages; any failure to provide Settlement Class Members and PAGA Group Members with meal breaks or rest breaks, or meal and rest break penalties; any failure to timely pay Settlement Class Members and PAGA Group Members all wages due upon the termination of their employment with Defendant; any failure to provide accurate wage statements; any failure to reimburse Settlement Class Members and PAGA Group Members for any reimbursable business expenses; any restitution to Settlement Class Members and PAGA Group Members under California Business & Professions Code Section 17200 *et seq.*, based on the aforementioned claims; any PAGA penalties based upon the aforementioned alleged California Labor Code violations; interest, attorneys’ fees and costs, as approved by the Court; the fees and costs of the Claims Administrator in connection with settlement and claims administration, as approved by the Court, including any fees and costs in connection with notice, the claims process, and the exclusion process, up to a maximum of Fifteen Thousand Dollars (\$15,000.00); settlement payments; the incentive awards to Plaintiffs, as approved by the Court; employee-paid withholding and payroll taxes (including state and federal income taxes, social security contributions and unemployment taxes); and all other settlement-related payments and costs.

- (1) Under no condition will Defendant’s liability for payments exceed the Maximum Settlement Amount, subject to Paragraph 8(a)(2) below. At no time shall Defendant have the obligation to segregate the funds comprising the Maximum Settlement Amount, and Defendant shall retain exclusive authority over, and the responsibility for, those funds. All claims submitted by Settlement Class Members, the PAGA Allocation (as defined below), and all attorneys’ fees, costs, incentive awards, and claims administration expenses shall be paid out of the Maximum Settlement Amount.
- (2) In addition to the Maximum Settlement Amount, Defendant shall be responsible for paying all employer-paid withholding and payroll taxes and similar expenses (including state and federal income taxes, social security contributions, and unemployment taxes), including FUTA and the employer’s share of FICA and Medicare taxes as required by law with respect to settlement payments to members of the Settlement Class.

Settlement Class Members and PAGA Group Members will be responsible for their own tax obligations.

- (3) Defendant's sole monetary obligations under this Settlement Agreement shall be the Maximum Settlement Amount and the employer-paid withholding and payroll taxes and similar expenses referred to in Paragraph 8(a)(2) above.

(b) Attorneys' Fees and Costs

Defendant understands that Settlement Class Counsel will file an application for an award of attorneys' fees in an amount not to exceed 25% of the Maximum Settlement Amount and reimbursement of costs in an amount not to exceed Twenty Seven Thousand Five Hundred Dollars (\$27,500) incurred in the prosecution of the Lawsuit for the benefit of the Settlement Class and the PAGA Group. Defendant agrees not to object to such application up to such amounts. Any such attorneys' fees and costs approved by the Court shall be paid from the Maximum Settlement Amount. If the Court awards attorneys' fees in an amount that is less than 25% of the Maximum Settlement Amount, then the difference between 25% of the Maximum Settlement Amount and the amount of attorneys' fees actually awarded by the Court shall become Potential Gross Settlement Proceeds within the meaning of Paragraph 11(b) of this Settlement Agreement. In the event that this settlement does not receive final approval from the Court (or if a final approval order is reversed on appeal), no party shall use this provision or the award of attorneys' fees and costs for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

(c) Incentive Awards

Settlement Class Counsel will file an application for approval of an incentive award for each Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000) for a total of Twenty Thousand Dollars (\$20,000) in Incentive Award payments. These awards are in addition to Plaintiffs' Individual Settlement Awards. Defendant agrees not to object to such application. Any such incentive award approved by the Court shall be paid from the Maximum Settlement Amount.

(d) The PAGA Allocation; Payment to the California Labor and Workforce Development Agency

Plaintiffs shall apply to the Court for approval of payments under PAGA. The parties agree to allocate one-third of the Potential Gross Settlement Proceeds, as defined below, to PAGA penalties (the "PAGA Allocation"). Seventy-five percent (75%) of the PAGA Allocation shall be paid to the LWDA (the "LWDA Payment"). The remaining twenty-five percent of the PAGA allocation (the "PAGA Group Share") shall be distributed to PAGA Group Members as "Individual PAGA Payments" in the manner described below. In the event the Court rejects the amount of the PAGA Allocation, the parties will meet and confer with the Court to reach a penalty allocation acceptable to all parties that does not materially alter the terms of the settlement or increase the Maximum Settlement Amount hereunder.

9. FILING OF MOTION TO CERTIFY SETTLEMENT CLASS

As part of Plaintiffs' Motion for Preliminary Approval, Plaintiffs shall request the Court to certify the Settlement Class, as defined herein, for purposes of settling the Lawsuit. Defendant does not consent to, and does not advocate for, but shall not oppose, such certification for settlement purposes only. In the event that this settlement does not receive final approval from the Court (or if a final approval order is reversed on appeal), no party shall use this provision or such certification for any purpose whatsoever in the Lawsuit or in any other action or proceeding.

10. INFORMATION TO ADMINISTRATOR; NOTICE OF SETTLEMENT AND CLAIM FORM; TIME TO SUBMIT CLAIMS

(a) Information To Claims Administrator

The parties agree that within fourteen (14) calendar days of execution of the Court's order granting preliminary approval, Defendant will provide the Settlement Class Members' and PAGA Group Members' information to the Administrator to the extent Defendant possesses such information and it has not already done so. Such information shall include each Settlement Class Member's name, last known address, last known home or mobile telephone number, and social security number.

(b) Notice of Settlement

Within thirty (30) calendar days of preliminary approval of this Settlement Agreement and Court approval of a settlement notice to the Settlement Class, the Claims Administrator will mail to the Settlement Class Members via first class United States Mail, at their last known address, the Court-approved notice of the terms and conditions of this settlement in the form of a "Notice" agreed upon by the parties, approved by the Court, and in substantially the same form as Exhibits "A" (for Rule 23 Sub-Class members) and "B" (for FLSA Sub-Class members) attached hereto. The Notice shall be accompanied by a "Claim Form" approved by the Court, in substantially the same form as Exhibit "C" attached hereto. All members of the Rule 23 Sub-Class also shall be provided with a "Request for Exclusion Form" approved by the Court, in substantially the same form as Exhibit "D" attached hereto. Exhibits "A," "C," and "D," in the case of the Rule 23 Sub-Class, and Exhibits "B" and "C" in the case of the FLSA Sub-Class, together with an addressed postage-prepaid return envelope, shall be collectively referred to as the "Notice Package."

The Notice shall inform Settlement Class Members:

- (1) of the terms of the settlement, including the Class Member's estimated settlement share;
- (2) that to receive a settlement award a Settlement Class Member must return a Claim Form within sixty (60) days of the Notice is mailed or re-mailed to an updated address (*i.e.*, the Submission Date);
- (3) that any Rule 23 Sub-Class member who does not exclude himself or herself from the settlement will release all claims he or she may have;

- (4) of the deadlines for submitting a Request for Exclusion Form (if applicable), or a copy thereof, to the Claims Administrator (*i.e.*, thirty-five (35) days after the Notice is mailed, except as to those Settlement Class Members who receive the Notice pursuant to re-mailing, whose deadline shall be thirty-five (35) days from the date the Notice is mailed to the updated address;
- (5) that any Claim Form or Request for Exclusion Form (if applicable) that is post-marked later than the respective deadlines will not be considered timely; (however, the parties agree to meet and confer regarding whether to accept late filed claims up and to including one (1) business day prior to the hearing on Final Approval);
- (6) of the name, address, and email address of the Claims Administrator to which the Claim Form or Request for Exclusion Form must be returned;
- (7) that there is a toll-free number to contact the Claims Administrator and an available website which provides information about the settlement; and
- (8) The date, time, and location of the Final Approval Hearing, as defined herein.

(c) Claim Form

The Claim Form shall inform such Settlement Class Members:

- (1) that the individual is believed to be a Settlement Class Member;
- (2) that the Settlement Class Member is shown by Defendant's records to have worked in the Settlement Class;
- (3) that the Settlement Class Member may contest the number of work weeks shown in the Claim Form by providing additional documentation to substantiate his or her dispute; however, providing such supporting documentation is not mandatory to any dispute;
- (4) that to submit a valid claim, the Settlement Class Member must declare under penalty of perjury that he or she has not previously settled or released, or received awards for, the claims covered by this settlement as explained in the accompanying notice;
- (5) that the failure to make this declaration in the Claim Form shall make the Settlement Class Member's Claim Form defective;
- (6) that by submitting a Claim Form, the Settlement Class Member agrees, *inter alia*, to participate in the settlement for FLSA purposes and thereby waives any additional rights the Settlement Class Member may have as alleged in this Lawsuit;

- (7) that the Claim Form submitted to the Claims Administrator, whether the original Claim Form received by the Settlement Class Member or a copy thereof, must be completed and must bear a signature either original or electronic; and
- (8) that the Settlement Class Member shall have until the Submission Date to submit his or her Claim Form to the Claims Administrator.

(d) Mailing of Notice, Claim Form, Request for Exclusion Form and Website

The Claims Administrator shall send the Notice Package to all Settlement Class Members via first class United States Mail. Before the first mailing, the Claims Administrator will perform a National Change of Address (“NCOA”) search for the Settlement Class Members. The Claims Administrator shall perform one skip trace as to any Notices (and accompanying documents) that are returned by the post office for invalid addresses within five (5) days of its receipt of such returned Notice. Those Settlement Class Members who receive Notice pursuant to the one skip trace shall be informed (via an insert in the Notice) that his or her time to submit a Claim Form or Request For Exclusion Form (if applicable) to the Claims Administrator shall be thirty-five (35) days for the Request for Exclusion or sixty (60) days for the Claim Form. The Claims Administrator shall notify Settlement Class Counsel and Defendant’s counsel of the number of all Settlement Class Members who were sent Notice as a result of a skip trace and whose Notice was again returned. The Claims Administrator shall provide such notification within seven (7) days of its receipt of such returned Notice. The Claims Administrator shall establish a website to be approved by both parties from which Settlement Class Members may download a Claim Form or Request for Exclusion Form. Settlement Class Members may also submit their Requests for Exclusion or Claim Forms through the website. If a Class Member submits both a Request for Exclusion and a Claim Form, the Request for Exclusion shall be disregarded and the Claim Form shall control.

There will be one reminder post card (in a form to be approved by the parties) sent halfway through the claims period to Settlement Class Members who have not submitted a Claim Form before the Submission Date.

(e) Time for Submission of Claim Forms

- (1) A Settlement Class Member who submits a timely and properly completed Claim Form shall be a “Claiming Settlement Class Member.” Plaintiffs shall be considered Claiming Settlement Class Members by virtue of their execution of this Settlement Agreement without the need to further submit a Claim Form.
- (2) To be considered timely, a Claim Form must be received by the Claims Administrator through the website or post-marked if received through the U.S. Postal Service on or before the Submission Date.

- (3) The Settlement Class Members who receive Notice pursuant to the one skip trace shall have sixty (60) days from the date of the re-mailing to submit a Claim Form.
- (4) The submission of a Claim Form will be deemed completed on the earlier of the date of receipt by the Claims Administrator or the postmark date on the envelope containing the Claim Form.

(f) Disputed Claim Forms

A Class Member may dispute the number of work weeks shown on his or her Claim Form. The Class Member will be asked to provide the correct number of work weeks he or she believes she worked in a covered position during the applicable Class Period. The Class Members will be asked to provide documentation in his or her possession to substantiate the dispute; however, supporting documentation is not mandatory for the dispute. The Claims Administrator shall promptly notify Defendant and Class Counsel of all such disputes and provide any information the Class Member has furnished regarding their dispute. Defendant shall investigate the dispute. In all such disputes, Defendant's records will carry a presumption of correctness. The Claims Administrator shall review Defendant's response to the dispute as well any additional information provided by the Class Member or Class Counsel and make a determination on the dispute. The Claims Administrator's determination shall be final and binding on all parties without right of appeal.

(g) Defective Claim Forms and Request for Exclusion Forms

A Claim Form or Request for Exclusion Form shall be defective if a Settlement Class Member fails to (1) make the required declaration (in the case of the Claim Form), or (2) sign the form as required. If the Claims Administrator receives a defective Claim Form or Request for Exclusion Form, the Claims Administrator shall return such form to the Settlement Class Member via first class mail (*i.e.*, provide a "Deficiency Notice") and instruct the Settlement Class Member as to the basis of the deficiency, and that he or she has until the later of (1) thirty-five (35) days or (2) the Submission Date within which to correct, complete, and/or sign such form and return it to the Claims Administrator via first class mail. The Claims Administrator will send only one Deficiency Notice per member of the Settlement Class. If a completed Claim Form, Request for Exclusion Form, or the requested information is not received within said time frame or remains defective, the Claim Form or Request for Exclusion Form, as the case may be, may be considered defective and invalid for purposes of this settlement. In such event, the Parties shall meet and confer and determine whether to accept the defective Claim Form or Exclusion Form. If the Parties cannot agree, the matter shall be submitted to the Claims Administrator whose decision shall be final, binding, and non-appealable. The Claims Administrator will provide the identity of Settlement Class Members who submitted defective Claim Forms and Request for Exclusion Forms to Settlement Class Counsel and Defendant's counsel at the same time a Settlement Class Member is notified that his or her form is defective.

(h) Report by Claims Administrator

No later than fourteen (14) calendar days after the completion of the Notice process, the Claims Administrator shall provide the parties with a declaration (the “Claims Administration Declaration”) setting forth the steps taken by the Claims Administrator to provide notice to Settlement Class Members, the number of undeliverable Notice Packages, the number of valid claims received, the number of disputed claims and their resolution, and the number of Requests for Exclusion.

(i) Retention of Claim Forms and Request for Exclusion Forms

The Claims Administrator shall maintain the completed Claim Forms and Request for Exclusion Forms throughout the administration of the settlement. The Claims Administrator shall make the completed Claim Forms and Request for Exclusion Forms available to Settlement Class Counsel and the Defendant upon a reasonable request for such forms.

11. PAYMENT TO SETTLEMENT CLASS MEMBERS AND PAGA GROUP MEMBERS

(a) Claims Administrator’s Role

The Claims Administrator shall calculate amounts to be paid to Claiming Settlement Class Members and PAGA Group Members as provided below.

(b) Potential Gross Settlement Proceeds

The “Potential Gross Settlement Proceeds” shall equal the Maximum Settlement Amount minus the total of: (1) Court-approved attorneys’ fees; (2) Court-approved reimbursement of costs; (3) Court-approved incentive awards to Plaintiffs; and (4) the fees and costs of the Claims Administrator. Two-thirds of the Potential Gross Settlement Proceeds shall constitute the “Settlement Class Member Allocation” and shall be available for Claiming Settlement Class Members to claim their Individual Settlement Awards, as defined below. The remaining one-third of the Potential Gross Settlement Proceeds shall constitute the Settlement’s PAGA Allocation.

(c) Individual Awards

- (1) Calculation of Settlement Class Member’s Individual Settlement Award: Each Claiming Settlement Class Member’s “Individual Settlement Award” shall equal the Claiming Settlement Class Member’s number of workweeks worked during the applicable class period divided by the total workweeks worked by all Settlement Class Members during the applicable class period, multiplied by the Settlement Class Member Allocation.

Example: If the Claiming Settlement Class Member worked 80 workweeks during the applicable class period, and there are a total of 8,000 workweeks worked by all Settlement Class Members during the applicable class period, then the Claiming

Settlement Class Member's Individual Settlement Award will be 1% of the Settlement Class Member Allocation.

$(80 \text{ workweeks} / 8,000 \text{ workweeks}) \times (\text{Settlement Class Member Allocation})$

- (2) Calculation of PAGA Group Member's Individual PAGA Payment: In addition to any Individual Settlement Award allocated pursuant to Paragraph 11(c)(1) above, each PAGA Group Member's Individual PAGA Payment shall equal the PAGA Group Member's number of workweeks worked during the PAGA Group Period divided by the total number of workweeks worked by all PAGA Group Members during the PAGA Group Period, multiplied by the PAGA Group Share.

Example: If the PAGA Group Member worked 80 workweeks during the PAGA Group Period, and PAGA Group Members worked a total of 19,000 workweeks during the PAGA Group Period, the PAGA Group Member's Individual PAGA Payment will equal 0.421% of the PAGA Group Share.

$(80 \text{ workweeks} / 19,000 \text{ workweeks}) \times (\text{PAGA Group Share})$.

- (3) For purposes of calculating Individual Settlement Awards and Individual PAGA Payments, workweeks worked shall be determined by Defendant's records.
- (4) The Claims Administrator will pay out all claims submitted by Claiming Settlement Class Members and all Individual PAGA Payments, out of a qualified settlement fund, and issue IRS tax forms.
- (5) The Individual Settlement Awards will be allocated as follows: fifty percent (50%) to alleged unpaid wages which will be reported to the IRS on Form W-2; and fifty percent (50%) to alleged non-wages which will be reported to the IRS on Form 1099. The Individual PAGA Payments will be denominated as non-wages (*i.e.*, penalties) that will be reported to the IRS on Form 1099.

(d) Claimed Settlement Amounts; Unclaimed Amounts

The total Individual Settlement Awards claimed by Claiming Settlement Class Members shall be the "Claimed Settlement Amount." If each and every individual Settlement Class Member is a Claiming Settlement Class Member, then the Claimed Settlement Amount, plus the PAGA Allocation, shall equal the Potential Gross Settlement Proceeds.

Any Settlement Class Member who does not make a claim (*i.e.*, become a Claiming Settlement Class Member) shall not receive any Individual Settlement Award. All checks issued by the Claims Administrator to Claiming Settlement Class Members shall be negotiable for one

hundred eighty (180) days. Thereafter, any portion of the Potential Gross Settlement Proceeds that is not distributed to the Settlement Class shall be paid to the *cy pres* entity approved by the parties and the Court.

(f) Tax Liability and Net Payments

The payment by the Defendant pursuant to this Settlement Agreement is for an alleged failure to pay compensation due, interest on said sum, and all other claims as set forth in the First Amended Complaint. In accordance with both State and Federal tax laws, taxes and other applicable withholdings shall be withheld from each Claiming Settlement Class Member's Individual Settlement Award as is required in order to comply with the same. Portions of any Individual Settlement Award not subject to withholding will be issued with a Form 1099. After appropriate tax withholding, the net payment to be received by each Claiming Settlement Class Member shall be designated as the "Net Payment," and said sum shall be paid as provided in this Settlement Agreement. The Claims Administrator shall report the taxes withheld from the wages of each Claiming Settlement Class Member as required by law via a W-2 form, and shall immediately pay over all such withheld funds, plus the employer's contribution, to the appropriate State and Federal taxing authorities. The Claims Administrator shall provide each Claiming Settlement Class Member with appropriate documentation setting forth the amount of any tax or other payment withheld, and employer contribution made, in accordance with State and Federal tax requirements. In addition, the Claims Administrator shall provide such information to Defendant's counsel and to Settlement Class Counsel. Claiming Settlement Class Members and PAGA Group Members shall be solely responsible for remitting to State and/or Federal taxing authorities any applicable other taxes due. Neither Defendant, Defendant's counsel, Settlement Class Counsel, nor the Claims Administrator shall be responsible for the amount or calculation of any taxes that may be owed by Claiming Settlement Class Members as a result of this Agreement..

(g) Payment of Settlement Funds Will Not Be Considered By Defendant as Having Any Effect on Any Employee Benefit Plan and Similar Plans

The payment to any Settlement Class Member or PAGA Group Member as provided for in this Settlement Agreement is not and shall not be deemed by Defendant to constitute an addition to, a modification of, or a change in any previously credited hours of service, compensation and/or wages under any employee benefit plan, employment policy, or stock option plan of or sponsored by the Defendant or any of its present or former parent corporations or affiliates or any jointly trusted benefit plans. Any such payment to any Settlement Class Member or PAGA Group Member shall not be considered by Defendant to form the basis for additional contributions to, additional benefits under, or any other additional entitlements under any employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or any of its present or former parent corporations or affiliates or any jointly trusted benefit plans. Defendant and each of its present and former parent corporations and affiliates retain the right to modify and/or amend the language of their employee benefit plans, employment policies, and stock option plans, and to seek to have modified and/or amended the language of any jointly trusted benefit plans, to make clear that any amounts paid as a result of this Settlement Agreement are not considered by Defendant as compensation or wages, or payments for "hours worked," as defined by the

applicable plans and policies, and that no additional contributions or benefits will be provided by Defendant by reason of the settlement.

12. ADMINISTRATION OF MAXIMUM SETTLEMENT AMOUNT

(a) The Claims Administrator will calculate the Net Payments to be made to the Claiming Settlement Class Members from the Potential Gross Settlement Proceeds in accordance with the terms and provisions of this Settlement Agreement, and shall calculate the Individual PAGA Payments to be made to the PAGA Group Members from the Potential Gross Settlement Proceeds in accordance with the terms and provisions of this Settlement Agreement. Defendant's counsel and Settlement Class Counsel will be provided access to all calculations and all data forming the basis for such determinations. The fees and costs of the Claims Administrator in connection with said verification and/or performance shall be considered settlement administration expenses and shall be paid from the Maximum Settlement Amount. All of the fees, costs of the Claims Administrator in connection with printing, issuing and/or mailing settlement payments shall be considered settlement administration expenses and shall be paid from the Maximum Settlement Amount, as provided herein.

(b) No person shall have any claim against Defendant, Defendant's counsel, Plaintiffs, the Settlement Class, the PAGA Group, Settlement Class Counsel, or the Claims Administrator based on distributions and payments made in accordance with this Settlement Agreement.

13. COURT'S PRELIMINARY APPROVAL

Plaintiffs shall seek preliminary approval of this settlement by the Court for entry of a Preliminary Approval Order in substantially the same form as Exhibit "E" attached hereto. As part of the preliminary approval process, the Court shall be asked to approve, among other matters, the terms of the settlement, the method of providing notice, the Notice Package, the procedure for the calculation of settlement distributions, the payment of incentive awards, and Settlement Class Counsel's fees, costs, and expenses as set forth herein.

14. FINAL APPROVAL HEARING

The Notice shall contain a date, time, and location for a "Final Approval Hearing." The Final Approval Hearing shall be held on a date approved by the Court no earlier than ten (10) days after the last day for Defendant to exercise its right to void this Settlement Agreement, as provided for in Paragraph 7 hereof. The exact date, time, and location of the Final Approval Hearing shall be set forth in the Notice. At the Final Approval Hearing, Settlement Class Counsel shall request the Court to grant final approval of the applications for attorneys' fees, costs, expenses, and incentive award referred to in Paragraphs 8(b) and 8(c) of this Settlement Agreement.

15. PROCEDURE FOR OBJECTIONS TO SETTLEMENT

The Notice shall provide that Settlement Class Members who wish to object to the settlement must file with the Court and serve on Settlement Class Counsel and Defendant's counsel a written statement objecting to the settlement. Such written statement must be filed with the Court and served on Settlement Class Counsel and Defendant's counsel no later than thirty (30) days

prior to the scheduled Final Approval Hearing date stated in the Notice (the “Objection Deadline Date”). Unless the Court orders otherwise, no Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the settlement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of his or her intention to appear at the Final Approval Hearing, and copies of any written objections or briefs, have been filed with the Court and served on Settlement Class Counsel and Defendant’s counsel on or before the Objection Deadline Date. Settlement Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement. Settlement Class Counsel shall file their fee request at least sixty-five (65) days before the Final Approval Hearing.

No PAGA Group Member shall have the right to object to the settlement unless he or she is also a Settlement Class Member.

16. [PROPOSED] FINAL APPROVAL ORDER, FINAL JUDGMENT AND ORDER OF DISMISSAL

Upon final approval of the settlement, the Court shall be requested to issue a [Proposed] Final Approval Order and Final Judgment (“Proposed Final Judgment”) in substantially the same form as Exhibits “F” and “G” attached hereto, respectively, which shall, *inter alia*:

(a) Dismiss without prejudice all claims asserted in the First Amended Complaint on behalf of individuals employed by Defendant as Assistant Store Manager who are not Settlement Class Members and/or PAGA Group Members.

(b) With respect to the Settlement Class, grant final approval of the settlement as fair, reasonable, adequate, in good faith and in the best interests of the Settlement Class, as a whole, and order the parties to carry out the provisions of this Settlement Agreement. With respect to the PAGA Group, approve the settlement as fair and reasonable and in the best interest of the PAGA Group and the State of California.

(c) Adjudge that all Settlement Class Members are conclusively deemed to have released Defendant and the Released Defendants (as defined below), of and from any and all rights, claims, demands, liabilities, causes of action, liens and judgments arising out of or in any way related to the wage and hour matters set forth, or that could have been set forth based on the facts alleged, in the First Amended Complaint in relation to the alleged claims against Defendant relating to the release of the Settlement Class.

(d) Adjudge that Defendant and the Released PAGA Defendants (as defined below) have been released from all PAGA claims that were set forth or that could have been set forth based on the facts alleged, in the First Amended Complaint.

(e) Bar and permanently enjoin each Settlement Class Member from prosecuting against the Defendant and the Released Defendants (as defined below), any and all of the settled

and released claims which the Settlement Class Members or any of them had or have arising out of or based upon any of the settled and released claims, or any of the allegations contained in the First Amended Complaint.

(f) Bar and permanently enjoin each PAGA Group Member from prosecuting any Released PAGA Claims (as defined below) against any of the Released PAGA Defendants (as defined below).

(g) Reserve continuing jurisdiction as provided herein above.

17. APPROVAL AND ADOPTION OF [PROPOSED] FINAL JUDGMENT BY COURT AND FINAL JUDGMENT

Plaintiffs shall seek final approval and adoption of this settlement from the Court for entry of the [Proposed] Final Judgment and the Final Approval Order, as well as an Attorneys' Fee and Costs Order and Incentive Awards Order.

18. PAYMENT OF SETTLEMENT PROCEEDS

(a) Timing of Payments

Net payments to Claiming Settlement Class Members (including any Court-approved incentive award to Plaintiffs), payment to Settlement Class Counsel for Court-approved attorneys' fees and costs, payment to PAGA Group Members, and payment to the Claims Administrator for all settlement administration expenses shall be made no later than five (5) business days after the date on which the time to challenge any aspect of this settlement by appeal has lapsed, provided that no such appeal has been filed (regardless of whether any objections to the settlement were made). If any such appeal is filed, the payments described in this Paragraph shall be made no later than five (5) business days after a final resolution of all appeals that result in the upholding of the parties' settlement. The date defined and determined by this Paragraph shall be called the "Effective Date."

(b) Method of Payment

Defendant will fund a qualified settlement fund established by the Claims Administrator who will be responsible for making appropriate payroll deductions and reporting obligations and issue the Individual Settlement Awards and the Individual PAGA Payments. The expiration date on the settlement checks will be 180 days from the date the settlement checks are issued. Uncashed settlement checks shall be paid to California's unclaimed property fund in the name of the respective Claiming Settlement Class Members.

(c) Skip Trace for Individual PAGA Payments

The Claims Administrator shall perform one skip trace as to any Individual PAGA Payments that are returned by the post office for invalid addresses within five (5) days of its receipt of such returned Individual PAGA Payments, and will re-mail the payment to an updated address

(if any) within fifteen (15) calendar days of receipt of the returned mail. If no other address is found, no further action is required, except as otherwise provided in this Settlement Agreement.

(d) Explanation of Individual PAGA Payments

Each Individual PAGA Payment shall include a brief description that the payment is the PAGA Group Member's share of the PAGA Allocation in a lawsuit resolving claims asserted under PAGA, in substantially the same form as Exhibit "H" attached hereto.

19. COSTS

Defendant shall bear its own costs and attorneys' fees incurred in connection with or arising out of the Lawsuit. The Settlement Class's attorneys' fees and costs, as approved by the Court, shall be paid from the Maximum Settlement Amount.

20. RELEASED CLAIMS

(a) Released Claims by Settlement Class Members

As of the Effective Date, all Settlement Class Members who did not submit a valid Request For Exclusion Form release Defendant (*i.e.*, Orchard Supply Company, LLC) and each of its respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the "Released Defendants") from the "Released Claims" as defined below.

For purposes of this Settlement Agreement, the "Released Claims" are defined as: All claims, demands, rights, liabilities, and causes of action that were asserted in the lawsuit, or could have been asserted in the lawsuit based on the facts alleged, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, for state wage and hour laws, including California Labor Code sections 201–204, 226, 226.7, 510, 512, 515, 1194, 2802; all applicable Industrial Wage Commission Wage Orders; Business and Professions Code § 17200; the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* ("PAGA"); and all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, ("FLSA") to the extent the FLSA claims arise out of facts and/or claims asserted or that could have been asserted in the Lawsuit, whether for allegedly unpaid wages, damages, liquidated damages, and/or statutory or civil penalties (including, but not limited to, claims for penalties pursuant to Labor Code §§ 218, 226, 226.3, 558 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)), 2699.3, 2699.5, attorneys' fees and costs (including, but not limited to, attorneys' fees and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure §1021.5), or interest arising out of the claims at issue, including, but not limited to: the causes of action asserted in the Lawsuit relating to the alleged misclassification of Defendant's Assistant Store Managers,

claims for allegedly unpaid overtime, alleged failures to provide meal periods, alleged failures to provide rest breaks, alleged failures to pay for all hours worked, alleged failures to pay all wages due and owing at termination, alleged failures to pay any other wages, alleged failures to reimburse business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any wage statements.

(b) Released Claims by PAGA Group Members

As of the Effective Date, all PAGA Group Members release Defendant (*i.e.*, Orchard Supply Company, LLC) and each of its respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the “Released PAGA Defendants”) from the “Released PAGA Claims” as defined below.

For purposes of this Settlement Agreement, the “Released PAGA Claims” are defined as: All claims, demands, rights, liabilities, and causes of action that were asserted, or could have been asserted based on the facts alleged in the First Amended Complaint, on behalf of the PAGA Group Members, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), based on alleged violations of Labor Code §§ 201, 202, 203, 226, 226.3, 510, 512, 1194, 2802, and I.W.C. Wage Order No. 7 (including 7-2001), whether for penalties (including, but not limited to penalties pursuant to Labor Code §§ 218, 226, 558 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)), 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to attorneys’ fees and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure § 1021.5), or interest arising out of the alleged underlying Labor Code violations, including: alleged unpaid overtime, alleged failures to provide meal periods, alleged failures to provide rest breaks, alleged failures to pay for all hours worked, alleged failures to pay all wages due and owing at termination, alleged failures to pay any other wages, alleged failures to reimburse business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any wage statements.

(c) Release by the Named Plaintiffs

Plaintiffs agree to execute a separate general release of all claims. Such release shall be substantially in the same form as Exhibit “I” attached hereto.

21. WAIVER OF RIGHTS

(a) The parties hereto, including the Settlement Class, stipulate and agree that the consideration received by the Settlement Class Members pursuant to this Settlement Agreement compensates the Settlement Class for all damages, all restitution, all penalties (including PAGA

penalties), and all liability related to any compensation to which they may be entitled as a result of the allegations that were, or could have been made, in the Lawsuit.

(b) By granting preliminary and final approval of the settlement, the Court will have reviewed this Settlement Agreement and concluded that the Settlement appears fair, reasonable and adequate.

22. NO ADMISSION BY THE PARTIES

Defendant, the Released Defendants, and the Released PAGA Defendants deny any and all claims alleged in the Lawsuit and deny all wrongdoing whatsoever. This Settlement Agreement is neither a concession nor an admission, and shall not be used against Defendant, the Released Defendants, or the Released PAGA Defendants as an admission or indication with respect to any claim of any fault, concession or omission by Defendant, the Released Defendants, or the Released PAGA Defendants. Whether or not the settlement is finally approved, neither the settlement, nor any document, statement, proceeding or conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall in any event be:

(a) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant, the Released Defendants, or the Released PAGA Defendants, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant, any of the Released Defendants, or any of the Released PAGA Defendants of any liability, fault, wrongdoing, omission, concession or damage; or

(b) disclosed, referred to or offered or received in evidence against Defendant, any of the Released Defendants, or any of the Released PAGA Defendants in any further proceeding in the Lawsuit, or any other civil, criminal or administrative action or proceeding, except for purposes of settling the Lawsuit pursuant to this Settlement Agreement or for the enforcement of the terms of this Settlement Agreement.

23. CONFIDENTIALITY

Plaintiffs, Defendant, Settlement Class Counsel, and Defendant's counsel shall not (i) initiate or cause the initiation of any communications concerning the settlement with any media organization and/or (ii) respond to or cause a response to be made to any communications concerning the settlement with any media organization. Notwithstanding the foregoing, nothing in this Agreement shall be read to prohibit Settlement Class Counsel from identifying the settlement in their advertising, including on their websites.

24. NULLIFICATION OF AGREEMENT

In the event: (a) the Court does not enter the Preliminary Approval Order specified herein in substantially the same form as Exhibit "E" attached hereto; (b) the Court does not finally approve the settlement as provided herein; (c) the Court does not issue a [Proposed] Final Judgment (as provided herein and in substantially the same form as Exhibit "G" attached hereto) which becomes final and not subject to any appeals; or (d) the settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment

entered by the Court in furtherance of this settlement shall be treated as void *ab initio*. In such event, the parties hereto and any funds to be awarded under this settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the parties shall proceed in all respects as if this Settlement Agreement had not been executed; however in this event, Defendant agrees to separately pay for the cost charged by the Claims Administrator directly to the Claims Administrator.

25. RETURN OF DOCUMENTS AND INFORMATION

Plaintiffs, the Settlement Class, the PAGA Group, and Settlement Class Counsel agree that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of the Lawsuit. No later than ten (10) days after Settlement Class Counsel receives any Court-approved award of attorneys' fees, Plaintiffs and Settlement Class Counsel shall destroy or return to Defendant's counsel the original and all copies of any documents that Defendant produced or provided to Plaintiffs or Settlement Class Counsel during the Lawsuit. Should Settlement Class Counsel elect to destroy those documents, Settlement Class Counsel shall certify under penalty of perjury that such documents have been destroyed.

26. REPRESENTATIONS AND WARRANTIES

Each party to this Settlement Agreement represents and warrants that he, she or it has not heretofore assigned or transferred, or purported to assign or transfer, any of the claims released pursuant to this Settlement Agreement to any other person and that he, she or it is fully entitled to compromise and settle same.

27. CALIFORNIA LAW

All questions with respect to the construction of this Settlement Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of California applicable to agreements to be wholly performed within the State of California.

28. OWN COUNSEL

Each party hereto acknowledges that he, she or it has been represented by counsel of his, her or its own choice throughout all of the negotiations which preceded the execution of this Settlement Agreement and in connection with the preparation and execution of this Settlement Agreement.

29. FURTHER ACTS AND DOCUMENTS

The parties hereto agree to do such acts and execute all such documents necessary to effectuate the intent of this Settlement Agreement.

30. COUNTERPARTS

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument,

and will be effective upon execution by all parties. Facsimile and electronic/digital signatures shall be deemed original signatures for all purposes.

31. HEADINGS

The headings contained in this Settlement Agreement are for reference only and are not to be construed in any way as a part of the Settlement Agreement.

32. ENTIRE AGREEMENT

This Settlement Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements and discussions. Each of the parties covenants that he, she or it has not entered into this Settlement Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided herein. Each party further covenants that the consideration recited herein is the only consideration for entering into this Settlement Agreement and that no promises or representations of another or further consideration have been made by any person. This Settlement Agreement may be amended only by an agreement in writing duly executed by all parties hereto.

33. BINDING EFFECT

This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, assigns and successors-in-interest.

34. DRAFTING

Each party hereto has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the same shall not be construed against any party as drafter of this Settlement Agreement.

35. SEVERABILITY

In the event any covenant or other provision herein is held to be invalid, void or illegal, the same shall be deemed severed from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein. If any covenant, condition or other provision herein is held to be invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

36. INCORPORATION OF EXHIBITS

All exhibits attached to this Settlement Agreement are hereby incorporated by reference as though set forth fully herein and are a material part of this Settlement Agreement. Any notice, order, judgment or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Settlement Agreement to become

effective. Notwithstanding this Paragraph, insubstantial changes to the attached exhibits shall not invalidate the Settlement Agreement.

37. AUTHORITY

Each party hereto warrants and represents that each of the persons or entities executing this Settlement Agreement is duly empowered and authorized to do so.

38. WAIVER OF RIGHT TO OBJECT

Plaintiffs agree to sign this Settlement Agreement and by signing this Settlement Agreement are bound by the terms herein stated and further agree not to request to be excluded from the Settlement Class and agree not to object to any of the terms of this Settlement Agreement.

39. ADMINISTRATION OF SETTLEMENT AND COMPLIANCE

The Court shall have continuing jurisdiction to resolve any dispute which may arise with regard to the terms and conditions of this Settlement Agreement as set forth herein.

40. NOTICE

All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement Agreement (other than the Notice to Settlement Class Members) shall be in writing and shall be delivered personally, telecopied, or mailed postage pre-paid by first class mail to the following persons at their addresses set forth as follows:

Class Counsel:

Edward J. Wynne, Esq.
George R. Nemiroff, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939

Gregg I. Shavitz, Esq.
SHAVITZ LAW GROUP, P.A.
1515 South Federal Highway, Suite 404
Boca Raton, FL 33432

Defendant's Counsel:

Phillip J. Eskenazi, Esq.
Kirk A. Hornbeck, Esq.
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

WHEREFORE, Plaintiffs, on their own behalf, on behalf of the Settlement Class, and as proxies for the LWDA, and Defendant, by its duly authorized agents or counsel, have executed this Settlement Agreement as of the dates set forth below.

Plaintiff Lawrence Branco

Dated: June 7, 2019



Lawrence Branco, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Plaintiff Kathy Elliott

Dated: June __, 2019

Kathy Elliott, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Defendant Orchard Supply Company, LLC

Dated: June __, 2019

ORCHARD SUPPLY COMPANY, LLC

By _____

Approval As To Form And Content By Counsel:

On Behalf of Plaintiffs and the Settlement Class:

Dated: June __, 2019

WYNNE LAW FIRM

By _____
Edward J. Wynne, Esq.

WHEREFORE, Plaintiffs, on their own behalf, on behalf of the Settlement Class, and as proxies for the LWDA, and Defendant, by its duly authorized agents or counsel, have executed this Settlement Agreement as of the dates set forth below.

Plaintiff Lawrence Branco

Dated: June __, 2019

Lawrence Branco, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Plaintiff Kathy Elliott

Dated: June ⁰⁷__, 2019



Kathy Elliott, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Defendant Orchard Supply Company, LLC

Dated: June __, 2019

ORCHARD SUPPLY COMPANY, LLC

By _____

Approval As To Form And Content By Counsel:

On Behalf of Plaintiffs and the Settlement Class:

Dated: June __, 2019

WYNNE LAW FIRM

By _____
Edward J. Wynne, Esq.

WHEREFORE, Plaintiffs, on their own behalf, on behalf of the Settlement Class, and as proxies for the LWDA, and Defendant, by its duly authorized agents or counsel, have executed this Settlement Agreement as of the dates set forth below.

Plaintiff Lawrence Branco

Dated: June __, 2019

Lawrence Branco, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Plaintiff Kathy Elliott

Dated: June __, 2019

Kathy Elliott, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Defendant Orchard Supply Company, LLC

Dated: June __, 2019

ORCHARD SUPPLY COMPANY, LLC

By 
Kim Reynolds (Jun 7, 2019)

Approval As To Form And Content By Counsel:

On Behalf of Plaintiffs and the Settlement Class:

Dated: June __, 2019

WYNNE LAW FIRM

By _____
Edward J. Wynne, Esq.

Dated: June __, 2019

SHAVITZ LAW GROUP, P.A.

By _____
Gregg I. Shavitz, Esq.

On Behalf of Defendant:

Dated: June 10, 2019

HUNTON ANDREWS KURTH LLP

By  _____
Phillip J. Eskenazi, Esq.

WHEREFORE, Plaintiffs, on their own behalf, on behalf of the Settlement Class, and as proxies for the LWDA, and Defendant, by its duly authorized agents or counsel, have executed this Settlement Agreement as of the dates set forth below.

Plaintiff Lawrence Branco

Dated: June __, 2019

Lawrence Branco, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Plaintiff Kathy Elliott

Dated: June __, 2019

Kathy Elliott, as an individual, as a representative of the individual Settlement Class Members, and as a proxy for the LWDA

Defendant Orchard Supply Company, LLC

Dated: June __, 2019

ORCHARD SUPPLY COMPANY, LLC

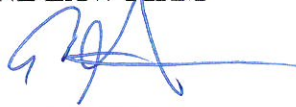
By _____

Approval As To Form And Content By Counsel:

On Behalf of Plaintiffs and the Settlement Class:

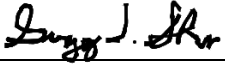
Dated: June 10, 2019

WYNNE LAW FIRM

By  _____
Edward J. Wynne, Esq.

Dated: June ^{06/10/}____, 2019

SHAVITZ LAW GROUP, P.A.

By 
Gregg I. Shavitz, Esq.

On Behalf of Defendant:

Dated: June __, 2019

HUNTON ANDREWS KURTH LLP

By _____
Phillip J. Eskenazi, Esq.

EXHIBIT A

**NOTICE OF CLASS ACTION SETTLEMENT AND
FINAL APPROVAL HEARING**

Lawrence Branco, et al. v. Orchard Supply Company, LLC
United States District Court, Northern District of California
Case No. 5:18-cv-00531-EJD

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN
THIS NOTICE.**

TO: All individuals who were employed by Defendant Orchard Supply Company, LLC as Assistant Store Managers in California on or after January 24, 2014 and who (1) did not enter into a severance agreement or an arbitration agreement with Defendant after March 6, 2016 or (2) submitted a declaration in support of Plaintiffs' Motion for Conditional Class Certification and did not enter into a severance agreement with Defendant.

On **INSERT Date of Preliminary Approval Order**, the Court in this lawsuit granted preliminary approval to a proposed settlement as set forth in a Class Action Settlement Agreement (the "Settlement Agreement"). If the settlement is granted final approval by the Court, this lawsuit will be dismissed with prejudice, and Defendant will be released from all claims that were asserted, or could have been asserted based on the facts alleged, in this lawsuit (*i.e.*, "Released Claims" as defined below). The Class Representative and Settlement Class Counsel (as defined below) believe the proposed settlement is fair, reasonable, and adequate, and in the best interest of the Settlement Class (as defined below). This Notice informs you of the proposed settlement and its terms and your rights to object to the terms of the proposed settlement, and to exclude yourself from the proposed settlement. This Notice also explains how you can obtain more information about the settlement. **YOU MUST SUBMIT A CLAIM FORM TO RECEIVE YOUR SHARE OF THE SETTLEMENT PROCEEDS.**

I. SUMMARY

Plaintiffs Lawrence Branco and Kathy Elliott ("Plaintiffs") have brought a lawsuit (the "Lawsuit") against Defendant Orchard Supply Company, LLC ("Defendant") on behalf of other former Orchard Assistant Store Managers ("ASMs"). The Lawsuit is styled as *Lawrence Branco, et al. v. Orchard Supply Company, LLC*, N.D. Cal. Case No. 5:18-cv-00531-EJD.

Plaintiffs allege that Defendant misclassified Settlement Class Members as exempt employees, rather than non-exempt employees; failed to pay Settlement Class Members overtime in violation of California Labor Code §§ 510 and 1194, and in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"); violated California Business & Professions § 17200 *et seq.* by failing to pay Settlement Class Members overtime and failing to provide Settlement Class Members with meal and rest breaks; failed to timely pay Settlement Class Members all wages due when their employment with Defendant terminated; failed to provide Settlement Class Members with accurate wage statements in violation of California Labor Code § 226; and failed to reimburse Settlement Class Members for business expenses, including out-of-pocket transportation costs and expenses related to the use of cell phones, in violation of California Labor Code § 2802. Plaintiffs also seek penalties against Defendant pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* ("PAGA") based on the aforementioned claims.

Defendant denies Plaintiffs' allegations in their entirety. Defendant contends that Plaintiffs and other Settlement Class Members were properly classified as exempt employees and were reimbursed for all known and necessary business expenses or losses incurred by Settlement Class Members in direct consequence of the discharge of their duties, or of their obedience to the directions of Defendant.

Plaintiffs and Defendant conducted substantial formal discovery and informal investigation in connection with the claims asserted in the Lawsuit. The parties also have researched and analyzed the relevant legal and factual issues arising from all of the claims that are alleged in, or could have been alleged in, the Lawsuit. Defendant provided Plaintiffs will sufficient information to allow Plaintiffs to evaluate Defendant's potential exposure in the Lawsuit.

The parties acknowledge the mutual costs and risks of litigation. The parties also specifically acknowledge that the vast majority of the Settlement Class has entered into arbitration agreements containing class action waivers. The mutual costs and risks and hazards of continuing to prosecute and defend the Lawsuit have led the parties to resolve the Lawsuit by way of settlement.

II. CLASS DEFINITION

The Lawsuit is being settled as a class action. In a class action, a plaintiff or plaintiffs, also referred to as class representative(s), sue on behalf of themselves and other persons with similar claims. The Court has conditionally approved a class for settlement purposes only. The settlement class ("Settlement Class") is defined as follows:

Those individuals who were employed by Defendant as Assistant Store Managers (i) in California on or after January 24, 2014 or (ii) in Florida or Oregon on or after January 24, 2015; and who (i) did not enter into a severance agreement or an arbitration agreement with Defendant after March 6, 2016 or (ii) submitted a declaration in support of Plaintiffs' Motion for Conditional Class Certification and did not enter into a severance agreement with Defendant.

Members of the Settlement Class who worked as ASMs for Defendant in California are known as the "Rule 23 Sub-Class." Members of the Settlement Class who worked as ASMs for Defendant in Oregon or Florida are known as the "FLSA Sub-Class." According to Defendant's records, you are a member of the Rule 23 Sub-Class.

Any person who previously settled or released all of the claims covered by this settlement, any person who previously was paid or received awards through civil or administrative actions for all of the claims covered by this settlement, and any member of the Rule 23 Sub-Class who excludes him or herself pursuant to the procedures described below, shall not be a member of the Settlement Class.

If the Court approves the settlement, the settlement will bind all Settlement Class Members who have not excluded themselves from the Settlement Class. (You will have the opportunity to exclude yourself from the Settlement Class pursuant to the procedure described below.) The Court has not yet determined that the Lawsuit could be litigated as a class action. If the Court does not approve this settlement, the conditional class certification will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation.

III. SETTLEMENT CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

The Court has appointed Plaintiffs Lawrence Branco and Kathy Elliott as the Settlement Class Representatives to represent the Settlement Class. The Court appointed the following attorneys to represent the Settlement Class as Settlement Class Counsel:

Edward J. Wynne, Esq.
George R. Nemiroff, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
(415) 461-6400

Gregg I. Shavitz, Esq.
SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
Boca Raton, FL 33431
(561) 447-8831

IV. SETTLEMENT AMOUNT

The proposed settlement obligates Defendant to pay a settlement amount (called the “Maximum Settlement Amount” in the Settlement Agreement) of One Million Two Hundred and Fifty Thousand Dollars and No Cents (\$1,250,000). Except for the payment of all employer-paid withholding and payroll taxes and similar expenses (including state and federal income taxes, social security contributions, and unemployment taxes), which are the responsibility of Defendant and shall be paid by Defendant in addition to the Maximum Settlement Amount, the Maximum Settlement Amount shall be “all inclusive,” including: any damages, penalties, or other relief arising from the alleged misclassification of the Settlement Class as exempt employees; any failure to pay the Settlement Class Members overtime wages; any failure to provide Settlement Class Members with meal breaks or rest breaks, or meal and rest break penalties; any failure to timely pay Settlement Class Members all wages due upon the termination of the their employment with Defendant; any failure to provide accurate wage statements; any failure to reimburse Settlement Class Members for any reimbursable business expenses; any restitution to Settlement Class Members under California Business & Professions Code Section 17200 *et seq.*, based on the aforementioned claims; any PAGA penalties based upon the aforementioned alleged California Labor Code violations; interest, attorneys’ fees and costs, as approved by the Court; the fees and costs of the Claims Administrator in connection with settlement and claims administration, as approved by the Court, including any fees and costs in connection with notice, the claims process, and the exclusion process, up to a maximum of [REDACTED] Thousand Dollars (\$[REDACTED],000.00); settlement payments; the incentive awards to Plaintiffs, as approved by the Court; employee-paid withholding and payroll taxes (including state and federal income taxes, social security contributions and unemployment taxes); and all other settlement-related payments and costs. Defendant’s sole monetary obligations under this Settlement Agreement shall be the Maximum Settlement Amount and the employer-paid withholding and payroll taxes and similar expenses.

V. SUMMARY OF YOUR OPTIONS

As a member of the Rule 23 Sub-Class, you have the options described below. (Members of the FLSA Sub-Class are receiving a different Notice and have different options.)

1. **Do Nothing.** If you do nothing in response to this Notice, you will remain a member of the Settlement Class, you will be bound by the Settlement Agreement, you will give up the claims that are released by the Settlement Agreement, but you will not receive a cash payment.
2. **Submit a Claim Form.** You may timely submit a valid, completed, signed Claim Form. If you submit a claim form, you will remain a member of the Settlement Class, you will be bound by the Settlement Agreement, you will give up the claims that are released by the Settlement Agreement, and you will receive a cash payment.
3. **Exclude Yourself From the Settlement Class.** You are entitled to exclude yourself from the Settlement Class by timely submitting a valid, completed, signed Request for Exclusion Form. If you exclude yourself from the Settlement Class, you will not receive any cash payment related to your membership in the Rule 23 Sub-Class. You will retain all of the claims that will be released by members of the Settlement Class.

VI. SETTLEMENT ADMINISTRATOR

The settlement process will be administered by Simpluris (the “Administrator”), a company that provides settlement administration services. The Court has approved Simpluris to act as the Administrator for purposes of this settlement. The fees and costs of the Administrator shall be paid out of and deducted from the Maximum Settlement Amount. The Settlement Administrator can be contacted at the following address:

[Simpluris]
[address line 1]
[address line 2]
[phone number] (toll free)

VII. RELEASE AND WAIVER

As of the Effective Date, all Settlement Class Members who did not submit a valid Request For Exclusion Form release Defendant (*i.e.*, Orchard Supply Company, LLC) and each of its respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the “Released Defendants”) from the “Released Claims” as defined below.

For purposes of this Settlement Agreement, the “Released Claims” are defined as: All claims, demands, rights, liabilities, and causes of action that were asserted in the lawsuit, or could have been asserted in the lawsuit based on the facts alleged, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, for state wage and hour laws, including California Labor Code sections 201–204, 226, 226.7, 510, 512, 515, 1194, 2802; all applicable Industrial Wage Commission Wage Orders; Business and Professions Code § 17200; the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”); and all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, (“FLSA”) to the extent the FLSA claims arise out of facts and/or claims asserted or that could have been asserted in the Lawsuit, whether for allegedly unpaid wages, damages, liquidated damages, and/or statutory or civil penalties (including, but not limited to, claims for penalties pursuant to Labor Code §§ 218, 226, 226.3, 558 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)), 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to, attorneys’ fees and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure §1021.5), or interest arising out of the claims at issue, including, but not limited to: the causes of action asserted in the Lawsuit relating to the alleged misclassification of Defendant’s Assistant Store Managers, claims for allegedly unpaid overtime, alleged failures to provide meal periods, alleged failures to provide rest breaks, alleged failures to pay for all hours worked, alleged failures to pay all wages due and owing at termination, alleged failures to pay any other wages, alleged failures to reimburse business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any wage statements.

VIII. ATTORNEYS’ FEES AND COSTS

Settlement Class Counsel have litigated the Lawsuit since January 24, 2018. It is customary for courts to award to class counsel attorneys’ fees based upon a percentage of the maximum settlement amount for the benefit of a class. In this case, Settlement Class Counsel will request an award of 25% of the Maximum Settlement Amount. Settlement Class Counsel also will seek reimbursement of reasonable costs that they have incurred on behalf of the Settlement Class, which amount shall be paid from the Maximum Settlement Amount.

IX. INCENTIVE AWARD

Plaintiffs will request the Court to approve an incentive award for each Plaintiff in an amount not to exceed \$10,000. The incentive award will be paid from the Maximum Settlement Amount, and is in addition to the payment to Plaintiffs of their share of the settlement as members of the Settlement Class.

X. PAYMENT TO THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY

Plaintiffs shall apply to the Court for approval of payments under PAGA. The parties agree to allocate one-third of the Potential Gross Settlement Proceeds, as defined below, to PAGA penalties (the “PAGA Allocation”). Seventy-five percent (75%) of the PAGA Allocation shall be paid to the LWDA (the “LWDA Payment”). The remaining twenty-five percent of the PAGA allocation (the “PAGA Group Share”) shall be distributed to “PAGA Group Members” as “Individual PAGA Payments.” PAGA Group Members are those individuals employed by Defendant as Assistant Store Managers in California on or after November 20, 2016. If you are a PAGA Group Member, you will receive your Individual PAGA Payment regardless of any action you take in response to this Notice.

XI. CALCULATION OF PAYMENTS

The “Potential Gross Settlement Proceeds” shall equal the Maximum Settlement Amount minus the total of: (1) Court-approved attorneys’ fees; (2) Court-approved reimbursement of costs; (3) Court-approved incentive awards to Plaintiffs; and (4) the fees and costs of the Claims Administrator. Two-thirds of the Potential Gross Settlement Proceeds shall constitute the “Settlement Class Member Allocation” and shall be available for Claiming Settlement Class Members to claim their Individual Settlement Awards, as defined below. The remaining one-third of the Potential Gross Settlement Proceeds shall constitute the Settlement’s PAGA Allocation.

The amount available for distribution to each member of the Settlement Class shall be calculated as follows:

1. Calculation of Settlement Class Member’s Individual Settlement Award: Each Settlement Class Member’s “Individual Settlement Award” shall equal the Settlement Class Member’s number of workweeks worked during the applicable class period divided by the total workweeks worked by all Settlement Class Members during the applicable class period, multiplied by the Settlement Class Member Allocation. The parties estimate that your pre-tax share of the settlement will be approximately \$[REDACTED].

2. Tax Liability and Net Payments: The Individual Settlement Awards will be allocated as follows: fifty percent (50%) to alleged unpaid wages which will be reported to the IRS on Form W-2; and fifty percent (50%) to alleged non-wages which will be reported to the IRS on Form 1099. The Claims Administrator shall provide each Settlement Class Member with appropriate documentation setting forth the amount of any tax or other payment withheld, and employer contribution made, in accordance with State and Federal tax requirements. In addition, the Claims Administrator shall provide such information to Defendant’s counsel and to Settlement Class Counsel. Settlement Class Members shall be responsible for remitting to State and/or Federal taxing authorities any applicable other taxes due and shall hold Defendant and the Claims Administrator harmless and indemnify it or them for any liabilities, costs and expenses, including attorneys’ fees, assessed or caused by any such taxing authority relating in any way to the tax treatment of the payments made pursuant to this Settlement Agreement.

3. Payment of Settlement Funds Will Not Be Considered By Defendant As Having Any Effect on Any Employee Benefit Plan and Similar Plans: The payment to any Settlement Class Member as provided for in this Settlement Agreement is not and shall not be deemed by Defendant to constitute an addition to, a modification of, or a change in any previously credited hours of service, compensation and/or wages under any employee benefit plan, employment policy, or stock option plan of or sponsored by the Defendant or any of its present or former parent corporations or affiliates or any jointly trustee benefit plans. Any such payment to any Settlement Class Member shall not be considered by Defendant to form the basis for additional contributions to, additional benefits under, or any other additional entitlements under any employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or any of its present or former parent corporations or affiliates or any jointly trustee benefit plans. Defendant and each of its present and former parent corporations and affiliates retain the right to modify and/or amend the language of their employee benefit plans, employment policies, and stock option plans, and to seek to have modified and/or amended the language of any jointly trustee benefit plans, to make clear that any amounts paid as a result of this Settlement Agreement are not considered by Defendant as compensation or wages, or payments for “hours worked,” as defined by the applicable plans and policies, and that no additional contributions or benefits will be provided by Defendant by reason of the settlement.

XII. FINAL APPROVAL HEARING

A hearing (the “Final Approval Hearing”) has been scheduled on [INSERT Date and Time of Final Approval Hearing], before the Honorable Edward J. Davila in Courtroom 1 (5th Floor) at the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, reasonable, and adequate to members of the Settlement Class; (2) whether the application of Settlement Class Counsel for an award of attorneys’ fees and costs should be approved and in what amount; (3) whether the application for an incentive award for Plaintiffs should be approved and in what amount; (4) whether the allocation for PAGA penalties is fair and adequate; and (5) whether a proposed Final Approval Order should be entered, dismissing the Lawsuit with prejudice.

You Are Not Required To Attend The Final Approval Hearing.

You are welcome to attend the Final Approval Hearing at your own expense. You may request permission to speak at the Final Approval Hearing. You may hire your own attorney at your own expense to speak at the Final

Approval Hearing. If you want to speak at the Final Approval Hearing, you must request permission from the Court. To do so, send a letter to the Court (at the address set forth above in this Section of this Notice) with a copy to the Administrator (at the address set forth in Section VI of this Notice), Settlement Class Counsel, and Defendant's counsel (at the addresses set forth Section XIV of this Notice) no later than **[INSERT Date]**, requesting permission to speak at the Final Approval Hearing. Such letter should be signed and should contain a brief statement of the position that you wish to put before the Court at the Final Approval Hearing and the basis for that position. The Court may, or may not, grant the request.

XIII. RIGHT TO BE EXCLUDED FROM THE SETTLEMENT

As a member of the Rule 23 Sub-Class, you may exclude yourself from the Settlement Class. To do so, you must complete and sign the Request for Exclusion Form, then either submit the form through the settlement website (**www.INSERT.com**) or return it by mail to the Administrator at the address set forth above in Section VI of this Notice, postmarked no later than **[INSERT Date: 35 days after mailing of Notice]**. If the Notice the Administrator mails to you is returned by the post office as undeliverable, the Administrator will perform one "skip trace" to locate an updated address for you. In such event, your deadline to submit the Request for Exclusion Form will be thirty-five (35) days from the date the Notice is mailed to the updated address. If you request to be excluded from the settlement, you will not receive any cash payment from the settlement, and you will not release any claims.

Any member of the Rule 23 Sub-Class who does not provide the Administrator with a timely Request for Exclusion Form shall be bound by all the terms and conditions of the settlement, including, without limitation, the releases provided for in the Settlement Agreement and any Final Judgment entered by the Court.

XIV. RIGHT TO OBJECT TO SETTLEMENT

You have the right to object to the settlement. To do so, you must file with the Court and serve on Class Counsel and Defendant's counsel (at the addresses set forth below), no later than **[INSERT Date: 30 days before Final Approval Hearing]**, a written statement stating your objection to the settlement and the basis for your objection, along with any and all documents that support your objection. Notwithstanding the foregoing, you also may object to Settlement Class Counsel's application for attorneys' fees by filing with the Court and serving on Class Counsel and Defendant's counsel (at the addresses set forth below), a written statement stating your objection and the basis for your objection, along with any and all documents that support your objection, no later than **[INSERT Date: 30 days before Final Approval Hearing]**.

No member of the Settlement Class shall be entitled to be heard at the Final Approval Hearing or to object to the settlement, and no written objections or briefs submitted by any member of the Settlement Class shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the member of the Settlement Class' intention to appear at the Final Approval Hearing, and copies of any written objections or briefs, have been filed with the Court and served on Class Counsel and Defendant's counsel by the deadlines set forth above. The service addresses for Class Counsel and Defendant's counsel are as follows:

Class Counsel:

Edward J. Wynne, Esq.
George R. Nemiroff, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
(415) 461-6400

Gregg I. Shavitz, Esq.
SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
Boca Raton, FL 33431
(561) 447-8831

Defendant's Counsel:

Phillip J. Eskenazi, Esq.
Kirk A. Hornbeck, Esq.
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
(213) 532-2000

Members of the Settlement Class who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections to the settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement,

including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs.

XV. REMINDER OF IMPORTANT SETTLEMENT DATES AND DEADLINES

The following are important dates and deadlines under the proposed settlement:

<u>Deadline To Object To Settlement:</u>	[INSERT Date: 30 days before Final Approval Hearing]
<u>Exclusion Deadline:</u>	[INSERT Date: 35 days after mailing of Notice]
<u>Deadline To Object To Attorneys' Fees:</u>	[INSERT Date: 30 days before Final Approval Hearing]
<u>Final Approval Hearing:</u>	[INSERT date]

XVI. AVAILABILITY OF COMPLETE SETTLEMENT AGREEMENT

This Notice contains a summary of the proposed settlement contained in the Settlement Agreement that is on file with the Clerk of the Court. The complete Settlement Agreement may be inspected during normal business hours at the offices of the Clerk.

XVII. ADDITIONAL INFORMATION

For more detailed information concerning the matters involved in the Lawsuit, please refer to the pleadings, the Settlement Agreement, the Orders entered in the Lawsuit, and to the other papers filed in the Lawsuit, which may be inspected at the Office of the Clerk of the United States District Court, Northern District of California, located at 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays. You can also access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records ("PACER") system at <http://ecf.cand.uscourts.gov>.

Additional information regarding the settlement may be found at the following website: [INSERT website address].

Any questions concerning the matters contained in this Notice may be directed to the Administrator or Settlement Class Counsel (at the addresses set forth above).

You may also seek the advice and counsel of your own attorney, at your own expense, if you desire.

**Do Not Call Or Write The Court To Obtain Copies Of Documents
Or To Ask Questions About The Settlement.**

EXHIBIT B

**NOTICE OF CLASS ACTION SETTLEMENT AND
FINAL APPROVAL HEARING**

Lawrence Branco, et al. v. Orchard Supply Company, LLC
United States District Court, Northern District of California
Case No. 5:18-cv-00531-EJD

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN
THIS NOTICE.**

TO: All individuals who were employed by Defendant Orchard Supply Company, LLC as Assistant Store Managers in Florida or Oregon on or after January 24, 2015, and who (1) did not enter into a severance agreement or an arbitration agreement with Defendant after March 6, 2016 or (2) submitted a declaration in support of Plaintiffs' Motion for Conditional Class Certification and did not enter into a severance agreement with Defendant.

On **INSERT Date of Preliminary Approval Order**, the Court in this lawsuit granted preliminary approval to a proposed settlement as set forth in a Class Action Settlement Agreement (the "Settlement Agreement"). If the settlement is granted final approval by the Court, this lawsuit will be dismissed with prejudice, and Defendant will be released from all claims that were asserted, or could have been asserted based on the facts alleged, in this lawsuit (*i.e.*, "Released Claims" as defined below). The Class Representative and Settlement Class Counsel (as defined below) believe the proposed settlement is fair, reasonable, and adequate, and in the best interest of the Settlement Class (as defined below). This Notice informs you of the proposed settlement and its terms and your rights to object to the terms of the proposed settlement, and to exclude yourself from the proposed settlement. This Notice also explains how you can obtain more information about the settlement. **YOU MUST OPT-IN TO THE SETTLEMENT TO RECEIVE YOUR SHARE OF THE SETTLEMENT PROCEEDS.**

I. SUMMARY

Plaintiffs Lawrence Branco and Kathy Elliott ("Plaintiffs") have brought a lawsuit (the "Lawsuit") against Defendant Orchard Supply Company, LLC ("Defendant") on behalf of other past Assistant Store Managers ("ASMs"). The Lawsuit is styled as *Lawrence Branco, et al. v. Orchard Supply Company, LLC*, N.D. Cal. Case No. 5:18-cv-00531-EJD.

Plaintiffs allege that Defendant misclassified Settlement Class Members as exempt employees, rather than non-exempt employees; failed to pay Settlement Class Members overtime in violation of California Labor Code §§ 510 and 1194, and in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"); violated California Business & Professions § 17200 *et seq.* by failing to pay Settlement Class Members overtime and failing to provide Settlement Class Members with meal and rest breaks; failed to timely pay Settlement Class Members all wages due when their employment with Defendant terminated; failed to provide Settlement Class Members with accurate wage statements in violation of California Labor Code § 226; and failed to reimburse Settlement Class Members for business expenses, including out-of-pocket transportation costs and expenses related to the use of cell phones, in violation of California Labor Code § 2802. Plaintiffs also seek penalties against Defendant pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* ("PAGA") based on the aforementioned claims.

Defendant denies Plaintiffs' allegations in their entirety. Defendant contends that Plaintiffs and other Settlement Class Members were properly classified as exempt employees and were reimbursed for all known and necessary business expenses or losses incurred by Settlement Class Members in direct consequence of the discharge of their duties, or of their obedience to the directions of Defendant.

Plaintiffs and Defendant conducted substantial formal discovery and informal investigation in connection with the claims asserted in the Lawsuit. The parties also have researched and analyzed the relevant legal and factual issues arising from all of the claims that are alleged in, or could have been alleged in, the Lawsuit. Defendant provided Plaintiffs will sufficient information to allow Plaintiffs to evaluate Defendant's potential exposure in the Lawsuit.

The parties acknowledge the mutual costs and risks of litigation. The parties also specifically acknowledge that the vast majority of the Settlement Class has entered into arbitration agreements containing class action waivers. The mutual costs and risks and hazards of continuing to prosecute and defend the Lawsuit have led the parties to resolve the Lawsuit by way of settlement.

II. CLASS DEFINITION

The Lawsuit is being settled as a class action. In a class action, a plaintiff or plaintiffs, also referred to as class representative(s), sue on behalf of themselves and other persons with similar claims. The Court has conditionally approved a class for settlement purposes only. The settlement class ("Settlement Class") is defined as follows:

Those individuals who were employed by Defendant as Assistant Store Managers (i) in California on or after January 24, 2014 or (ii) in Florida or Oregon on or after January 24, 2015; and who (i) did not enter into a severance agreement or an arbitration agreement with Defendant after March 6, 2016 or (ii) submitted a declaration in support of Plaintiffs' Motion for Conditional Class Certification and did not enter into a severance agreement with Defendant.

Members of the Settlement Class who worked as ASMs for Defendant in California are known as the "Rule 23 Sub-Class." Members of the Settlement Class who worked as ASMs for Defendant in Oregon or Florida are known as the "FLSA Sub-Class." According to Defendant's records, you are a member of the FLSA Sub-Class.

Any person who previously settled or released all of the claims covered by this settlement, any person who previously was paid or received awards through civil or administrative actions for all of the claims covered by this settlement, and any member of the FLSA Sub-Class who does not opt-in to the settlement, shall not be a member of the Settlement Class.

If the Court approves the settlement, the settlement will bind all members of the FLSA Sub-Class who opt-in to the settlement. The Court has not yet determined that the Lawsuit could be litigated as a class action. If the Court does not approve this settlement, the conditional class certification will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation.

III. SETTLEMENT CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

The Court has appointed Plaintiffs Lawrence Branco and Kathy Elliott as the Settlement Class Representatives to represent the Settlement Class. The Court appointed the following attorneys to represent the Settlement Class as Settlement Class Counsel:

Edward J. Wynne, Esq.
George R. Nemiroff, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
(415) 461-6400

Gregg I. Shavitz, Esq.
SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
Boca Raton, FL 33431
(561) 447-8831

IV. SETTLEMENT AMOUNT

The proposed settlement obligates Defendant to pay a settlement amount (called the “Maximum Settlement Amount” in the Settlement Agreement) of One Million Two Hundred and Fifty Thousand Dollars and No Cents (\$1,250,000). Except for the payment of all employer-paid withholding and payroll taxes and similar expenses (including state and federal income taxes, social security contributions, and unemployment taxes), which are the responsibility of Defendant and shall be paid by Defendant in addition to the Maximum Settlement Amount, the Maximum Settlement Amount shall be “all inclusive,” including: any damages, penalties, or other relief arising from the alleged misclassification of the Settlement Class as exempt employees; any failure to pay the Settlement Class Members overtime wages; any failure to provide Settlement Class Members with meal breaks or rest breaks, or meal and rest break penalties; any failure to timely pay Settlement Class Members all wages due upon the termination of the their employment with Defendant; any failure to provide accurate wage statements; any failure to reimburse Settlement Class Members for any reimbursable business expenses; any restitution to Settlement Class Members under California Business & Professions Code Section 17200 *et seq.*, based on the aforementioned claims; any PAGA penalties based upon the aforementioned alleged California Labor Code violations; interest, attorneys’ fees and costs, as approved by the Court; the fees and costs of the Claims Administrator in connection with settlement and claims administration, as approved by the Court, including any fees and costs in connection with notice, the claims process, and the exclusion process, up to a maximum of [REDACTED] Thousand Dollars (\$[REDACTED],000.00); settlement payments; the incentive awards to Plaintiffs, as approved by the Court; employee-paid withholding and payroll taxes (including state and federal income taxes, social security contributions and unemployment taxes); and all other settlement-related payments and costs. Defendant’s sole monetary obligations under this Settlement Agreement shall be the Maximum Settlement Amount and the employer-paid withholding and payroll taxes and similar expenses.

V. SUMMARY OF YOUR OPTIONS

As a member of the FLSA Sub-Class, you have the options described below. (Members of the Rule 23 Sub-Class are receiving a different Notice and have different options.)

1. **Opt-In to the Settlement Class.** You may opt-in to the settlement by timely submitting a valid, completed, signed Claim Form. If you opt-in to the settlement, you will be a member of the Settlement Class, you will be bound by the Settlement Agreement, you will receive a cash payment, and you will give up the claims that are released by the Settlement Agreement. The Administrator identified below will mail a settlement check to your last known address.

2. **Remain Excluded From the Settlement Class.** If you do not timely submit a valid, completed, signed Claim Form, you will not be included in the Settlement Class. If you are not included in the Settlement Class, you will not receive any cash payment or any other benefits from the settlement. You will retain all of the claims that will be released by members of the Settlement Class.

VI. SETTLEMENT ADMINISTRATOR

The settlement process will be administered by Simpluris (the “Administrator”), a company that provides settlement administration services. The Court has approved Simpluris to act as the Administrator for purposes of this settlement. The fees and costs of the Administrator shall be paid out of and deducted from the Maximum Settlement Amount. The Settlement Administrator can be contacted at the following address:

[Simpluris]
[address line 1]
[address line 2]
[phone number] (toll free)

VII. RELEASE AND WAIVER

As of the Effective Date, all Settlement Class Members who timely opt-in to the settlement release Defendant (*i.e.*, Orchard Supply Company, LLC) and each of its respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the “Released Defendants”) from the “Released Claims” as defined below.

For purposes of this Settlement Agreement, the “Released Claims” are defined as: All claims, demands, rights, liabilities, and causes of action that were asserted in the lawsuit, or could have been asserted in the lawsuit based on the facts alleged, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, for state wage and hour laws, including California Labor Code sections 201–204, 226, 226.7, 510, 512, 515, 1194, 2802; all applicable Industrial Wage Commission Wage Orders; Business and Professions Code § 17200; the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”); and all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, (“FLSA”) to the extent the FLSA claims arise out of facts and/or claims asserted or that could have been asserted in the Lawsuit, whether for allegedly unpaid wages, damages, liquidated damages, and/or statutory or civil penalties (including, but not limited to, claims for penalties pursuant to Labor Code §§ 218, 226, 226.3, 558 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)), 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to, attorneys’ fees and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure §1021.5), or interest arising out of the claims at issue, including, but not limited to: the causes of action asserted in the Lawsuit relating to the alleged misclassification of Defendant’s Assistant Store Managers, claims for allegedly unpaid overtime, alleged failures to provide meal periods, alleged failures to provide rest breaks, alleged failures to pay for all hours worked, alleged failures to pay all wages due and owing at termination, alleged failures to pay any other wages, alleged failures to reimburse business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any wage statements.

VIII. ATTORNEYS’ FEES AND COSTS

Settlement Class Counsel have litigated the Lawsuit since January 24, 2018. It is customary for courts to award to class counsel attorneys’ fees based upon a percentage of the maximum settlement amount for the benefit of a class. In this case, Settlement Class Counsel will request an award of 25% of the Maximum Settlement Amount. Settlement Class Counsel also will seek reimbursement of reasonable costs that they have incurred on behalf of the Settlement Class, which amount shall be paid from the Maximum Settlement Amount.

IX. INCENTIVE AWARD

Plaintiffs will request the Court to approve an incentive award for each Plaintiff in an amount not to exceed \$10,000. The incentive award will be paid from the Maximum Settlement Amount, and is in addition to the payment to Plaintiffs of their share of the settlement as members of the Settlement Class.

X. PAYMENT TO THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY

Plaintiffs shall apply to the Court for approval of payments under PAGA. The parties agree to allocate one-third of the Potential Gross Settlement Proceeds, as defined below, to PAGA penalties (the “PAGA Allocation”). Seventy-five percent (75%) of the PAGA Allocation shall be paid to the LWDA (the “LWDA Payment”). The remaining twenty-five percent of the PAGA allocation (the “PAGA Group Share”) shall be distributed to “PAGA Group Members” as “Individual PAGA Payments.” PAGA Group Members are those individuals employed by Defendant as Assistant Store Managers in California on or after November 20, 2016. PAGA Group Members will receive an Individual PAGA Payment regardless of any action taken in response to this Notice.

XI. CALCULATION OF PAYMENTS

The “Potential Gross Settlement Proceeds” shall equal the Maximum Settlement Amount minus the total of: (1) Court-approved attorneys’ fees; (2) Court-approved reimbursement of costs; (3) Court-approved incentive awards to Plaintiffs; and (4) the fees and costs of the Claims Administrator. Two-thirds of the Potential Gross

Settlement Proceeds shall constitute the “Settlement Class Member Allocation” and shall be available for Claiming Settlement Class Members to claim their Individual Settlement Awards, as defined below. The remaining one-third of the Potential Gross Settlement Proceeds shall constitute the Settlement’s PAGA Allocation.

The amount available for distribution to each member of the Settlement Class shall be calculated as follows:

1. Calculation of Settlement Class Member’s Individual Settlement Award: Each Settlement Class Member’s “Individual Settlement Award” shall equal the Settlement Class Member’s number of workweeks worked during the applicable class period divided by the total workweeks worked by all Settlement Class Members during the applicable class period, multiplied by the Settlement Class Member Allocation. The parties estimate that your pre-tax share of the settlement will be approximately \$ [REDACTED].

2. Tax Liability and Net Payments: The Individual Settlement Awards will be allocated as follows: fifty percent (50%) to alleged unpaid wages which will be reported to the IRS on Form W-2; and fifty percent (50%) to alleged non-wages which will be reported to the IRS on Form 1099. The Claims Administrator shall provide each Settlement Class Member with appropriate documentation setting forth the amount of any tax or other payment withheld, and employer contribution made, in accordance with State and Federal tax requirements. In addition, the Claims Administrator shall provide such information to Defendant’s counsel and to Settlement Class Counsel. Settlement Class Members shall be responsible for remitting to State and/or Federal taxing authorities any applicable other taxes due and shall hold Defendant and the Claims Administrator harmless and indemnify it or them for any liabilities, costs and expenses, including attorneys’ fees, assessed or caused by any such taxing authority relating in any way to the tax treatment of the payments made pursuant to this Settlement Agreement.

3. Payment of Settlement Funds Will Not Be Considered By Defendant As Having Any Effect on Any Employee Benefit Plan and Similar Plans: The payment to any Settlement Class Member as provided for in this Settlement Agreement is not and shall not be deemed by Defendant to constitute an addition to, a modification of, or a change in any previously credited hours of service, compensation and/or wages under any employee benefit plan, employment policy, or stock option plan of or sponsored by the Defendant or any of its present or former parent corporations or affiliates or any jointly trustee benefit plans. Any such payment to any Settlement Class Member shall not be considered by Defendant to form the basis for additional contributions to, additional benefits under, or any other additional entitlements under any employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or any of its present or former parent corporations or affiliates or any jointly trustee benefit plans. Defendant and each of its present and former parent corporations and affiliates retain the right to modify and/or amend the language of their employee benefit plans, employment policies, and stock option plans, and to seek to have modified and/or amended the language of any jointly trustee benefit plans, to make clear that any amounts paid as a result of this Settlement Agreement are not considered by Defendant as compensation or wages, or payments for “hours worked,” as defined by the applicable plans and policies, and that no additional contributions or benefits will be provided by Defendant by reason of the settlement.

XII. FINAL APPROVAL HEARING

A hearing (the “Final Approval Hearing”) has been scheduled on [INSERT Date and Time of Final Approval Hearing], before the Honorable Edward J. Davila in Courtroom 1 (5th Floor) at the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, reasonable, and adequate to members of the Settlement Class; (2) whether the application of Settlement Class Counsel for an award of attorneys’ fees and costs should be approved and in what amount; (3) whether the application for an incentive award for Plaintiffs should be approved and in what amount; (4) whether the allocation for PAGA penalties is fair and adequate; and (5) whether a proposed Final Approval Order should be entered, dismissing the Lawsuit with prejudice.

You Are Not Required To Attend The Final Approval Hearing.

You are welcome to attend the Final Approval Hearing at your own expense. You may request permission to speak at the Final Approval Hearing. You may hire your own attorney at your own expense to speak at the Final Approval Hearing. If you want to speak at the Final Approval Hearing, you must request permission from the Court. To do so, send a letter to the Court (at the address set forth above in this Section of this Notice) with a copy to the Administrator (at the address set forth in Section VI of this Notice), Settlement Class Counsel, and Defendant’s counsel (at the addresses set forth Section XIV of this Notice) no later than [INSERT Date], requesting permission to speak at the Final Approval Hearing. Such letter should be signed and should contain a brief

statement of the position that you wish to put before the Court at the Final Approval Hearing and the basis for that position. The Court may, or may not, grant the request. Neither you nor any attorney hired at your expense will be permitted to speak at the hearing if you do not opt-in to the settlement by submitting a timely Claim Form, as described in Section XIII.

XIII. RIGHT TO OPT-IN TO THE SETTLEMENT

You are not automatically a member of the Settlement Class. You may join the Settlement Class by submitting a completed and signed Claim Form and returning it to the Administrator at the address set forth above in Section VI of this Notice, postmarked no later than **[INSERT Date: 60 days after mailing of Notice]**. If the Notice the Administrator mails to you is returned by the post office as undeliverable, the Administrator will perform one “skip trace” to locate an updated address for you. In such event, your deadline to submit the Claim Form will be the 60 days from the date the Notice is mailed to the updated address obtained as a result of the skip trace. If you opt-in to the settlement, you will be a member of the Settlement Class, you will be bound by the Settlement Agreement, you will receive a cash payment, and you will give up the claims that are released by the Settlement Agreement.

If you do not timely submit a Claim Form to the Administrator, you will not receive any cash payment from the settlement, and you will not release any claims.

XIV. RIGHT TO OBJECT TO SETTLEMENT

If you timely submit a Claim Form to the Administrator as described in Section XIII of this Notice, you have the right to object to the settlement. To do so, you must file with the Court and serve on Class Counsel and Defendant’s counsel (at the addresses set forth below), no later than **[INSERT Date: 30 days before Final Approval Hearing]**, a written statement stating your objection to the settlement and the basis for your objection, along with any and all documents that support your objection. Notwithstanding the foregoing, you also may object to Settlement Class Counsel’s application for attorneys’ fees by filing with the Court and serving on Class Counsel and Defendant’s counsel (at the addresses set forth below), a written statement stating your objection and the basis for your objection, along with any and all documents that support your objection, no later than **[INSERT Date: 30 days before Final Approval Hearing]**.

No member of the Settlement Class shall be entitled to be heard at the Final Approval Hearing or to object to the settlement, and no written objections or briefs submitted by any member of the Settlement Class shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the member of the Settlement Class’ intention to appear at the Final Approval Hearing, and copies of any written objections or briefs, have been filed with the Court and served on Class Counsel and Defendant’s counsel by the deadlines set forth above. The service addresses for Class Counsel and Defendant’s counsel are as follows:

Class Counsel:

Edward J. Wynne, Esq.
George R. Nemiroff, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939
(415) 461-6400

Gregg I. Shavitz, Esq.
SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
Boca Raton, FL 33431
(561) 447-8831

Defendant’s Counsel:

Phillip J. Eskenazi, Esq.
Kirk A. Hornbeck, Esq.
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
(213) 532-2000

Members of the Settlement Class who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections to the settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, or any award of attorneys’ fees or reimbursement of costs.

XV. REMINDER OF IMPORTANT SETTLEMENT DATES AND DEADLINES

The following are important dates and deadlines under the proposed settlement:

<u>Deadline To Object To Settlement:</u>	[INSERT Date: 30 days before Final Approval Hearing]
<u>Opt-in Deadline:</u>	[INSERT Date: 60 days after mailing of Notice]
<u>Deadline To Object To Attorneys' Fees:</u>	[INSERT Date: 30 days before Final Approval Hearing]
<u>Final Approval Hearing:</u>	[INSERT date]

XVI. AVAILABILITY OF COMPLETE SETTLEMENT AGREEMENT

This Notice contains a summary of the proposed settlement contained in the Settlement Agreement that is on file with the Clerk of the Court. The complete Settlement Agreement may be inspected during normal business hours at the offices of the Clerk.

XVII. ADDITIONAL INFORMATION

For more detailed information concerning the matters involved in the Lawsuit, please refer to the pleadings, the Settlement Agreement, the Orders entered in the Lawsuit, and to the other papers filed in the Lawsuit, which may be inspected at the Office of the Clerk of the United States District Court, Northern District of California, located at 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays. You can also access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records ("PACER") system at <http://ecf.cand.uscourts.gov>.

Additional information regarding the settlement may be found at the following website: [INSERT website address].

Any questions concerning the matters contained in this Notice may be directed to the Administrator or Settlement Class Counsel (at the addresses set forth above).

You may also seek the advice and counsel of your own attorney, at your own expense, if you desire.

**Do Not Call Or Write The Court To Obtain Copies Of Documents
Or To Ask Questions About The Settlement.**

EXHIBIT C

**Must Be
Postmarked
No Later Than
Month 00, 2019**

Lawrence Branco, et al. v. Orchard Supply Company, LLC Settlement Administrator
P.O. Box 0000
City, ST 00000

CLAIM FORM

BRANCO ET AL. V. ORCHARD SUPPLY COMPANY, LLC SETTLEMENT

TO: <PREPRINT NAME>
<PREPRINT ADDRESS>

Records show that you are a Settlement Class Member because you were employed by Orchard Supply Company, LLC (“Orchard”) as an Assistant Store Manager during the time period covered by this Settlement. Please file this Claim Form if you want to receive a payment from the Settlement. **You must sign this form and provide all information below for your claim to be considered.**

Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked by **Month 00, 2019 for your claim to be considered.**

1. INFORMATION ABOUT YOUR EMPLOYMENT WITH ORHCARD.

1) Workweeks:

- **Rule 23 Sub-Class:** According to Orchard’s records, you were employed by Orchard as an Assistant Store Manager in California for [insert] work weeks between January 24, 2014 and Orchard’s closure. If you believe that number of work weeks is inaccurate, you may contest that number by providing additional documentation to the Settlement Administrator; however providing such supporting documentation is not mandatory. The Settlement Administrator will resolve any dispute.
- **FLSA Sub-Class:** According to Orchard’s records, you were employed by Orchard as an Assistant Store Manager in Florida and/or Oregon for [insert] work weeks between January 24, 2015 and Orchard’s closure. If you believe that number of work weeks is inaccurate, you may contest that number by providing additional documentation to the Settlement Administrator; however providing such supporting documentation is not mandatory. The Settlement Administrator will resolve any dispute.

2) By your signature below, you declare under penalty of perjury that you have not previously settled or released (or received money for) the claims covered by the Settlement?

3) Making a claim for a payment will not affect any employee benefit plan, employment policy, or stock option plan and cannot be counted as compensation, wages, or payment for “hours worked.” Orchard will not provide additional contributions or benefits under this Settlement.

2. DECLARATION AND RELEASE OF CLAIMS.

I declare under penalty of perjury that all of the foregoing information is true, accurate, and correct.

By signing and submitting this Claim Form, I agree to participate in this settlement and agree that except for the obligations imposed by this settlement, Orchard shall be forever released and discharged from all individual and/or class-wide claims or causes of action, which have been asserted or could have been asserted based on the facts alleged in the Lawsuit as fully set forth in the Settlement Agreement, including all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, whether known or unknown, whether in tort, contract, statute, rule,

ordinance, order, regulation, or otherwise, for state wage and hour laws, including California Labor Code sections 201–204, 226, 226.7, 510, 512, 515, 1194, 2802; all applicable Industrial Wage Commission Wage Orders; Business and Professions Code § 17200; the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”); and all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, (“FLSA”) to the extent the FLSA claims arise out of facts and/or claims asserted or that could have been asserted in the Lawsuit, whether for allegedly unpaid wages, damages, liquidated damages, and/or statutory or civil penalties (including, but not limited to, claims for penalties pursuant to Labor Code §§ 218, 226, 226.3, 558 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)), 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to, attorneys’ fees and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure §1021.5), or interest arising out of the claims at issue, including, but not limited to: the causes of action asserted in the Lawsuit relating to the alleged misclassification of Defendant’s Assistant Store Managers, claims for allegedly unpaid overtime, alleged failures to provide meal periods, alleged failures to provide rest breaks, alleged failures to pay for all hours worked, alleged failures to pay all wages due and owing at termination, alleged failures to pay any other wages, alleged failures to reimburse business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any wage statements.

I expressly give my consent to join this action and expressly give my consent to settle and release any claims I may have under the Fair Labor Standards Act, of 1938, as amended, 29 U.S.C. § 201, *et seq.*, as set forth above and in the Settlement Agreement.

3. SIGN AND DATE YOUR CLAIM FORM.

I declare under penalty of perjury under the laws of the United States that the information supplied in this Claim Form is true, accurate, and correct.

Signature (original or electronic signature required)

Print Name

_____/_____/_____
Month/Day/Year

The following information is solely for lawsuit-related communication, and will not be filed with the Court

Telephone Number: (_____) _____

Email Address: _____

Address (if different from address printed above): _____

4. SUBMIT YOUR CLAIM FORM.

You may submit this Claim Form through the website established for this settlement, which can be accessed at [www.\[insert URL\]](#). You also may submit this Claim Form by mailing it to the address below. If you choose to mail this this Claim Form, it must be postmarked by **Month 00, 2019**.

Lawrence Branco, et al. v. Orchard Supply Company, LLC Settlement Administrator

P.O. Box 0000
City, ST 00000

EXHIBIT D

Lawrence Branco, et al. v. Orchard Supply Company, LLC
United States District Court, Northern District of California
Case No. 5:18-cv-00531-EJD

REQUEST FOR EXCLUSION FORM

**SUBMIT THIS FORM IF YOU WISH TO BE EXCLUDED
FROM PARTICIPATING IN THE CLASS ACTION SETTLEMENT**

**THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN [35 days after Notice
Package is mailed].**

By signing and returning this form, I represent that I hereby exclude myself from participating in the settlement of the class action entitled *Lawrence Branco, et al. v. Orchard Supply Company, LLC*, N.D. Cal. Case No. 5:18-cv-00531-EJD. I have received notice of the proposed settlement in this action and have read the Notice of Class Action Settlement. I wish to be excluded from the settlement class, and do not wish to participate in the proposed settlement of the class claims. I understand that I have the right to seek the advice of counsel with respect to this choice and how it affects my legal rights, including but not limited to the applicable statute of limitations. I represent that the information set forth below is accurate.

Name: _____

Address: _____

Telephone No.: _____

Date: _____

Signature: _____

Please mail this Exclusion Form to:

Lawrence Branco, et al. v. Orchard Supply Company, LLC
c/o [REDACTED], Claims Administrator
[REDACTED] Address

**THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN [35 days after Notice
Package is mailed].**

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

LAWRENCE C. BRANCO, KATHY
ELLIOTT, individually and on behalf of
other members of the general public
similarly situated and as proxies for the
State of California,

Plaintiff,

v.

ORCHARD SUPPLY COMPANY,
LLC,

Defendant.

Case No.: 5:18-cv-00531-EJD-VKD

[CLASS ACTION]

**[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
SETTING OF A FAIRNESS
DETERMINATION HEARING AND
APPROVAL OF NOTICE TO CLASS**

Complaint Filed: January 24, 2018

**[PROPOSED] ORDER FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

5:18-cv-00531-EJD-VKD

1 The Court, having reviewed Plaintiffs' Notice of Motion and Motion for
2 Preliminary Approval of Class Action Settlement, the supporting Points and
3 Authorities, the Declaration of [REDACTED], the parties' Class Action Settlement
4 Agreement ("Settlement Agreement"), the Notices of Class Action Settlement
5 ("Notices"), the Claim Form, and the Request for Exclusion Form ("Exclusion
6 Form"), and in recognition of the Court's duty to make a preliminary determination as
7 to the reasonableness of any proposed class action settlement, and if preliminarily
8 determined to be reasonable, to ensure proper notice is provided to Class Members in
9 accordance with due process requirements; and to conduct a Final Approval Hearing
10 as to the good faith, fairness, adequacy, and reasonableness of any proposed
11 settlement, THE COURT HEREBY MAKES THE FOLLOWING
12 DETERMINATIONS AND ORDERS:

13 The Court finds, on a preliminary basis, that the Settlement Agreement,
14 incorporated in full by this reference and made a part of this Order of Preliminary
15 Approval, appears to be for an amount that is within the range of reasonableness of a
16 settlement which ultimately could be given final approval by this Court; the Court
17 notes that Defendant Orchard Supply Company, LLC ("Defendant") has agreed to pay
18 up to the Maximum Settlement Amount of One Million Two Hundred Fifty Thousand
19 Dollars (\$1,250,000.00) to the Settlement Class, the Class Representatives, Class
20 Counsel, the Claims Administrator, the PAGA Group, and the California Labor &
21 Workforce Development Agency, in full satisfaction of the claims as more specifically
22 described in the Settlement Agreement.

23 It further appears to the Court, on a preliminary basis, that the Settlement is fair
24 and reasonable to the Settlement Class when balanced against the probable outcome of
25 further litigation relating to class certification, liability and damages issues, and
26 potential appeals of rulings. It also appears that settlement at this time will avoid
27

1 substantial costs, delay, and risks that would be presented by the further prosecution
2 of the litigation.

3 It further appears to the Court that significant formal and informal discovery,
4 investigation, research, and litigation has been conducted such that counsel for the
5 parties at this time are able to evaluate their respective positions reasonably. It also
6 appears that the proposed Settlement has been reached as the result of intensive,
7 informed and non-collusive negotiations between the parties.

8 It further appears to the Court, on a preliminary basis and for purposes of
9 settlement only, that the prerequisites for a class action under Rule 23 of the Federal
10 Rules of Civil Procedure have been satisfied in that: (a) the number of members of
11 the Settlement Class is so numerous that joinder of all members thereof is
12 impracticable; (b) there are questions of law and fact common to the Settlement Class;
13 (c) the common questions of law and fact predominate over questions affecting only
14 individual members of the Settlement Class; (d) Plaintiffs' claims are typical of the
15 claims of the Settlement Class; (e) Plaintiffs will fairly and adequately protect the
16 interests of the Settlement Class; and (f) a class action is superior to other available
17 methods for the fair and efficient resolution of the action.

18 ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR
19 ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS
20 HEREBY GRANTED; AND THE COURT HEREBY TEMPORARILY AND
21 CONDITIONALLY CERTIFIES THE CLASS FOR SETTLEMENT PURPOSES
22 ONLY, PURSUANT TO THE TERMS AND CONDITIONS CONTAINED IN THE
23 SETTLEMENT AGREEMENT.

24 The Court finds, on a preliminary basis, that Plaintiffs and Plaintiffs' attorneys
25 have fairly represented and protected the interests of the Settlement Class.
26
27

1 It further appears to the Court, on a preliminary basis, that Plaintiffs' attorneys
2 are experienced and capable of fairly and competently representing the interests of the
3 Class.

4 It further appears to the Court that Simpluris Inc. is qualified to serve as the
5 settlement and claims administrator for purposes of this Settlement.

6 ACCORDINGLY, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED
7 AS FOLLOWS:

8 For purposes of the settlement of this action only, the Court hereby
9 appoints Plaintiffs Lawrence Branco and Kathy Elliott as representatives of the
10 Settlement Class (the "Class Representatives");

11 For purposes of the settlement of this action only, the Court hereby
12 appoints the following attorneys as counsel for the Class ("Class Counsel"):

13 Edward J. Wynne, Esq.
14 J.E.B. Pickett, Esq.
15 WYNNE LAW FIRM
16 80 E. Sir Francis Drake Blvd., Suite 3G
17 Larkspur, CA 94939

18 Gregg I. Shavitz, Esq.
19 SHAVITZ LAW GROUP, P.A.
20 951 Yamato Road, Suite 285
21 Boca Raton, FL 33431

22 The Court hereby appoints Simpluris Inc. as the settlement and claims
23 administrator for purposes of this Settlement (the "Claims Administrator").

24 The Court finds, on a preliminary basis, that an award of attorneys' fees to
25 Class Counsel of twenty-five percent (25%) of the \$1,250,000.00 Maximum
26 Settlement Amount is fair, reasonable, and justified given the time and effort Class
27

1 Counsel has expended pursuing the Settlement Class' claims, as well as the substantial
2 benefit conferred upon the Settlement Class as a result of such time and effort.

3 It further appears to the Court, on a preliminary basis, that reimbursement of
4 Class Counsel's costs and expenses in an amount not to exceed \$27,500.00 is fair,
5 reasonable, and justified, subject to Class Counsel presenting at the Final Approval
6 Hearing evidence of the nature and amount of expenses actually incurred and claimed.

7 It further appears to the Court, on a preliminary basis, that an incentive award
8 of \$10,000.00 each to Plaintiffs Lawrence Branco and Kathy Elliott is fair, reasonable,
9 and justified given the amount of time and effort the Class Representatives have
10 expended during the course of the litigation, and the risk of stigma the Class
11 Representatives have assumed for being class representatives in a class action labor
12 dispute, which in turn, could affect their future employability.

13 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT
14 PRELIMINARILY APPROVES THE APPLICATION BY CLASS COUNSEL FOR
15 ATTORNEYS' FEES AND COSTS AND FOR THE INCENTIVE AWARDS TO
16 THE CLASS REPRESENTATIVES.

17 The Court finds that the Notices, Claim Form, and Exclusion Form advise of
18 the pendency of the Class Action and of the proposed settlement, of preliminary Court
19 approval of the proposed Settlement, claim submission timing and procedures, opt-out
20 timing and procedures, objection timing and procedures, and of the Final Approval
21 Hearing. These documents fairly and adequately advise Class Members of the terms
22 of the proposed Settlement and the benefits available to Class Members thereunder, as
23 well as their right to opt-in to the Settlement or exclude themselves from the
24 Settlement, as the case may be, and procedures for doing so, and of the right of Class
25 Members to file documentation in support of or in opposition to the proposed
26 Settlement, and their right to appear at the Final Approval Hearing; the Court further
27

1 finds that the Notices clearly comport with all constitutional requirements, including
2 those of due process.

3 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY
4 APPROVES THE PROPOSED NOTICES, THE PROPOSED CLAIM FORM AND
5 THE EXCLUSION FORM.

6 The mailing to the present and/or last known addresses of the Class Members
7 constitutes an effective method of notifying Class Members of their rights with respect
8 to the Class Action and Settlement.

9 ACCORDINGLY, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED
10 AS FOLLOWS:

11 On or before _____, 2019 (14 calendar days after entry of Preliminary
12 Approval), Defendant will provide the Settlement Class Members' information and
13 the information of the PAGA Group Members (as that term is defined in the
14 Settlement Agreement) to the Claims Administrator to the extent Defendant possesses
15 such information and it has not already done so;

16 On or before _____, 2019 (30 days after entry of Preliminary
17 Approval), the Claims Administrator shall mail the appropriate Notice, Claim Form,
18 and Exclusion Form to each member of the Settlement Class; and

19 All mailings shall be made to the present and/or last known mailing
20 address of the Class Members based on Defendant's records, as well as addresses that
21 may be located by the Claims Administrator, who will conduct standard address
22 searches in cases of returned mail. The Court finds that the mailing of notices to Class
23 Members as set forth in this paragraph is the best means practicable by which to reach
24 Class Members and is reasonable and adequate pursuant to all constitutional and
25 statutory requirements including all due process requirements.

26 IT IS FURTHER ORDERED that to be considered valid and timely any:
27
28

1 Claim Forms or Exclusion Forms must be submitted, either by mail or by
2 the website established by the Settlement Agreement, to the Claims Administrator
3 within 60 days in the case of a Claim Form or 35 days in the case of an Exclusion
4 Form, unless those deadlines are extended as a result of a re-mailing pursuant to a skip
5 trace, as set forth in the Settlement Agreement; and

6 Objections, including objections to Class Counsel's attorneys' fee
7 request, must be filed with the Court and served on Class Counsel and on counsel for
8 Defendants 30 days prior to the Final Approval Hearing.

9 Given the Court's preliminary approval of the Settlement at this time, IT IS
10 FURTHER ORDERED THAT Defendants shall, if they have not already done so,
11 provide notice of this Class Action Settlement to the Attorney General of the United
12 States, the California Attorney General, and any other state attorney general where
13 Class Members reside within 10 days of today () in accordance with the Class
14 Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

15 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held
16 before the undersigned on , 2019 at a.m. in Courtroom 1
17 (5th Floor) of the above-entitled court, located at 280 South 1st Street, San Jose,
18 California 95113, to consider the fairness, adequacy and reasonableness of the
19 proposed Settlement preliminarily approved by this Order of Preliminary Approval,
20 and to consider the application of Class Counsel for an award of reasonable attorneys'
21 fees, litigation expenses, incentive awards, and for costs of claims administration
22 incurred.

23 IT IS FURTHER ORDERED that pending final determination of whether this
24 proposed Settlement should be granted final approval, no Class Member, either
25 directly or representatively, or in any other capacity, shall commence or prosecute any
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1 action or proceeding asserting any of the Class Members' Released Claims, as defined
2 in the Settlement Agreement, against Defendants in any court or tribunal.

3 IT IS FURTHER ORDERED that any party to this case, including Class
4 Members, may appear at the Final Approval Hearing in person or by counsel, and may
5 be heard to the extent allowed by the Court, in support of or in opposition to the
6 settlement, to inform the Court's determination of the good faith, fairness,
7 reasonableness and adequacy of the proposed Settlement, the requested attorneys' fees
8 and litigation expenses, and any Order of Final Approval and Judgment regarding
9 such Settlement, fees and expenses; provided, however, that no person, except Class
10 Counsel and counsel for Defendants, shall be heard in opposition to such matters
11 unless such person has complied with the conditions set forth in the Notice of Class
12 Action Settlement which conditions are incorporated herein.

13 IT IS FURTHER ORDERED that if, for any reason, the Court does not execute
14 and file an Order of Final Approval, or if the Effective Date (as defined in the
15 Settlement Agreement) does not occur for any reason whatsoever, the proposed
16 Settlement Agreement and all evidence and proceedings had in connection therewith,
17 shall be without prejudice to the *status quo ante* rights of the parties to the litigation as
18 more specifically set forth in the Settlement Agreement.

19 IT IS FURTHER ORDERED that, pending further order of this Court, all
20 proceedings in this matter except those contemplated herein and in the Settlement
21 Agreement are stayed.

22 IT IS FURTHER ORDERED that the Court will consider the fairness and
23 adequacy of the proposed settlement of the claim brought pursuant to the California
24 Labor Code Private Attorneys' General Act of 2004, Cal. Lab. Code §2698, *et seq.*
25 ("PAGA"), at the Final Approval Hearing, but finds on a preliminary basis that the
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1 Settlement Agreement's allocation of settlement funds to the PAGA claim is fair and
2 adequate.

3 The Court expressly reserves the right to adjourn or continue the Final
4 Approval Hearing from time-to-time without further notice to the Class Members.

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6 **IT IS SO ORDERED.**

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8 Dated: _____, 2019

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11 Edward J. Davila
12 UNITED STATES DISTRICT JUDGE
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EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

LAWRENCE C. BRANCO, KATHY
ELLIOTT, individually and on behalf of
other members of the general public
similarly situated and as proxies for the
State of California,

Plaintiff,

v.

ORCHARD SUPPLY COMPANY,
LLC,

Defendant.

Case No.: 5:18-cv-00531-EJD-VKD

[CLASS ACTION]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Complaint Filed: January 24, 2018

**[PROPOSED] ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

5:18-cv-00531-EJD-VKD

1 The Parties have submitted their Settlement Agreement (the “Settlement”),
2 which this Court preliminarily approved in its [REDACTED], 2019 Order for
3 Preliminary Approval of Class Action Settlement (the “Preliminary Approval Order”).
4 In accordance with the Preliminary Approval Order, Class Members have been given
5 adequate notice of the terms of the Settlement and their right to participate in, object
6 to, or exclude themselves from the Settlement where applicable. In addition, pursuant
7 to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, the United
8 States Attorney General, the California Attorney General, and the attorneys general of
9 all other states where class members resided at the time notice was issued have been
10 given notice of the Settlement.

11 Having received and considered the Settlement, the supporting papers filed by
12 the Parties, the Application for Final Approval of the Settlement, the Application for
13 an Award of Class Counsel’s Attorneys’ Fees and Reimbursement of Expenses, the
14 Application for Incentive Awards for the Class Representatives, and the evidence and
15 argument received by the Court at the Final Approval Hearing on [REDACTED],
16 2019, the Court GRANTS final approval of the Settlement, and hereby ORDERS as
17 follows:

18 1. The Class covered by this Order is defined as: Those individuals who
19 were employed by Defendant as Assistant Store Managers (i) in California on or after
20 January 24, 2014 or (ii) in Florida or Oregon on or after January 24, 2015; and who (i)
21 did not enter into a severance agreement or an arbitration agreement with Defendant
22 after March 6, 2016 or (ii) submitted a declaration in support of Plaintiffs’ Motion for
23 Conditional Class Certification and did not enter into a severance agreement with
24 Defendant. Members of the Settlement Class who worked as Assistant Store
25 Managers for Defendant in California shall be known as the “Rule 23 Sub-Class”; and
26 members of the Settlement Class who worked as ASMs for Defendant in Oregon or
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1 Florida shall be known as the “FLSA Sub-Class.” Any person who previously settled
2 or released all of the claims covered by this settlement, any person who previously
3 was paid or received awards through civil or administrative actions for all of the
4 claims covered by this settlement, any person who excluded him or herself from the
5 Rule 23 Sub-Class, or any member of the FLSA Sub-Class who did not opt-in to the
6 settlement, shall not be a member of the Settlement Class.

7 2. Specific portions of this Order also cover the “PAGA Group,” which is
8 defined as: those individuals employed by Defendant as Assistant Store Managers in
9 California on or after November 20, 2016.

10 3. Pursuant to this Court’s Preliminary Approval Order, a Notice of Class
11 Action Settlement, Claim Form, and Exclusion Form were sent to each Class Member
12 by first-class mail as appropriate. These papers informed Class Members of the terms
13 of the Settlement, and the extent of their right to participate in, object to, or exclude
14 themselves from the Settlement to pursue their own remedies, and their right to appear
15 in person or by counsel at the Final Approval Hearing to be heard regarding approval
16 of the Settlement. Adequate periods of time were provided by each of these
17 procedures. The Notice provided to each Class Member also contained a website
18 address where Class Members could obtain information about the settlement.
19 [Number] Class Members filed written objections to the Settlement as part of this
20 notice process or stated his or her intent to appear at the Final Approval Hearing.

21 4. The Court finds and determines that this notice procedure afforded
22 adequate protections to Class Members and provides the basis for the Court to make
23 an informed decision regarding approval of the Settlement based on the responses of
24 Class Members. The Court finds and determines that the notice provided in this case
25 was the best notice practicable, which satisfied the requirements of law and due
26 process.

1 5. For the reasons stated in the Court's Preliminary Approval Order, the
2 Court finds and determines that the proposed Settlement Class, as defined in the
3 Settlement, meets all of the legal requirements for class certification, and it is hereby
4 ordered that the Settlement Class is finally approved and certified as a class for
5 purposes of settlement of this action.

6 6. The Court further finds and determines that the terms of the Settlement
7 are fair, reasonable, and adequate to the Class and to each Class Member and that the
8 Class Members who have not excluded themselves shall be bound by the Settlement,
9 that the Settlement is ordered finally approved, and that all terms and provisions of the
10 Settlement should be and hereby are ordered to be consummated.

11 7. The Court further finds and determines that the payments to be made to
12 the Settlement Class Members as provided for in the Settlement are fair and
13 reasonable. The Court hereby gives final approval to and orders the payment of those
14 amounts be made to the Settlement Class Members out of the One Million Two
15 Hundred Fifty Thousand Dollar (\$1,250,000.00) Maximum Settlement Amount in
16 accordance with the terms of the Settlement.

17 8. The Court further finds and determines that the Settlement is fair and
18 adequate with respect the claim brought pursuant to California Labor Code Private
19 Attorneys' General Act of 2004, Cal. Lab. Code §2698, *et seq.* ("PAGA"), and the
20 Court approves the form of the payment explanation letter attached as Exhibit H to the
21 Settlement Agreement.

22 9. The Court hereby grants and approves the application presented by Class
23 Counsel for an award of attorneys' fees in the amount of \$_____, to be paid in
24 accordance with the terms of the Settlement.

1 employees, administrators, fiduciaries, trustees and agents, and any individual or
2 entity which could be jointly liable with Defendant (the “Released Defendants”) from
3 the “Released Claims” as defined below and in paragraph 20 of the Settlement.

4 For purposes of this Settlement Agreement, the “Released Claims” are defined
5 as: All claims, demands, rights, liabilities, and causes of action that were asserted in
6 the lawsuit, or could have been asserted in the lawsuit based on the facts alleged,
7 whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, for
8 state wage and hour laws, including California Labor Code sections 201–204, 226,
9 226.7, 510, 512, 515, 1194, 2802; all applicable Industrial Wage Commission Wage
10 Orders; Business and Professions Code § 17200; the California Labor Code Private
11 Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”); and all
12 claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et*
13 *seq.*, (“FLSA”) to the extent the FLSA claims arise out of facts and/or claims asserted
14 or that could have been asserted in the Lawsuit, whether for allegedly unpaid wages,
15 damages, liquidated damages, and/or statutory or civil penalties (including, but not
16 limited to, claims for penalties pursuant to Labor Code §§ 218, 226, 226.3, 558
17 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)),
18 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to, attorneys’ fees
19 and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure
20 §1021.5), or interest arising out of the claims at issue, including, but not limited to: the
21 causes of action asserted in the Lawsuit relating to the alleged misclassification of
22 Defendant’s Assistant Store Managers, claims for allegedly unpaid overtime, alleged
23 failures to provide meal periods, alleged failures to provide rest breaks, alleged
24 failures to pay for all hours worked, alleged failures to pay all wages due and owing at
25 termination, alleged failures to pay any other wages, alleged failures to reimburse
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business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any wage statements.

(b) Released Claims by PAGA Group Members

As of the Effective Date, all PAGA Group Members release Defendant (i.e., Orchard Supply Company, LLC) and each of its respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the “Released PAGA Defendants”) from the “Released PAGA Claims” as defined below and in paragraph 20 of the Settlement.

For purposes of this Settlement Agreement, the “Released PAGA Claims” are defined as: All claims, demands, rights, liabilities, and causes of action that were asserted, or could have been asserted based on the facts alleged in the First Amended Complaint, on behalf of the PAGA Group Members, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), based on alleged violations of Labor Code §§ 201, 202, 203, 226, 226.3, 510, 512, 1194, 2802, and I.W.C. Wage Order No. 7 (including 7-2001), whether for penalties (including, but not limited to penalties pursuant to Labor Code §§ 218, 226, 558 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)), 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to attorneys’ fees and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure §

1 1021.5), or interest arising out of the alleged underlying Labor Code violations,
2 including: alleged unpaid overtime, alleged failures to provide meal periods, alleged
3 failures to provide rest breaks, alleged failures to pay for all hours worked, alleged
4 failures to pay all wages due and owing at termination, alleged failures to pay any
5 other wages, alleged failures to reimburse business expenses, and for any
6 shortcomings, deficiencies, and/or inaccuracies in any wage statements.

7 14. Pursuant to the Settlement, all Class Members (except for those who filed
8 Exclusion Forms) are permanently barred from prosecuting the Released Defendants
9 for any Released Claims. Pursuant to the Settlement, all PAGA Group Members are
10 permanently barred from prosecuting the Released PAGA Defendants for any
11 Released PAGA Claims.

12 15. The parties are hereby ordered to comply with the terms of the
13 Settlement.

14 16. This action and the claims alleged in the First Amended Complaint filed
15 in the action are hereby ordered dismissed with prejudice, each side to bear its own
16 costs and attorneys' fees except as provided by the Settlement.

17 17. Without affecting the finality of this Final Order in any way, this Court
18 retains jurisdiction of all matters relating to the interpretation, administration,
19 implementation, effectuation and enforcement of this Order and the Settlement.

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21 **IT IS SO ORDERED.**

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23 Dated: _____, 2019

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26 Edward J. Davila
27 UNITED STATES DISTRICT JUDGE

EXHIBIT G

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

LAWRENCE C. BRANCO, KATHY
ELLIOTT, individually and on behalf of
other members of the general public
similarly situated and as proxies for the
State of California,

Plaintiff,

v.

ORCHARD SUPPLY COMPANY,
LLC,

Defendant.

Case No.: 5:18-cv-00531-EJD-VKD

[CLASS ACTION]

[PROPOSED] JUDGMENT

Complaint Filed: January 24, 2018

[PROPOSED] JUDGMENT

5:18-cv-00531-EJD-VKD

[PROPOSED] JUDGMENT

WHEREAS, on [REDACTED], 2019, the Court granted preliminary approval to a settlement of this action;

WHEREAS, the Court granted final approval to the settlement on [REDACTED], 2019, finding that the settlement is fair, reasonable and adequate within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure and applicable law; and

WHEREAS, the Court has found that the notice sent to the Class Members fairly and adequately informed the Class of the terms of the settlement, was consistent with Rule 23 of the Federal Rules of Civil Procedure and due process, and was given in the manner prescribed by the Settlement Agreement and the Court's order preliminarily approving the settlement:

Pursuant to the Settlement Agreement, all Class Members, except those who have requested exclusion from the settlement, are conclusively deemed to have released any and all "Released Claims" against the "Released Defendants" as described below and in paragraph 20 of the Settlement Agreement. Further, pursuant to the Settlement Agreement, all PAGA Group Members are conclusively deemed to have released any and all "Released PAGA Claims" against the "Released PAGA Defendants" as described below and in paragraph 20 of the Settlement Agreement.

(a) Released Claims by Settlement Class Members

Upon the Effective Date of the Settlement (as defined in paragraph 18(a) of the Settlement), the members of the Class, including the Class Representatives, shall release Defendant (*i.e.*, Orchard Supply Company, LLC) and each of its respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and their respective

1 successors and predecessors in interest, each of their company-sponsored employee
2 benefit plans of any nature (including, without limitation, profit-sharing plans, pension
3 plans, 401(k) plans, and severance plans) and all of their respective officers, directors,
4 employees, administrators, fiduciaries, trustees and agents, and any individual or
5 entity which could be jointly liable with Defendant (the “Released Defendants”) from
6 the “Released Claims” as defined below and in paragraph 20 of the Settlement.

7 For purposes of this Settlement Agreement, the “Released Claims” are defined
8 as: All claims, demands, rights, liabilities, and causes of action that were asserted in
9 the lawsuit, or could have been asserted in the lawsuit based on the facts alleged,
10 whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, for
11 state wage and hour laws, including California Labor Code sections 201–204, 226,
12 226.7, 510, 512, 515, 1194, 2802; all applicable Industrial Wage Commission Wage
13 Orders; Business and Professions Code § 17200; the California Labor Code Private
14 Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”); and all
15 claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et*
16 *seq.*, (“FLSA”) to the extent the FLSA claims arise out of facts and/or claims asserted
17 or that could have been asserted in the Lawsuit, whether for allegedly unpaid wages,
18 damages, liquidated damages, and/or statutory or civil penalties (including, but not
19 limited to, claims for penalties pursuant to Labor Code §§ 218, 226, 226.3, 558
20 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)),
21 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to, attorneys’ fees
22 and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure
23 §1021.5), or interest arising out of the claims at issue, including, but not limited to: the
24 causes of action asserted in the Lawsuit relating to the alleged misclassification of
25 Defendant’s Assistant Store Managers, claims for allegedly unpaid overtime, alleged
26 failures to provide meal periods, alleged failures to provide rest breaks, alleged
27 failures to pay for all hours worked, alleged failures to pay all wages due and owing at
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1 termination, alleged failures to pay any other wages, alleged failures to reimburse
2 business expenses, and for any shortcomings, deficiencies, and/or inaccuracies in any
3 wage statements.

4 (b) Released Claims by PAGA Group Members

5 As of the Effective Date, all PAGA Group Members release Defendant (i.e.,
6 Orchard Supply Company, LLC) and each of its respective past, present and future
7 owners, stockholders, all present and former parent corporations, related or affiliated
8 companies, subsidiaries, officers, directors, shareholders, employees, agents,
9 principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers
10 and re-insurers, and their respective successors and predecessors in interest, each of
11 their company-sponsored employee benefit plans of any nature (including, without
12 limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and
13 all of their respective officers, directors, employees, administrators, fiduciaries,
14 trustees and agents, and any individual or entity which could be jointly liable with
15 Defendant (the “Released PAGA Defendants”) from the “Released PAGA Claims” as
16 defined below and in paragraph 20 of the Settlement.

17 For purposes of this Settlement Agreement, the “Released PAGA Claims” are
18 defined as: All claims, demands, rights, liabilities, and causes of action that were
19 asserted, or could have been asserted based on the facts alleged in the First Amended
20 Complaint, on behalf of the PAGA Group Members, pursuant to the Labor Code
21 Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), based
22 on alleged violations of Labor Code §§ 201, 202, 203, 226, 226.3, 510, 512, 1194,
23 2802, and I.W.C. Wage Order No. 7 (including 7-2001), whether for penalties
24 (including, but not limited to penalties pursuant to Labor Code §§ 218, 226, 558
25 (including § 558(a)–(e) and all penalties for victim-specific relief), 515, 2699(f)),
26 2699.3, 2699.5, attorneys’ fees and costs (including, but not limited to attorneys’ fees
27 and costs pursuant to Labor Code §§ 218.5, and 2699(g), Code of Civil Procedure §
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1 1021.5), or interest arising out of the alleged underlying Labor Code violations,
2 including: alleged unpaid overtime, alleged failures to provide meal periods, alleged
3 failures to provide rest breaks, alleged failures to pay for all hours worked, alleged
4 failures to pay all wages due and owing at termination, alleged failures to pay any
5 other wages, alleged failures to reimburse business expenses, and for any
6 shortcomings, deficiencies, and/or inaccuracies in any wage statements.

7 Without affecting the finality of this Judgment in any way, the Court reserves
8 exclusive and continuing jurisdiction over this action, the named Plaintiffs, the Class,
9 and the Defendant for the purposes of supervising the implementation, enforcement,
10 construction, and interpretation of the Settlement, and all orders and judgments
11 entered in connection therewith.

12
13 **IT IS SO ORDERED.**

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15 Dated: _____, 2019

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18 Edward J. Davila
19 UNITED STATES DISTRICT JUDGE
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EXHIBIT H

Lawrence Branco, et al. v. Orchard Supply Company, LLC
United States District Court, Northern District of California
Case No. 5:18-cv-00531-EJD

[Simpluris]
[insert address]

[Date], 2019

[insert employee name]
[insert employee address]

Re: Explanation of Individual PAGA Payment

Dear Former Orchard Assistant Store Manager:

[Simpluris] is the Court-approved settlement administrator for a lawsuit entitled *Lawrence Branco, et al. v. Orchard Supply Company, LLC*, N.D. Cal. Case No. 5:18-cv-00531-EJD (the “Lawsuit”).

In the lawsuit, the plaintiffs alleged that Defendant Orchard Supply Company, LLC (“Orchard”): (1) misclassified its Assistant Store Managers (“ASMs”) as exempt employees; (2) failed to pay ASMs overtime in violation of California and federal law; (3) failed to provide meal and rest breaks in accordance with California law; (4) failed to timely pay ASMs all wages due when their employment with Orchard terminated; (5) failed to provide ASMs with accurate wage statements in violation of California law; and (6) failed to reimburse ASMs for business expenses, including out-of-pocket transportation costs and expenses related to the use of cell phones. Based on those allegations, the plaintiff brought a class action, a collective action, and a claim under the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (“PAGA”). Orchard denied all liability. The parties reached a settlement, which the Court approved.

In a PAGA case, a plaintiff brings a lawsuit on behalf of the State of California seeking penalties under the PAGA law. For most claims, the law requires that 75% of the net recovery go to the State and the remaining 25% to the affected employees. Orchard’s records show that you are one of the former Orchard ASMs who is entitled to a share of the settlement of the PAGA claim. The enclosed payment constitutes your share of the PAGA portion of the settlement.

Very truly yours,

[Simpluris]

EXHIBIT I

INDIVIDUAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Individual Settlement Agreement and Mutual Release (“Agreement”) is entered into by and between Plaintiff [NAME] (“Plaintiff”), on the one hand, and Orchard Supply Company, LLC (“Defendant”), on the other hand, and is effective upon its execution by all Parties hereto. Defendant and Plaintiff are collectively referred to herein as the “Parties.”

I.

RECITALS

WHEREAS, Plaintiff and Defendant are parties to *Lawrence Branco, et al. v. Orchard Supply Company, LLC*, N.D. Cal. Case No. 5:18-cv-00531-EJD (the “Lawsuit”), pending in the United States District Court for the Northern District of California (the “Court”);

WHEREAS, the Parties prepared for and engaged in formal mediation on November 29, 2018;

WHEREAS, Defendant, Plaintiff, and Plaintiff’s Counsel were able to reach an agreement on a settlement for the class claims;

WHEREAS, the terms of settlement of the class claims are set forth in a Class Action Settlement Agreement; and

WHEREAS, as a part of the Class Action Settlement Agreement, Plaintiff agreed to execute a separate individual release of his/her claims;

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Class Action Settlement Agreement, and for good consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II.

AGREEMENT

1. **Plaintiff’s Release and Waiver of All Individual Claims.** In exchange for the consideration provided in the Class Action Settlement Agreement, Plaintiff agrees to settle, release and waive any and all claims he/she has or may have against Defendant and each of its respective past, present and future owners, stockholders, parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and re-insurers, and each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendant (the “Released Parties”) for anything that has occurred up to the date of execution of this Agreement, including but not limited to, any and all claims resulting from Plaintiff’s employment with Defendant, and all “Released Claims,” as that term is defined in the Class Action Settlement Agreement.

2. California Civil Code Section 1542 Waiver. Plaintiff stipulates and agrees that, upon the Effective Date, he/she shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Section 1542 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.

3. Rescission of Agreement. Should the Class Action Settlement Agreement not be granted final approval for any reason whatsoever, or should Plaintiff not receive any incentive payment as part of the Class Action Settlement, this Agreement shall be null and void.

4. Application For Employment. Plaintiff agrees that he/she will not apply for employment with Lowe's Home Centers, LLC, and that he/she will not be eligible for such employment. Subject to the foregoing, Plaintiff agrees that the fact of this Agreement constitutes a legitimate, non-discriminatory, and non-retaliatory reason for rejecting any application for employment with Lowe's Home Centers, LLC. Should Plaintiff, in breach of this Agreement, become employed with Lowe's Home Centers, LLC, Plaintiff agrees that the fact of this Agreement constitutes a legitimate, non-discriminatory, and non-retaliatory reason for terminating such employment.

5. No Admission of Liability. The Parties acknowledge and agree that this Agreement is a compromise and settlement of each Party's disputed claims and/or defenses and that neither the execution nor the terms hereof may be construed as an admission of liability on the part of any Party with respect to the disputed matters.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. Consent to Jurisdiction and Forum Selection. The Parties acknowledge and agree that any action or proceeding arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of San Jose, State of California. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph.

8. Incorporation of Class Action Settlement Agreement. The Class Action Settlement Agreement is hereby incorporated by reference as though set forth fully herein and is a material part of this Agreement.

9. Entire Agreement. This Agreement, and the Class Action Settlement Agreement incorporated herein, constitutes the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, whether oral or in writing, express or implied, between or among the Parties. The Parties and each of them acknowledge that no representations, inducements, promises, agreements or warranties have been made to them or by them, or by anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance upon any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including but not limited to any purported supplements, modifications, waivers or terminations of this Agreement, shall be valid or binding unless executed in writing by each of the Parties to this Agreement.

10. Agreement to Be Construed Fairly. This Agreement is to be construed fairly and not in favor of or against either Party, regardless of which Party drafted or participated in the drafting of its terms. Any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

11. No Assignment. Plaintiff represents and warrants that: (a) there has been no assignment or other transfer of any interest in the claims which he/she has or may have that are being released herein, and Plaintiff shall indemnify, hold harmless, and defend Defendant from any liability, claims, demands, damages, costs, expenses and reasonable outside attorneys' fees incurred by Defendant as a result of any such assignment or transfer contrary to the foregoing representation; and (b) Plaintiff owns all claims, demands, and causes of action which Plaintiff releases by this Agreement, which release is free and clear from all liens, claims, and encumbrances.

12. Authority to Enter into Agreement. Each of the Parties represents and warrants that any person executing this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of said Party, and has the full right and authority to execute this Agreement and to fully bind that Party to the terms and obligations of this Agreement. Each of the persons signing this Agreement on behalf of the Parties hereto makes the same warranties referred to herein.

13. Successors and Assigns. The terms of this Agreement shall be binding upon the Parties and their agents, employees, successors, assigns and insurers.

14. Prevailing Party Attorneys' Fees. In the event either of the Parties brings an action to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover the reasonable attorneys' fees and costs it incurred in such action.

15. Consultation with Counsel. Each of the Parties to the Agreement represents and warrants that this Agreement has been voluntarily and knowingly executed by the Parties after having had the opportunity to consult with legal counsel. The Parties declare that they know and understand the contents of this Agreement, and that they have executed it voluntarily.

16. Headings. The various headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the Agreement or any provision of it.

17. Severability. If any word, clause, phrase, sentence, or paragraph of this Agreement is declared void or unenforceable, such portion shall be considered independent of, and severable from, the remainder, the validity of which shall remain unaffected.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute together one in the same instrument, and will be effective upon execution by all Parties. Facsimile signatures shall be deemed original signatures for all purposes.

19. Notice. Any notices required under this Agreement shall be served upon the Parties via U.S. Mail as follows:

Plaintiff's Counsel/Class Counsel:

Edward J. Wynne, Esq.
George R. Nemiroff, Esq.
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Larkspur, CA 94939

Gregg I. Shavitz, Esq.
SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
Boca Raton, FL 33431

Defendant's Counsel:

Phillip J. Eskenazi, Esq.
Kirk A. Hornbeck, Esq.
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

20. Execution Date. The terms of this Agreement as between the Parties are binding upon Final Approval of the Class Action Settlement Agreement. The Parties have executed this Agreement as of the last date set forth below.

Plaintiff [NAME]

Dated: _____

[Name]

Defendant Orchard Supply Company, LLC

Dated: _____

By _____

Approval As To Form And Content By Counsel:

On behalf of Plaintiff:

Dated: _____

**WYNNE LAW FIRM
SHAVITZ LAW GROUP, P.A.**
Edward J. Wynne, Esq.
Gregg I. Shavitz, Esq.

Edward J. Wynne, Esq.

On behalf of Defendants:

Dated: _____

HUNTON ANDREWS KURTH LLP
Phillip J. Eskenazi, Esq.
Kirk A. Hornbeck, Esq.

Phillip J. Eskenazi, Esq.