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Attorneys for Plaintiffs, LLUVIANA RUIZ, JESUS
BARBOZA, and PURESА RESENDIS,
on behalf of themselves and all others similarly situated
and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

LLUVIANA RUIZ, JESUS BARBOZA
RUIZ, and PURESА RESENDIS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

KLEEN HARVEST, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21CV002319

[Assigned for all purposes to the Hon. Thomas
W. Wills in Dept. 15]

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

1 This Court, having considered the plaintiffs Lluviana Ruiz (“Plaintiff Ruiz”), Jesus Barboza
2 Ruiz (“Plaintiff Barboza”), and Puresa Resendis (“Plaintiff Resendis”, collectively, “Plaintiffs”)
3 Motion for Preliminary Approval of Class and Representative Action Settlement and Provisional
4 Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the
5 Declarations of David D. Bibiyan, Brandon M. Chang, Plaintiffs, and Lisa Mullins, the Joint
6 Stipulation Re: Class Action and Representative Action Settlement (the “Settlement,” “Settlement
7 Agreement” or “Agreement”), the proposed Notice of Proposed Class Action Settlement and Date
8 for Final Approval Hearing (“Class Notice”), and other documents submitted in support of the
9 Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

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

12 2. The Court certifies the following settlement class (“Settlement Class,” “Settlement
13 Class Members” or “Class Members”) for the purpose of settlement only: all persons currently or
14 formerly employed by defendant Kleen Harvest Inc., (“Defendant”) either directly or through any
15 subsidiary, staffing agency, or professional employer organization, as hourly-paid, non-exempt
16 employees at any time between July 21, 2017 through July 23, 2023 (“Class Period”).

17 3. The Court preliminarily appoints the named plaintiffs Lluviana Ruiz, Jesus Barboza
18 Ruiz, and Puresa Resendis as Class Representatives, and David D. Bibiyan, Jeffrey D. Klein, and
19 Vedang J. Patel of Bibiyan Law Group, P.C., as Class Counsel.

20 4. The Court preliminarily approves the proposed class settlement upon the terms and
21 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
22 settlement appears to be within the range of reasonableness of settlement that could ultimately be
23 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
24 amount is fair, adequate, and reasonable as to all potential class members when balanced against the
25 probable outcome of further litigation relating to liability and damages issues. It further appears that
26 extensive and costly investigation and research has been conducted such that counsel for the parties
27 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
28 that the settlement at this time will avoid substantial additional costs to all parties, as well as the

1 delay and risks that would be presented by the further prosecution of the Action. It further appears
2 that the settlement has been reached as the result of intensive, non-collusive and arms-length
3 negotiations utilizing an experienced third-party neutral.

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

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

10 7. The Court hereby preliminarily approves the definition and disposition of the Gross
11 Settlement Amount of \$375,000.00, which is inclusive of: attorneys' fees of up to thirty-five percent
12 (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
13 Agreement, amounts to \$131,250.00, in addition to actual costs incurred of up to \$30,000.00; service
14 awards of \$7,500.00 to Plaintiff Ruiz, \$5,000.00 to Plaintiff Barboza, \$5,000.00 to Plaintiff
15 Resendis, for a total of \$17,500.00; costs of settlement administration of no more than \$11,500.00
16 and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of \$20,000.00, of
17 which \$15,000.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA")
18 and \$5,000.00 (25%) to "Aggrieved Employees," defined as Class Members working for Defendant,
19 as non-exempt, hourly-paid employees at any time between July 10, 2020 through July 23, 2023
20 ("PAGA Period").

21 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
22 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

23 9. "Workweeks" shall mean the number of weeks that a Settlement Class Member was
24 employed by Defendant in a non-exempt, hourly position during the Class Period in California,
25 based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

26 10. Based on information available as of the date of the mediation, Defendant estimated
27 that there are no more than 10,548 Workweeks worked by Class Members during the Class Period.
28 In the event the number of Workweeks worked increases by more than 10% or more than 1,548

1 Workweeks worked, then the Gross Settlement Amount shall be increased proportionally by the
2 Workweeks worked in the Class Period in excess of 12,096 multiplied by the Workweek Value. The
3 Workweek Value shall be calculated by dividing the Gross Settlement Amount by 10,548
4 Workweeks. The Parties agree that the Workweek Value amounts to and the settlement amounts to
5 \$35.55 per Workweek (\$375,000.00 / 10,548 Workweeks).

6 11. The Court deems ILYM Group, Inc. (“ILYM”), the settlement administrator, and
7 payment of administrative costs, not to exceed \$11,500.00 out of the Gross Settlement Amount for
8 services to be rendered by ILYM on behalf of the class.

9 12. (1) Within seven (7) calendar days after the Preliminary Approval Date,
10 Defendant shall provide the Settlement Administrator with information with respect to each
11 Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in
12 Defendant’s possession, custody or control; (3) last known telephone number(s) currently in
13 Defendant’s possession, custody or control; (4) last known Social Security Number(s) in
14 Defendant’s possession, custody or control; (5) pay records of weeks worked for each Settlement
15 Class Member (“Class List”).

16 13. The Settlement Administrator shall perform an address search using the United States
17 Postal Service National Change of Address (“NCOA”) database and update the addresses contained
18 on the Class List with the newly-found addresses, if any.

19 14. Within seven (7) calendar days or soon thereafter of receiving the Class List from
20 Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the
21 Settlement Class Members via first-class regular U.S. Mail using the most current mailing address
22 information available.

23 15. “Response Deadline” means the deadline for Settlement Class Members to mail any
24 Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator, which
25 is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and
26 Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an
27 instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing or forty-five
28 (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a

1 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
2 exclusive means for determining whether a Request for Exclusion, Objection or Workweek Dispute
3 was submitted by the Response Deadline.

4 16. No later than seven (7) calendar days from the Response Deadline, the Settlement
5 Administrator shall provide counsel for the Parties with a declaration attesting to the completion of
6 the notice process, including the number of attempts to obtain valid mailing addresses for and re-
7 sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests
8 for Exclusion and Objections received by the Settlement Administrator.

9 17. Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
10 Settlement by mailing a written request to be excluded from the Settlement (“Request for
11 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To
12 be valid, a Request for Exclusion must include: (1) the Class Member’s name; (2) the last four (4)
13 digits of the Class Member’s Social Security Number; (3) the Class Member’s signature; and (4)
14 the following statement: “Please exclude me from the Settlement Class in the Lluviana Ruiz, et. al.
15 v. Kleen Harvest Inc. matter” or any statement of similar meaning standing for the proposition that
16 the Class Member does not wish to participate in the Settlement.

17 18. Any Settlement Class Member who does not opt out of the Settlement by submitting
18 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
19 those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court
20 if Final Approval of the Settlement is granted.

21 19. Each Settlement Class Member may dispute the number of Workweeks attributed to
22 him or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to
23 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
24 Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes
25 to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all such
26 disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant and
27 Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
28 dispute.

20. Only Participating Class Members may object to the Settlement. In order for any Settlement Class Member to object to the Settlement, or any term of it, he or she must do so by mailing a written objection to the Settlement Administrator at the address or phone number provided on the Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support of Plaintiffs' Motion for Final Approval. The Objection should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority, if any, the Objector asserts in support of the Objection.

21. If a Settlement Class Member objects to the Settlement, the Settlement Class Member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class Member will be bound by the terms of the Settlement in the same way and to the same extent as a Settlement Class Member who does not object. The date of mailing of the Class Notice to the objecting Settlement Class Member shall be conclusively determined according to the records of the Settlement Administrator. Settlement Class Members need not object in writing to be heard at the Final Approval Hearing; they may object or comment in person at the hearing at their own expense.

(4) No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests for Exclusion and Objections received by the Settlement Administrator.

23. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled.

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

1 25. A Final Approval Hearing shall be held with the Court on November 28, 2024
2 at 8:30 am in Department 15 of the above-entitled Court to determine: (1) whether the proposed
3 settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the
4 amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award
5 to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the
6 amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

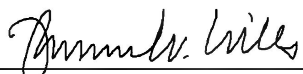
7 26. The Settlement Administrator shall provide notice to any objection party of any
8 continuance of the hearing of the motion for final approval.

9 27. Participating Class Members will receive an Individual Settlement Payment and
10 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
11 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty
12 (180) calendar days after the date of their issuance. Subject to the requirements of California Civil
13 Procedure section 384, within seven (7) calendar days after expiration of the 180-day period, checks
14 for such payments shall be canceled and funds associated with such checks shall be transmitted to
15 the Food Bank for Monterey County, the *cypres* recipient, for use in Monterey County.

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17 **IT IS SO ORDERED.**

18
19 Dated: July 3, 2024



Judge of the Superior Court

THOMAS W. WILLS